Finance Committee

FIN(3) 05-08 (p3)
Thursday 6 March 2008

Financial impact of the NHS Redress Measure

Purpose of Paper

1. For members to consider the further information provided by the Minister for Health and Social Services.

Background

2 The Finance Committee considered the initial financial assessment of the NHS Redress Measure at its meeting on 20 September 2007.

3 Its report (Annex 1) concluded:

"The Committee's judgement is that it cannot reliably assess the impact of the proposed NHS Redress Measure. It concludes that it has little alternative but to recommend that the stage one debate on the general principles of the Measure is not brought forward until the Committee, and by implication Assembly Members generally, have had an opportunity to consider the better estimate of costs that will flow from the work currently underway."

4. The Committee wrote to the Committee on 24 January with an 'Interim Financial Assessment' (Annexes 2a and b) and promised further information 'by Easter'. This information has now been received (Annex 3).

Progress of the Measure

5. The first stage of the Measure was completed by the Assembly on 29 January and the Assembly passed the financial resolution on 5 February.

6. The Measure is currently undergoing Stage 2 detailed consideration by Committee is expected to be concluded by the Easter recess. The deadline for Stage 2 amendments is 4 March, which is before the Finance Committee's meeting, but amendments can still be submitted for Stage 3.

Action

7. The Committee is invited to consider the further information received from the Minister

John Grimes
Clerk, Finance Committee

29 February 2008

Annex 1

NATIONAL ASSEMBLY FOR WALES

REPORT FROM THE FINANCE COMMITTEE

Report on NHS Redress (Wales) Measure, 2007

Background:

1. Standing Order 14.2 states:

> *14.2 The [Finance] Committee may also consider and, where it sees fit, report on:*
>
> *(i) financial information in explanatory memoranda accompanying proposed Assembly Measures;*

Consideration

2. The Committee considered the Report on NHS Redress (Wales) Measure, 2007 at its meeting on 20 September and took evidence from the officials involved in preparing the financial information:

- Janet Davies, Head of Clinical Governance Support & Development Unit
- Pat Vernon, Head of Public and Patient Involvement Branch

Report

3. The Committee considered the work that had been undertaken to assess the costs that would arise from implementation of the Measure. They noted that the estimates that had been prepared were based on a number of assumptions made by the Department of Health and that figures for Wales had been extrapolated from these.

4. The Committee was concerned that there were a number of other factors that might cause the estimates to be inaccurate including the variation in the number of claims each year in Wales and the huge variation year on year in terms of how much is being paid out overall for negligence. They also noted that, because the proposed Measure could be used for cases involving primary care, it was be broader and more flexible than the English legislation. This difference in scope suggested the cost to Wales would be proportionately higher.

5. Members drew attention to the fact that the aim of the Measure was to provide a simpler and fairer system of redress and that one consequence might be the unlocking of a number of ‘pent up’ claims. They also noted that a further benefit might be a change in the culture of the NHS leading to a more open approach to when things went wrong.

6. The Committee noted that work to assess the costs of the Measure was continuing and that three Working Groups were about to get under way and were expected to produce an interim report by the end of 2007.

Conclusion

7. The Committee were disappointed that the information to assess the cost of the implementing the Measure was so weak. While they accepted that there were difficulties in making judgements in this regard, they felt it should have been possible to provide more robust information so the Committee could test the assumptions that had been made. They consider this important not just in relation to the NHS Redress Measure itself but because any under- or over-estimate of its costs would have a consequent effect on the budgets for other Welsh Assembly Government policies.

8. The Committee noted that Officials are to continue to work on the figures and that this work would be informed by the working groups that have been set up. They were disappointed that the Measure had been brought forward before the assessment its financial impact had been adequately completed.

9. The Committee's judgement is that it cannot reliably assess the impact of the proposed NHS Redress Measure. It concludes that it has little alternative but to recommend that the stage one debate on the general principles of the Measure is not brought forward until the Committee, and by implication Assembly Members generally, have had an opportunity to consider the better estimate of costs that will flow from the work currently underway.

Alun Cairns AM
Chair, Finance Committee

Edwina Hart AM MBE
Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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24 January 2008

Dear Assembly Member,

NHS REDRESS MEASURE

Many of you will know that since last autumn, a Committee Chaired by Jonathan Morgan AM, has been considering the principles behind the Proposed NHS Redress (Wales) Measure, which I introduced on 2nd July 2007.

A debate on the Stage 1 principles has been tabled for next Tuesday, 29th January. By way of information to support that debate, I am sending you a copy of an interim financial assessment, so that you may read it alongside the NHS Redress Measure Committee's report, which is due out by this Friday, 25th January. Members will have the opportunity to raise any questions on the financial aspects during next week's debate.

Using this information, I would then propose to table a finance resolution for 5th February before the Measure proceeds to detailed Stage 2 consideration.

The interim financial assessment shows both where we have been able to assess potential costs and savings now, and further work that will be completed by Easter. At that time, I will share with Jonathan Morgan's Committee and with the Finance Committee, a full and final financial assessment to enable them to take it into account before the Stage 2 deadline of 9th April.

Edwina H

NHS REDRESS MEASURE/PUTTING THINGS RIGHT PROJECT

INTERIM FINANCIAL IMPACT ASSESSMENT – JANUARY 2008

1. Background

1.1 The Explanatory Memorandum, which accompanied the introduction of the NHS Redress Measure on 2nd July 2007, set out some initial analyses of the potential costs of introducing arrangements to allow the NHS to settle certain lower-value clinical negligence claims locally. This was based on work done by the Department of Health for the NHS Redress Bill in England and extrapolated for Wales. An explanation of the work is attached at Annex A. The assumptions from that work (i.e. a potential increase in cases of between 15 and 43 per cent) are used throughout this document. However, we have also added a 60 per cent increase range as a worst case scenario.

1.2 Following receipt of the interim reports from the three *Putting Things Right* Project Working Groups further work has been carried out and this paper provides more detail on the potential financial impact of the Measure and wider work. A final financial report will be prepared **by Easter 2008**, drawing on the further work of the Working Groups by that time, to inform Stage 2 consideration of the Measure, due to complete by 9th April. At this point, it is important to note that the analysis is set within the context of possible wider changes to the way in which the NHS in Wales handles things that go wrong, of which NHS Redress is one element.

1.3 This paper has been prepared by officials of the Department for Health and Social Services of the Welsh Assembly Government.

2. Predicted costs and potential savings

Staffing levels and skills required

2.1 The Investigation and Process Working Group is agreed that a single investigation process should be put in place for complaints, claims and patient safety incidents. This will require staffing levels and skills suitable to conduct robust and appropriate investigations as well as to be able to consider issues such as liability and settlement of claims in appropriate cases. In general terms we are of the view that this can largely be achieved by the streamlining of existing resources at Trust level, however, there may be a requirement to boost the direct staffing levels in some areas.

2.2 A questionnaire was sent out in the autumn of 2007 to all Welsh NHS Trusts and Powys Local Health Board (LHB) to ascertain the existing skill mix and resource devoted to the resolution of complaints, claims and incidents. Overall, there was a good response rate from the 15 NHS trusts with:

- 13 responding on complaints;
- 12 responding on claims and

- 9 responding on incidents.

2.3 The responses reveal that Trusts have varying numbers of staff working directly in these areas and other staff across Directorates who have training and skills in carrying out investigations.

2.4 There are considerable differences in staff ratios across Trusts. For example, the ratio of staff to claims varied from 1 per 57 cases to 1 per 149 cases. Similarly, the skill mix and seniority of staff shows wide differences locally - qualifications and experience varied with some staff having no formal training and others having legal diplomas or higher. Some, but not all Trusts satisfy the Welsh Risk Management Standard for claims handling, which requires that Trusts must have access to a claims manager who has received external training and who holds or who is working towards a formal qualification. The National Patient Safety Agency (NPSA) has also trained a core group of staff in every organisation in Root Cause Analysis (RCA) investigative techniques. However, it is not clear how effectively this resource is deployed across the board. Whilst Trusts will retain the flexibility to manage any new arrangements to suit local needs, the aim of the Putting Things Right project work is to deliver a consistency of outcome.

Further work will therefore need to be done to assess the level of training and skill required additional to that which already exists in staff directly involved in this type of activity. This will be addressed in more detail before Easter.

2.5 It is also envisaged that additional training for frontline staff in disclosure and investigation would be required over the first two years to encourage a proactive culture in dealing with things that go wrong. This would include specific training to increase the number of individuals who could conduct Root Cause Analysis investigations. An initial programme, funded centrally through the Department's agreement with the NPSA, provided training to all NHS organisations in Wales. Subsequent training has had to be funded by the organisations themselves. Within an integrated investigation process, we would envisage having to extend such training to a much wider group of staff and to ensure consistency, we would anticipate commissioning a further all-Wales programme, estimated at **£300,000** in the first year and **£150,000** in the second year.

Guidance

2.6 It is anticipated that a revised guidance manual would be required complemented by a series of road show events to publicise the new arrangements. The costs for these activities is estimated to be around **£100,000** and would be funded from the Public and Patient Involvement Budget Expenditure Line (BEL 0265) within the DHSS Main Expenditure Group (MEG).

Independent Review

2.7 Independent Review (IR) forms the second stage of the complaints procedure.

2.8 It currently costs **£354,000 per annum** which funds staff located at the NHS Business Services Centre, independent lay reviewers' fees and expenses, training and development and panel costs. Additionally around **£100,000 per annum** is paid by Trusts for clinical advice to support the IR process.

2.9 In the autumn of 2007 questionnaires were used to gather views on IR process from the Welsh NHS and members of the public who have used the process. The feedback was mixed. Many suggested the process raised complainants' expectations, but was then unable to deliver the outcome they wanted while others felt IR gave organisations a useful second chance to put things right.

2.10 In its interim report the Investigation and Process Working Group doubted the value of the extant IR process and recommended that Independent Review be either:

- replaced with a system similar to the Scottish model through which resolution is sought locally, followed if necessary by direct referral to the Ombudsman; or

- redesigned to include only the options of referral to a panel or to the Ombudsman.

2.11 Replacing the IR process would potentially release £454,000 per annum (including clinical advice costs), while redesign would result in little cost saving because those elements of the process where costs are incurred would remain largely unaltered. Lay reviewers would still be required to decide whether to have a panel; clinical advice would still be needed to enable them to make such a decision; and all the panel costs would remain as now.

Primary care

2.12 The Investigations and Process Working Group concluded in its interim report that Local Health Boards (LHBs) should be able to investigate formal complaints and issues concerning GPs and other primary care practitioners. There a number of staff across LHBs in Wales working on complaints, however, at present they do not conduct investigations into or deal with claims against primary care practitioners as they have no direct role in doing so.

The final financial impact assessment, to be completed by Easter 2008, will include advice on the appropriate level and additional cost (if any) of staffing, skills and training required to address primary care complaints, including the scope for redeployment of staff currently involved in the IR process. This would not include the NHS Redress element of any arrangements, as further work is needed on this.

Impact on Ombudsman's investigations

2.13 New, more accessible and proactive arrangements are bound to increase the number of investigations to be conducted locally. Whilst the aim is to handle the vast majority of these successfully at local level, we would anticipate an increase in the number of cases going to the Ombudsman, particularly if the IR process is abolished. In Scotland, IR was abolished in 2005 and there was a 128% increase in cases going to the Ombudsman in 2005/06. The measures introduced in Scotland that year in the revised NHS complaints procedure sought to make it easier to use and emphasised the message: it is OK to complain. If IR were to be abolished in Wales and, as expected, the number of complaints received were to increase, cases received by the Public Services Ombudsman for Wales could increase by a similar amount, for example, from 191 to 364 cases (based on 2006/07 figures). However, the full financial impact will include a fuller report following further dialogue with the Public Services Ombudsman for Wales on the potential impact on his workload, whether his service is capable of absorbing any increase in the number of investigations and what action, if any, is jointly required. **This will be addressed in further work to be done by Easter.**

Impact on Welsh Health Legal Services

2.14 An increase in the number of claims coming forward, NHS organisations would be likely to increase their demand for advice from Welsh Health Legal Services in respect of complex claims, while demand for advice on smaller, simpler claims would be likely to reduce as more claims are settled locally. **Further work on the financial impact of the measure on WHLS will be undertaken by Easter to inform the final financial impact assessment, but at this stage it is estimated that the impact would be minimal.**

Advocacy support

2.15 The Advocacy and Assistance Working Group has recommended that existing patient support mechanisms in NHS organisations are used more effectively to prevent issues escalating. This is not about setting up a new service but better co-ordination of what is already available. Work carried out over the last 18 months in South East Wales Region will be shared with the rest of the NHS and there will be no costs associated with it.

2.16 Community Health Councils in Wales are already providing an advocacy service for people wishing to make a complaint about the NHS in Wales. The Advocacy and Assistance Working Group recommends this service should be enhanced and provided in conjunction with Action against Medical Accidents (AvMA) for those patients wishing to access the NHS Redress part of the arrangements. The current advocacy service costs **£490,000 per annum** from a total CHC budget of £3.25m. Requests for advocacy could increase this budget by between £73k (15 per cent) and £210k (43 per cent), which could be managed through efficiency savings generated by CHC mergers to reflect Trust merger areas.

2.17 **The full financial impact will confirm whether savings can be released (and over what period) and redirected towards an enhancement of the advocacy service.** Other options will also be considered, including training other CHC staff to be able to take on advocacy work alongside their other roles although these could be longer-term pieces of work in which cost savings would take time to realise.

2.18 At this interim stage it is estimated that an additional **£100,000 per annum** would be required for the first two years to allow for a predicted increase in demand for advocacy services. The additional funding would support the additional human resources costs and a service level agreement between the CHCs and AvMA. It is anticipated that the additional funding could be tapered as CHC efficiency savings were realised. **The final financial impact assessment will also consider the funding requirements for a more general service to be provided by Citizen's Advice Cymru.**

Mediation and facilitation

2.19 Both the Advocacy and Assistance Working Group and Legal Advice Working Group recommend the development of a more effective mediation service across Wales. There is already an Independent Complaints Facilitation Service available but there is relatively low uptake of the service, possibly because the service is funded by NHS Trusts who may look for cheaper ways to resolve issues. Some investment may therefore be required to boost the use of this service to enable the resolution of issues earlier, saving time and money later on in the process. At this stage it is estimated that an additional **£120,000** at least for the first year (an average of £15,000 per NHS Trust) to encourage the use of mediation and facilitation.

Legal costs and award of damages

2.20 In 2006-07 101 claims in Wales were settled for £20,000 or less at a total cost in damages of £791,000 and £692,000 in legal costs. The figures for 2005-06 were broadly similar. Using these figures to illustrate the potential impact of the measure on damages and legal costs, it is assumed that the average value of damages per claim is £7,832 and the average legal costs per claim are £6,851.

2.21 Using the 2006-07 average figures, a 15 per cent increase in claims settling for £20,000 or less would generate an additional 15 claims with damages totalling £117,480 and legal costs amounting to £102,765 – a total additional cost of £220,245. If the additional 15 cases settled at £20,000 the total additional cost would be £402,765.

2.22 Still using the 2006-07 figures, if the number of claims increase by DoH worst case scenario, 43 per cent, an additional 44 cases would be generated costing in total an additional £646,052 (using average damages) or £1.182 million if all 44 cases settled at £20,000.

2.23 If we assume that the DoH predictions are too low and there will be 60 per cent increase in cases, the costs could increase by between £895,663 or

£1.61 million (if all additional cases settle for £20,000).

2.24 In summary, depending on the percentage increase in claims and using average legal costs, the additional costs and damages could range **£220,000** (15 per cent) to **£896,000** (60 per cent).

2.25 The Legal Advice Working Group has concluded that specialist legal advice should be provided to people accessing the NHS Redress part of the arrangements at key stages of the process although it is recognised that not all patients will choose to do so at every stage. The cost of legal advice will depend on which method of remuneration is to be chosen. The figures above include average legal costs based on 2006-07 of £6,851 per claim. The Legal Advice Working Group has put forward some alternative options for establishing the legal costs:

Option 1: Fixed fee for whole process

2.26 Under the is option a fixed fee of £3,500 is proposed for cases where there is concession of liability and £5,000 for cases where there may be no agreement regarding liability between the Trust, the patient and their legal adviser and further investigation, evidence collation and analysis is required. An equal split between the number of cases attracting £3,500 fee and £5,000 fee is assumed.

Option 2: Fixed fee for various stages

2.27 This option assumes a fixed fee for various stages. This means that legal advice could be as low as £1,500 in many cases but rise to £3,000 or more in others which are more complicated or where there is no agreement. It assumes 50 per cent of cases could be settled within the £1,500 cost limit, 30 per cent within the £3,000 limit and 20 per cent within the £5,000 limit.

2.28 The table below shows the estimated financial impact of options 1 and 2, based on the 2006-07 figures. Option 2 is the cheapest, with forecast savings of between £488,000 (15% increase) and £678,000 (60% increase) when compared to the current average legal cost.

		Average cost	**Option 1**	**Option 2**
% increase on 2006-07 figures (101 claims)	**Total no. of claims £20,000 or under per annum**	**Total legal costs using average (£6851)**	**Total legal costs using Fixed Fee (50% £3,500,50% £5,000)**	**Total legal costs using Fixed Fee (50% £1,500, 30% £3000, 20% £5000)**
15	116	794,716	493,000	307,000
43	144	986,544	612,000	382,000
60	161	1,103,011	684,250	425,500

Option 3. Hourly rate for work undertaken

2.29 The Legal Advice Working Group also considered an hourly rate option, based on £175 per hour, but there was no agreement in the Group on how it

would be controlled. As such, it is not possible at this stage to estimate the costs of this option though these should be available in the final financial impact assessment.

Option 4. Composite costs

2.30 The fourth option considered allows for costs to be charged on an hourly rate of £175 for work carried out immediately following the investigation, capped at a total of £1,500. Late stages of work could be at a fixed fee or a similarly capped hourly rate. This would allow for simple cases where fewer hours work would be required to be paid appropriately whilst still maintaining control over the total possible fee. The total cost for solicitor's fees under this option would be a maximum of £4,500 but might be as low as £175. Further information will be required to estimate costs more accurately and this will be provided in the final financial impact assessment.

Clinical and Expert advice

2.31 As indicated above under the IR process, there is already estimated to be **£100k** in the system for the commissioning of independent clinical advice. The figures for 2006-07 legal costs shown above also contain an element for expert advice, although this is not shown separately. The cost of clinical advice can vary from as little as £450 for a report to over £1,000 depending on the complexity of the case and the speciality concerned. For the purposes of estimating costs, and based on a potential increases of 15%, 43% and 60% additional cases and an average of £700 per report, the **additional costs for clinical advice will be between £10,500 and £42,000 per annum.**

3. Conclusion

3.1 At this interim stage, net additional potential costs range from savings of £91k to additional costs of £1.171m, as shown in the table below. These figures will be tested further in the final stage of the analysis. Further work will also need to be done by Easter 2008 to estimate the impacts from LHBs taking on investigation of primary care complaints and on other parts of the system, such as Ombudsman's investigations and this will continue as the development of the detail progresses.

SUMMARY OF POTENTIAL ADDITIONAL COSTS AND SAVINGS (OVER 2006/07 FIGURES)

ITEM	BEST CASE SCENARIO (15% INCREASE)	MEDIUM CASE SCENARIO (43% INCREASE)	WORST CASE SCENARIO (60% INCREASE)	OTHER COSTS/ COMMENTS
Training and skills for staff directly involved in new arrangements	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Training for front line staff in disclosure and Root Cause Analysis	£300k in first year reducing to £150k in second year	£300k in first year reducing to £150k in second year	£300k in first year reducing to £150k in second year	
Guidance and embedding	N/A	N/A	N/A	£100k to be met from Departmental programme budget
Independent Review	-£354k	-£354k	-£354k	To be saved if Independent Review is discontinued
LHB investigation of primary care complaints	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Primary care NHS Redress element	TBC	TBC	TBC	To be determined in longer term piece of work
Impact on Ombudsman's investigations	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Impact on Welsh Health Legal Services	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Advocacy support from CHCs and agreement with AvMA	£100k in first year	£210k	£294k	
Support for Citizen's Advice Cymru	To be included in report by Easter	To be included in report by Easter	To be included in report by Easter	
Mediation and facilitation	£120k for first year			
Damages	£117k	£345k	£478k	

Costs - No cost structure - Option 1 - - Option 2	 £103k -£199k -£385k	 £295k -£80k -£310k	 £411k -£8k -£267k	
Clinical/Expert Advice	£11k	£30k	£42k	
TOTALS - With no cost structure - Option 1 - Option 2	 £397k £95k -£91k	 £826k £451k £221k	 £1.171m £752k £493k	

ANNEX A

Department of Health: NHS Redress Research

Background note

1. In 2004, the Department of Health (DoH) commissioned a piece of research from Professor Paul Fenn, University of Nottingham, et al, the objective of which was to assess the cost of an alternative compensation scheme for patients. The researchers assessed data collected by MORI in 2001 during face to face interviews with a randomly selected sample of adults. The total sample size was 8,206 and included patients from Wales (497) and Scotland (769).

2. Of those questioned and who provided answers (8,198), some 4.8% (395) considered that they had suffered illness, injury or impairment as a result of medical treatment or care. Of those, only 11.4% had pursued a legal claim for financial compensation. In a significant number of cases (271), people said that they did not want financial compensation. The researchers looked at various factors, which might have prohibited people from pursuing a claim, and concluded it was dependent on income, severity and access to legal aid.

3. DoH Economic Advisors used this work to predict the number of cases that might come forward under a scheme aimed at increasing access. Their predictions showed an increase of between 15 and 43 per cent. The survey sample included [?] people from Wales and if we assume that this sample was representative of the Welsh population then the DoH predictions could be seen as a useful basis on which to predict possible changes in behaviour in Wales that might arise from the NHS Redress Measure.

Edwina Hart AM MBE
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21st February 2008

Dear Jonathan

NHS REDRESS MEASURE – FINANCIAL IMPACT ASSESSMENT

Further to my letter of 8th February, I am now enclosing a final assessment into the potential financial impact of the NHS Redress Measure and associated work.

I am copying this letter to Alun Cairns AM, the Chair of the Finance Committee and to all AMs.

NHS REDRESS MEASURE/PUTTING THINGS RIGHT PROJECT

FINAL FINANCIAL IMPACT ASSESSMENT – FEBRUARY 2008

1. Introduction

1.1 This financial impact assessment revises the interim document that was issued to all Assembly Members at the end of January 2008. It has been produced following further work with the Welsh Risk Pool, Community Health Councils in Wales, Welsh Health Legal Services and the Public Services Ombudsman for Wales. There has also been recent consultation with claims, complaints and risk managers from some NHS trusts in Wales.

1.2 This paper is not a document of the Putting Things Right project board, nor of the three associated working groups. The Department for Health and Social Services of the Welsh Assembly Government has prepared this document as a guide for Assembly Members to the potential costs that might arise from this work.

1.3 Potential additional costs arising from the introduction of new arrangements now range from £2.4m to £3.6m. Members will note that this latest assessment reflects more closely the estimate of an additional £3m set out in the original Explanatory Memorandum which accompanied the NHS Redress Measure on introduction. These figures will be refined further in the coming months, and before any regulations are consulted upon.

1.4 Tables showing the potential financial implications of implementing the NHS Redress Measure and Putting Things Right Project are as follows:

Table 1

Item	Estimated additional costs (£000)	Comments
Staff skills & training	1,800	Could be phased over 3 years
Training in disclosure & RC Analysis	300	Reducing to £150,000 in year two
Guidance and embedding	100	
Independent Review (IR)	(354)	Potential saving if IR discontinued
LHB primary care complaints investigation		Not yet known. Further work needed as part of separate work stream
Primary care NHS Redress element		
Impact on Ombudsman's investigations	350	
Impact on Welsh Health Legal Services	150	For first two years only
Advocacy support (CHCs / AvMA)	195	
Mediation and facilitation	120	Year one cost only
Total	**2,661**	

Table 2

Table 1 costs plus Legal costs and award of damages	Best case (£000)	Medium case (£000)	Worst case (£000)
Total from Table 1	2,661	2,661	2,661
Damages	117	345	478
Clinical/Expert Advice	11	30	42
Sub Total	**2,789**	**3,036**	**3,181**
Legal costs (no cost structure – Option 1)	103	295	411
Total using Option 1	**2,892**	**3,331**	**3,592**
Legal costs (fixed fee whole process – Option 2))	(199)	(80)	(8)
Total using Option 2	**2,590**	**2,956**	**3,173**
Legal costs (fixed fee part process)	(385)	(310)	(267)
Total using Option 3	**2,404**	**2,726**	**2,914**

The following paragraphs provide a background to and an explanation of the above estimates.

2. Background

2.1 The Explanatory Memorandum, which accompanied the introduction of the NHS Redress Measure on 2nd July 2007, set out some initial analyses of the potential costs of introducing arrangements to allow the NHS to settle certain lower-value clinical negligence claims locally. This was based on actuarial work commissioned by the Welsh Risk Pool and survey work done by the Department of Health for the NHS Redress Bill in England and extrapolated for Wales. An explanation of the Department of Health work is attached at Annex A. The assumptions from that work (i.e. a potential increase in cases of between 15 and 43 per cent) are used throughout this document. However, we have also added a 60 per cent increase range as a worst case scenario.

2.2 Following receipt of the interim reports from the three *Putting Things Right* Project Working Groups and further work commissioned by the Welsh Assembly Government, more detail on the potential financial impact of the Measure and wider work is now set out in this paper. It is important to note that the analysis is set within the context of possible wider changes to the way in which the NHS in Wales handles things that go wrong, of which NHS Redress is one element.

3. Predicted costs and potential savings

Staffing levels and skills required

3.1 The Investigation and Process Working Group is agreed that a single investigation process should be put in place for complaints, claims and patient safety incidents. This will require staffing levels and skills suitable to conduct robust and appropriate investigations as well as to be able to consider issues such as liability and settlement of claims in appropriate cases. There is

already a considerable pool of resources in the NHS dealing with work of this nature. We have considered whether it would be possible, through reorganisation and streamlining of existing resources at Trust level to meet the requirements of delivering any new arrangements without substantial further investment. Revised calculations on this aspect reveal the need for additional investment and this is detailed below at paragraphs 3.5 to 3.7 below.

3.2 A questionnaire was sent out in the autumn of 2007 to all Welsh NHS Trusts and Powys Local Health Board (LHB) to ascertain the existing skill mix and resource devoted to the resolution of complaints, claims and incidents. Overall, there was a good response rate from the 15 NHS trusts with:

- 13 responding on complaints;
- 12 responding on claims and
- 9 responding on incidents.

3.3 The responses reveal that Trusts have varying numbers of staff working directly in these areas and other staff across Directorates who have training and skills in carrying out investigations.

3.4 There are considerable differences in staff ratios across Trusts. For example, the ratio of staff to claims varied from 1 per 57 cases to 1 per 149 cases. Similarly, the skill mix and seniority of staff shows wide differences locally - qualifications and experience varied with some staff having no formal training and others having legal diplomas or higher. Some, but not all Trusts satisfy the Welsh Risk Management Standard for claims handling, which requires that Trusts must have access to a claims manager who has received external training and who holds or who is working towards a formal qualification. The National Patient Safety Agency (NPSA) has also trained a core group of staff in every organisation in Root Cause Analysis (RCA) investigative techniques. However, it is not clear how effectively this resource is deployed across the board, or whether skills are being regularly used in order to keep them current. Whilst Trusts will retain the flexibility to manage any new arrangements to suit local needs, the aim of the Putting Things Right project work is to deliver a consistency of outcome.

3.5 Further work commissioned from the Welsh Risk Pool has done more to establish the exact nature of the existing resources at Trust level devoted to investigating complaints, incidents and claims. It is estimated that between £2.4m and £3m per annum is currently spent on the direct employment of staff involved in this type of work. Additionally, there is the considerable and uncalculated "hidden" cost of operational and clinical staff time spent contributing to investigations. In order to operate a set of integrated arrangements effectively, Trusts will need to develop teams that can respond appropriately across the range of issues, in order to avoid the duplication of process that can sometimes result from the current tendency to segregate roles.

3.6 The recent work has identified a need for at least one senior and highly skilled lead officer in each Trust to oversee a suitable structure as well as supplementing existing staff both in sufficient numbers and competency so that they are able to take on additional work across the range. Whilst there is no one size fits all solution, if a team-based approach were to be adopted across all Trusts, it is estimated that this would require a further investment in the region of **£1.8 million.**

3.7 This estimate was arrived at by looking at the size of organisations in overall staffing terms, and the number of cases likely to be generated in an organisation of that size. The cost per head of dealing with complaints, claims and incidents was assessed for each organisation using information about current expenditure in this area, and then compared with an integrated team-based model. This gave a very broad-brush estimate of the level of resource required to handle issues in the way that is envisaged by the Putting Things Right project. It should be recognised that there is no one reliable way to assess these potential costs and that opportunities afforded by Trust mergers in terms of streamlining existing resources may reduce this estimate further.

3.8 It is also envisaged that additional training for frontline staff in disclosure and investigation would be required over the first two years to encourage a proactive culture in dealing with things that go wrong. This would include specific training to increase the number of individuals who could conduct Root Cause Analysis investigations. An initial programme, funded centrally through the Department's agreement with the NPSA, provided training to all NHS organisations in Wales. Subsequent training has had to be funded by the organisations themselves. Within an integrated investigation process, we would envisage having to extend such training to a much wider group of staff and to ensure consistency, we would anticipate commissioning a further all-Wales programme, estimated at **£300,000** in the first year and **£150,000** in the second year.

Guidance

3.9 It is anticipated that a revised guidance manual would be required complemented by a series of road show events to publicise the new arrangements. The costs for these activities is estimated to be around **£100,000** and would be funded from the Public and Patient Involvement Budget Expenditure Line (BEL 0265) within the DHSS Main Expenditure Group (MEG).

Independent Review

3.10 Independent Review (IR) forms the second stage of the complaints procedure.

3.11 It currently costs **£354,000 per annum** which funds staff located at the NHS Business Services Centre, independent lay reviewers' fees and expenses, training and development and panel costs. Additionally around **£100,000 per annum** is paid by Trusts for clinical advice to support the IR process.

3.12 In the autumn of 2007 questionnaires were used to gather views on IR process from the Welsh NHS and members of the public who have used the process. The feedback was mixed. Many suggested the process raised complainants' expectations, but was then unable to deliver the outcome they wanted while others felt IR gave organisations a useful second chance to put things right.

3.13 In its interim report the Investigation and Process Working Group doubted the value of the extant IR process and recommended that Independent Review be either:

- replaced with a system similar to the Scottish model through which resolution is sought locally, followed if necessary by direct referral to the Ombudsman; or

- redesigned to include only the options of referral to a panel or to the Ombudsman.

3.14 Replacing the IR process would potentially release £454,000 per annum (including clinical advice costs), while redesign would result in little cost saving because those elements of the process where costs are incurred would remain largely unaltered. Lay reviewers would still be required to decide whether to have a panel; clinical advice would still be needed to enable them to make such a decision; and all the panel costs would remain as now.

Primary care

3.15 The Investigations and Process Working Group concluded in its interim report that Local Health Boards (LHBs) should be able to investigate formal complaints and issues concerning GPs and other primary care practitioners. There are a number of staff across LHBs in Wales working on complaints, however, at present they do not conduct investigations into or deal with claims against primary care practitioners as they have no direct role in doing so. Their main role is to help achieve a local solution between complainants and independent contractors and to deal with any complaints concerning the LHB's own role.

3.16 At present, it is estimated that around £20k per annum per LHB is spent on administration of the complaints process. Implementing this initial recommendation of the working group to allow LHBs to take on the investigation of all formal complaints about primary care practitioners would have considerable impact and would need careful planning and a period of development to allow resources to be found and skills to be acquired. This is of course even more the case were LHBs to have a role in the investigation of claims about primary care practitioners.

3.17 Separate work, involving LHBs and primary care representative organisations will be taken forward to look in detail at the implications, both in terms of cost and practical issues around delivery of redress. It is therefore not possible to provide any further detail on this aspect in the financial assessment.

Impact on Ombudsman's investigations

3.18 New, more accessible and proactive arrangements are bound to increase the number of investigations to be conducted locally. Whilst the aim is to handle the vast majority of these successfully at local level, we would anticipate an increase in the number of cases going to the Ombudsman, particularly if the IR process is abolished. In Scotland, IR was abolished in 2005 and there was a 128% increase in cases going to the Ombudsman in 2005/06. The measures introduced in Scotland that year in the revised NHS complaints procedure sought to make it easier to use and emphasised the message: "it is OK to complain". If IR were to be abolished in Wales and, as expected, the number of complaints received were to increase, cases received by the Public Services Ombudsman for Wales could increase by a similar amount, for example, from 191 to 364 cases (based on 2006/07 figures).

3.19 However, further work has been done with the Ombudsman's office on the potential impact on his workload of any change in arrangements. It is agreed that there would be an increase in cases going to the Ombudsman, based on the numbers that already go, and the inevitable increase in cases overall, if the NHS saw more coming forward under new arrangements. In mitigation if more cases were to be successfully resolved locally, then this should prevent a certain number having to be escalated to the Ombudsman. A very broad estimate from the Ombudsman is that he might see an additional 100 cases annually, requiring an additional investment of **£350,000** for investigations staff and clinical advice.

Impact on Welsh Health Legal Services

3.20 An increase in the number of claims coming forward, NHS organisations would be likely to increase their demand for advice from Welsh Health Legal Services in respect of complex claims, while demand for advice on smaller, simpler claims would be likely to reduce as more claims are settled locally. However, at least in the early stages, there may be more of a reliance on the advice of WHLS as the new arrangements bed in. An initial estimate is that this might cause an additional 10-15% burden on solicitors' time, which equates to an additional **£150,000**, potentially for each of the first two years of any new arrangements.

Advocacy support

3.21 The Advocacy and Assistance Working Group has recommended that existing patient support mechanisms in NHS organisations are used more effectively to prevent issues escalating. This is not about setting up a new service but better co-ordination of what is already available. Work carried out over the last 18 months in South East Wales Region will be shared with the rest of the NHS and there will be no costs associated with it.

3.22 Community Health Councils in Wales are already providing an advocacy service for people wishing to make a complaint about the NHS in Wales. The Advocacy and Assistance Working Group recommends this service should be

enhanced and provided in conjunction with Action against Medical Accidents (AvMA) for those patients wishing to access the NHS Redress part of the arrangements. The current advocacy service costs **£490,000 per annum** from a total CHC budget of £3.25m. Requests for advocacy could increase this budget by between £73k (15 per cent) and £210k (43 per cent).

3.23 Further recent work carried out on this aspect suggests that to enable CHC advocates to cope with the increase in workload that might be expected under the new arrangements. This includes signposting, providing assistance, providing a greater level of support in some cases and facilitation and mediation in others would cost an additional **£150,000** per annum. This equates to an increase in advocacy time of around 20 hours per week in each of the nine CHC federation areas.

3.24 In addition, referrals for advice to AvMA could require the services of the equivalent of one WTE caseworker, amounting to **£45,000** per annum.

3.25 In terms of potential savings to be identified, it is not considered feasible to assume that there will be any cost savings from CHC mergers, and in any case, there are no plans to make changes in the foreseeable future. In terms of training other CHC staff, again, recent assessments do not envisage any scope for such action, as it would have the potential for detracting from CHCs' other functions.

3.26 Further work also confirms that there is unlikely to be any further funding requirement for Citizen's Advice Cymru as issues around access to information will be covered by the development of a Memorandum of Understanding across organisations that can be funded through current provision.

Mediation and facilitation

3.27 Both the Advocacy and Assistance Working Group and Legal Advice Working Group recommend the development of a more effective mediation service across Wales. There is already an Independent Complaints Facilitation Service available but there is relatively low uptake of the service, possibly because the service is funded by NHS Trusts who may look for cheaper ways to resolve issues. Some investment may therefore be required to boost the use of this service to enable the resolution of issues earlier, saving time and money later on in the process. At this stage it is estimated that an additional **£120,000** at least for the first year (an average of £15,000 per NHS Trust) to encourage the use of mediation and facilitation.

Legal costs and award of damages

3.28 In 2006-07 101 claims in Wales were settled for £20,000 or less at a total cost in damages of £791,000 and £692,000 in legal costs. The figures for 2005-06 were broadly similar. Using these figures to illustrate the potential impact of the measure on damages and legal costs, it is assumed that the average value of damages per claim is £7,832 and the average legal costs per claim are £6,851.

3.29 Using the 2006-07 average figures, a 15 per cent increase in claims settling for £20,000 or less would generate an additional 15 claims with damages totalling £117,480 and legal costs amounting to £102,765 – a total additional cost of £220,245. If the additional 15 cases settled at £20,000 the total additional cost would be £402,765.

3.30 Still using the 2006-07 figures, if the number of claims increase by DoH worst case scenario, 43 per cent, an additional 44 cases would be generated costing in total an additional £646,052 (using average damages) or £1.182 million if all 44 cases settled at £20,000.

3.31 If we assume that the DoH predictions are too low and there will be 60 per cent increase in cases, the costs could increase by between £895,663 or £1.61 million (if all additional cases settle for £20,000).

3.32 In summary, depending on the percentage increase in claims and using average legal costs, the additional costs and damages could range **£220,000** (15 per cent) to **£896,000** (60 per cent).

3.33 The Legal Advice Working Group has concluded that specialist legal advice should be provided to people accessing the NHS Redress part of the arrangements at key stages of the process although it is recognised that not all patients will choose to do so at every stage. The cost of legal advice will depend on which method of remuneration is to be chosen. The figures above include average legal costs based on 2006-07 of £6,851 per claim. The Legal Advice Working Group has put forward some alternative options for establishing the legal costs:

Option 1: Fixed fee for whole process

3.34 Under the is option a fixed fee of £3,500 is proposed for cases where there is concession of liability and £5,000 for cases where there may be no agreement regarding liability between the Trust, the patient and their legal adviser and further investigation, evidence collation and analysis is required. An equal split between the number of cases attracting £3,500 fee and £5,000 fee is assumed.

Option 2: Fixed fee for various stages

3.35 This option assumes a fixed fee for various stages. This means that legal advice could be as low as £1,500 in many cases but rise to £3,000 or more in others which are more complicated or where there is no agreement. It assumes 50 per cent of cases could be settled within the £1,500 cost limit, 30 per cent within the £3,000 limit and 20 per cent within the £5,000 limit.

3.36 The table below shows the estimated financial impact of options 1 and 2, based on the 2006-07 figures. Option 2 is the cheapest, with forecast savings of between £488,000 (15% increase) and £678,000 (60% increase) when compared to the current average legal cost.

		Average cost	Option 1	Option 2
% increase on 2006-07 figures (101 claims)	**Total no. of claims £20,000 or under per annum**	**Total legal costs using average (£6851)**	**Total legal costs using Fixed Fee (50% £3,500,50% £5,000)**	**Total legal costs using Fixed Fee (50% £1,500, 30% £3000, 20% £5000)**
15	116	794,716	493,000	307,000
43	144	986,544	612,000	382,000
60	161	1,103,011	684,250	425,500

Option 3. Hourly rate for work undertaken

3.37 The Legal Advice Working Group also considered an hourly rate option, based on £175 per hour, but there was no agreement in the Group on how it would be controlled. As such, it is not possible at this stage to estimate the costs of this option.

Option 4. Composite costs

3.38 The fourth option considered allows for costs to be charged on an hourly rate of £175 for work carried out immediately following the investigation, capped at a total of £1,500. Late stages of work could be at a fixed fee or a similarly capped hourly rate. This would allow for simple cases where fewer hours work would be required to be paid appropriately whilst still maintaining control over the total possible fee. The total cost for solicitor's fees under this option would be a maximum of £4,500 but might be as low as £175. A further financial assessment of this option has not been done, as it is now unlikely to be recommended by the Legal Advice Group.

3.39 This assessment does not include legal costs for cases that are not ultimately settled. Further work is needed on the investigation process to determine whether and how such cases would attract legal advice. Many claims currently in the system are withdrawn and so do not place a cost burden on the NHS in respect of claimant legal costs. It is not presently possible to determine the number of such cases that would, under new arrangements, attract legal advice free of charge. Officials will be considering this point in more detail over the coming months.

Clinical and Expert advice

3.40 As indicated above under the IR process, there is already estimated to be **£100,000** in the system for the commissioning of independent clinical advice. The figures for 2006-07 legal costs shown above also contain an element for expert advice, although this is not shown separately. The cost of clinical advice can vary from as little as £450 for a report to over £1,000 depending on the complexity of the case and the speciality concerned. For the purposes of estimating costs, and based on a potential increases of 15%, 43% and 60% additional cases and an average of £700 per report, the **additional costs for clinical advice will be between £10,500 and £42,000 per annum.**

ANNEX A

Department of Health: NHS Redress Research

Background note

1. In 2004, the Department of Health (DoH) commissioned a piece of research from Professor Paul Fenn, University of Nottingham, et al, the objective of which was to assess the cost of an alternative compensation scheme for patients. The researchers assessed data collected by MORI in 2001 during face to face interviews with a randomly selected sample of adults. The total sample size was 8,206 and included patients from Wales (497) and Scotland (769).

2. Of those questioned and who provided answers (8,198), some 4.8% (395) considered that they had suffered illness, injury or impairment as a result of medical treatment or care. Of those, only 11.4% had pursued a legal claim for financial compensation. In a significant number of cases (271), people said that they did not want financial compensation. The researchers looked at various factors, which might have prohibited people from pursuing a claim, and concluded it was dependent on income, severity and access to legal aid.

3. DoH Economic Advisors used this work to predict the number of cases that might come forward under a scheme aimed at increasing access. Their predictions showed an increase of between 15 and 43 per cent. The survey sample included 497 people from Wales and if we assume that this sample was representative of the Welsh population then the DoH predictions could be seen as a useful basis on which to predict possible changes in behaviour in Wales that might arise from the NHS Redress Measure.