01656 753931

Mrs Dawn Davies **13 September 2007**

Jonathan Morgan AM
Chair, The Proposed NHS Redress (Wales) Measure Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Mr Morgan

Consultation – Proposed NHS Redress (Wales) Measure Committee

I refer to your letter dated 20 July 2007 and set out below the views of this Trust in relation to the questions detailed in your letter.

The Head of the Trust's Governance Support Unit is a member of the NHS Wales *Putting Things Right* Project Board and the Trust is an enthusiastic supporter of the project. The Trust has already made significant changes to its structures, processes and ways of working in order to bring about an integrated approach to dealing with risk, incidents, complaints and claims that aims to provide patients and their families with better access to redress and minimises their distress at often difficult times. These changes were influenced by our view that there must be a requirement for a thorough investigation, at the earliest possible point in time, of any healthcare event where it is considered that something may have gone wrong and for remedial action to be instigated regardless of whether the patient takes matters further. The Trust believed that the existing focus on individual processes, teams and departments for dealing with incidents, complaints, claims, needed to be addressed and the Governance Support Unit was wholly restructured in October 2005 to enable this way of working and in particular allows one member of staff to deal with an adverse event from incident through to conclusion of complaint or claim, thereby reducing re-work for the organisation and allowing a patient to maintain one point of contact.

Why is a Redress Scheme required?

We believe that the proposed Measure and a Redress Scheme is required to build upon the positive achievements and address the ongoing difficulties of current systems and processes for incident reporting and management, complaints and claims.

We need a speedier, less adversarial system for both patients and staff involved. The insurance industry manages to make decisions on liability in law under its policies and pay the vast number of claims

without the need to refer to formal legal advice at every stage. Patients need a system that engenders confidence that fair redress will be made available, where due, without having to resort to solicitors.

Healthcare professionals need a system that allows for early identification of a problem and deals with it appropriately so that individuals and the organisation can reflect, learn and move on, rather than having to face lengthy and protracted litigation. Within the Trust, processes are designed to ensure that the individual specialities and departments maintain ownership of the investigation, findings and remedial action and outcomes are not 'imposed' by central departments. It is our view that careful consideration should be given to the means by which to effect change and improve patient safety after adverse events and whether this is best achieved through locally managed processes or some other means.

These comments are made acknowledging the investment in knowledge and competence at a local level that is required to conduct quality investigations that allow a decision to be made as to whether a qualifying tort has occurred and the cultural changes that will need to accompany this.

Where it is an appropriate head of damage, successful claimants receive the equivalent cost of ongoing or remedial treatment on a private basis. Such treatment could be provided more cost effectively in the NHS itself, but consideration must be given to how to fairly expedite access.

Does the proposed Measure achieve the policy objective?

We consider that the proposed Measure describes, albeit at a high-level, arrangements that could achieve the means for patients to secure redress for sub-standard care that gives rise to a liability in tort, without the need to instigate formal legal proceedings. Also, to bring about the speedier resolution of such matters, assist to reduce re-work, to potentially reduce the legal costs involved and to provide further emphasis on the critical need to use the learning from events to better manage risks in the future.

Section 4 of the proposed Measure is important. Consideration will have to be given to whether the regulations should focus on simply helping patients to know what their rights are under the system or whether they should go much further and require the body to make a patient aware that a right of action in tort is considered to exist and that a potential redress package is under consideration.

We believe that the regulations should require investigation of any adverse event that could result in a potential liability in tort. Where that robust investigation indicates that there is a liability in tort, the report should proactively consider what redress may be appropriate and to open communication with the patient accordingly. If regulations do not require these steps, it could be viewed that the onus remains unfairly placed on patients to know when there may be a potential right of action and to pursue it. The question must be asked whether this fits with a healthcare system that should be open and honest with the patients it serves and is perceived to act accordingly.

What are the views of stakeholders who will have to work with a redress system?

In this Trust we have already implemented the structures and processes to consider 'something that has gone wrong' in an integrated and holistic manner, consider whether a qualifying liability in tort arises and consider whether any form of redress should be proactively offered. We, therefore, support and welcome the principle of a formal redress system, agree with the high-level provisions within the

proposed Measure and through our involvement in the Putting Things Right Project Board, hope that we will be able to make a valuable contribution to the consideration of the final arrangements.

We are hopeful that some aspects of the current NHS Wales Complaints Procedure and the performance targets allied to it, that can present difficulties in achieving a qualitative approach in practical terms, can naturally be overcome by the redress system.

We hope that the developments we have implemented within the Bro Morgannwg Trust to date will help to engender confidence that an integrated approach and a proactive redress system can be successfully enacted.

What will be the practicalities of making the system work and does the proposed Measure make provision for these?

There must be effective communication with patients and an involvement in the process, to achieve moving forward in a jointly-agreed manner, with everyone involved understanding expectations and steps in the process.

Clinician engagement is a key point, in a process that has to routinely and openly scrutinise and critically appraise clinical practice at an individual practitioner level. Consideration will have to be given to whether the existing culture and processes, underpinned and potentially influenced by different existing indemnity arrangements and contractual status, are consistent in all care settings and can be brought under one process/system.

Otherwise, there are quite simply a very significant number of details that need to be considered to make the system work in practice. The Measure covers all key issues but at a high level. Even when regulations are determined, there will still be a number of practicalities to work through in the implementation of the system on a day to day basis and we suggest consideration may need to be given to an overseeing body to deal with guidance, questions from the service etc., whilst ensuring ownership of the process at a local level.

It is essential that there is sufficient time to achieve quality– time to conduct a through investigation; time to work with and support individual clinicians who may demonstrate an initial defensive reaction and bring them on board; time to engage effectively with patients.

As expressed above, we believe that our own experience evidences that there is a significant shortfall overall in the availability of those with proven knowledge, skills and competence to make this successful and an investment programme in this regard is a critical success factor.

Up-front information provision will be essential to helping patients understand specific steps in the process. As an example from our own experience, patients can view legitimate and necessary steps, such as obtaining a certificate from the Compensation Recovery Unit, as suspicious and a stalling tactic.

We proactively seek external, independent opinion, where we feel this is appropriate and helpful but it can be expensive and can take some time. Building upon and expanding the valuable work already conducted through the Speedy Resolution Scheme pilot, access to an expanded panel of experienced, independent clinicians for a defined fee and timescale, would assist in resolving more complex cases.

Organisations will still need to be able to call upon formal legal advice and we would like to highlight that we have received excellent support and service from Welsh Health Legal Services staff when we have needed to call upon them.

The proposed Measure applies where healthcare has been commissioned for Welsh patients from providers outside Wales. We already have a number of examples where even simple issues such as requiring patient records from another provider is not as straightforward and quick as it should be. There are some obvious practical implications of binding non-Welsh providers to the system, which may not mirror the system in that country.

Is it appropriate that so much be done by regulations i.e. the details of any scheme or schemes will be decided by Welsh Ministers?

Subject to the current consultation programme, the Trust considers it is likely to be reasonable for Welsh Ministers to create regulations as set out in the Measure but this is not an area in which we feel we have any expertise to comment further.

The Measure relates to redress in relation to liability in tort i.e. where some fault is established without recourse to the Courts. Would it be better for the Assembly to seek the power from Westminster to introduce a 'no-fault scheme'?

Due to the necessary conditions and potential limitations placed on cases qualifying for compensation under any no-fault scheme and the requirement to maintain affordability through a tariff based system, it would be arguable that compensation levels would be inadequate particularly for patients who were in well-paid employment at the time of the injury and would be unable to claim compensation for loss of earnings. Further and seemingly more importantly, the way in which such a scheme would provide incentives to improve patient safety should be carefully considered, taking into account research available on any comparable schemes worldwide.

Overall, we feel that it would be more appropriate to allow a scheme, such as is already proposed, to 'bed down' and inform consideration of any further developments.

Thank you for providing this Trust with the opportunity to respond to the draft Measure.

Your colleague, Sian Wilkins, contacted Mrs Dawn Davies, Head of our Governance Support Unit and a member of the *Putting Things Right* Project Board, in July 2007 and Dawn has already confirmed a willingness to represent the Trust and give oral evidence to the Committee.

As I am currently away from the office, I have asked Miss Sheelagh Lloyd Jones to sign this letter on my behalf.

Yours sincerely

PAUL WILLIAMS
CHIEF EXECUTIVE