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24 October 2019

Dear Dr Lloyd,

### **National Health Service (Indemnities) (Wales) Bill**

I write further to the Health, Social Care and Sport Committee's scrutiny of National Health Service (Indemnities) (Wales) Bill, on 23 October 2019.

May I begin by once again reiterating my apologies – as already discussed with your Clerk – for the fact I was unable to accept Assembly Members' invitation to attend the session in person, and give evidence on behalf of the Medical Protection Society (MPS). Unfortunately, there were existing diary commitments that I was unable to alter at short notice. Nevertheless, I trust that our written submission to your committee was of assistance to your consideration and scrutiny of the Bill.

Following the Committee's session on 23 October – and in addition to the written evidence of MPS - I am writing to you to place four further points on the record.

### **Meeting the expected future cost of claims**

I note that there was discussion during the evidence session about how medical defence organisations set member subscriptions and I thought it would be helpful to summarise the approach taken by MPS.

As a responsible, not-for-profit organisation, we have an obligation to ensure that we collect sufficient subscription income to meet the expected future costs of claims and cases against members, so we can be in a position to defend their interests, should they require it. As a mutual we take decisions on membership subscriptions that are in the long-term interests of our membership.

The written evidence from the MDU states that they rely on members' continuing subscriptions to help to meet their needs for historic claims.

We do not take this approach. MPS prudently seeks to hold a long-term surplus which is available to support requests for assistance which are likely to arise in the future from both current and past members. The principle reason that this surplus is held is to meet the cost of potential claims on members for incidents that have already occurred, but which have not yet been notified to MPS. This surplus is transparent in the published annual accounts.

### **Negotiations with the Welsh Government and UK Government**

I also wanted to place on record how much my colleagues and I have valued the constructive and collaborative way in which the Welsh Government have conducted negotiations over the Existing Liability Scheme (ELS) with us. We have been able to have open and direct discussions with officials and believe we have reached commercial agreement, and we hope to finalise plans for the transfer of assets to a Welsh Government ELS in the near future.

Our dealings with the Welsh Government have been largely comparable to those with the UK Government – with whom we were the first MDO to reach agreement over their ELS scheme. We secured a good outcome for MPS GP members in England; helping to deliver a state-backed scheme offering members consistent and comprehensive support for clinical negligence claims long into the future. As we stated in our written evidence to your committee, on 18 October 2019, we are eager for GP members in Wales to have parity with their English colleagues, and for this to be achieved as soon as possible.

### **Discretionary indemnity**

I would like to emphasise that membership of MPS allows members to seek assistance for matters arising from their clinical practice, and this membership is recognised as providing adequate and appropriate indemnity arrangements by the GMC. It is not a contract of insurance and I was concerned that the term “insurance” was repeatedly used in the committee meeting without this point being clarified.

### **Tort reform**

Finally, I wanted to raise the subject of tort reform. While the National Health Service (Indemnities) (Wales) Bill serves a very specific and important purpose, it would be remiss of me not to highlight that MPS – like the MDU and MDDUS – have also called for significant legal reforms to address the rising cost of clinical negligence.

The rising cost of clinical negligence means money is being diverted away from front line care at a time when the NHS is facing increasing financial pressures. That is why MPS launched the 'Striking a Balance' campaign in 2017, calling for a package of legal reforms to address this growing concern. MPS has been at the forefront of this debate for many years and remains eager to work with governments across the UK, to see that costs are brought under control.

I have taken the liberty of enclosing a copy of our *Rising cost of clinical negligence: Who pays the price?* report, which I hope will be of interest and use to the Committee.

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I remain at the Committee's disposal, if MPS can assist any further on its scrutiny of the Bill, or indeed any other matter. Please do not hesitate to contact me if I can be of any assistance.

Yours sincerely,



Howard Kew  
**Executive Director**