



Consultation – Proposed NHS Redress (Wales) Measure Committee

Citizens Advice Cymru welcomes the opportunity to respond to the consultation on the proposed NHS Redress (Wales) Measure.

1. Background

1.1 The Citizens Advice Bureaux (CAB) Service in Wales is the largest integrated network of independent advice agencies in Wales with service delivered from 58 main offices and 198 secondary advice outlets. Each CAB offers access to services by telephone, which is available 670 hours per week and the CAB service has home visiting schemes in every County. The local CAB service is delivered by the efforts of a variety of people. There are 1,475 people involved in the CAB service in Wales, of these, 77% are volunteers.

1.2 The **Twin Aims** of the Citizens Advice Bureau service are

“to ensure that individuals do not suffer through lack of knowledge of their rights and responsibilities or of the services available to them, or through an inability to express their needs effectively

and equally;

“to exercise a responsible influence on the development of social policies and services both locally and nationally”.

1.3 Individual Bureaux, under the terms of Membership of Citizens Advice (the operating name for the National Association of Citizens Advice Bureaux), provide core advice based on a certificate of quality standards on consumer issues, welfare benefits, housing, taxes, health, money advice, employment, family and personal matters, immigration and nationality and education.

1.4 In the year 2005/06, Wales CABx dealt with 256,463 enquiries. These included 89,862 enquiries related to welfare benefits and tax credits; 73,593 enquiries in relation to debt; 18,529 related to employment; 14,841 housing issues and 11,690 legal issues.

1.5 **Better Advice: Better Health**

The Citizens Advice Bureaux network in Wales deliver advice in primary health care locations across all 22 local authority areas in Wales. This project is strategically funded by the WAG funded project and is an example of joint planning and commissioning that delivers an effective targeted service at individuals who may not access high street services, whilst also meeting the

WAG agenda on health inequalities. This project ensures that patients, who need non clinical treatment can be referred for CAB advice by their healthcare practitioner. This includes debt and welfare benefit advice, particularly looking at disability and carer needs as well as offering a range of further ancillary advice and advocacy.

2. Comments on the proposed Measure

2.1 Section 1 subsection (4) refers to “a breach of duty of care”. Will the Committee explore with the Minister whether or not she is minded to specify cleaning / administrative staff in the regulations under subparagraph (b)?

2.2 Section 4, subsection (1) (a) could be interpreted as to allow for regulations to require anyone reviewing / investigating a case to take steps to effectively invite a claim from someone who has not taken any steps to make one. Is it intended that there is a duty to admit to an error without waiting for a claim to be made?

2.3 Section 5, subsection (4) (b) gives a specific example of when regulations may provide for the withholding of a report. The English primary legislation does not include an example. Regulations under this provision could be a cause for concern. Could the committee explore what appropriate reasons might there be for the withholding of a report?

2.4 Section 6, subsection (2) would allow regulations that would involve changes to the Limitation Act. Is there competency to do this? Is the Committee happy that the provisions under matter 9.1 are wide enough for this?

2.5 Section 7 provides for regulations to allow free legal advice to discuss an offer or refusal of an offer. Free legal advice as to whether to make a claim might be cost effective. It is not clear that costs would be part of the compensation package. If they were a part of the compensation, then legal (and advice?) costs would be borne by the NHS in Wales. Would the costs otherwise fall on the budget for Wales i.e. the Welsh Consolidation Fund?

2.6 Section 8, subsection (3) allows ministers to make payments under Section 8 and Section 7. In the England part of the NHS Redress Act 2006 (sections 8 and 9), there is no mention of enabling payments for legal advice, though there is for payment for advice (section 9 (3)). We would like to query whether there is any significance to this difference?

2.7 We would like to explore whether or not Citizens Advice Bureaux could become involved in provision of this advice under Section 8, subsection (a). We are unclear as to what organisation it is envisaged would provide this. If the assumption is that Community Health Councils would do this, there could be potential for the CAB network to offer some holistic advice package in conjunction with them. All Citizens Advice Bureaux are in a position to provide ancillary advice for individuals and families in relation to considerations around options during and following treatment for example, full benefit check,

income maximisation, assessing care needs and entitlement, debt management. Further, people who decide not to pursue a complaint may benefit for advice in this context for example, even though they accept that continuing health problems are not a result of clinical negligence.

2.8 In general this measure allows powers to be exercised by 'Welsh Ministers'. We have received an explanation as to the origin of the phrasing "Welsh Ministers" being that the conferring of functions on the Welsh Ministers in the Measure adopts the architecture of the Government of Wales Act 2006 under which most existing functions have transferred to Welsh Ministers. Once functions are vested in the Welsh Ministers the practical reality is that the First Minister allocates responsibility to individual Ministers under their respective portfolios. We understand that in practice it will be the Minister for Health and Social Services (or possibly her deputy) who signs the regulations to be made under the Measure, acting under the statutory powers conferred upon her and her Welsh Minister Cabinet colleagues. We would ask the Committee to consider whether there should be a precedent for specifying "the Minister" as an alternative to "Welsh Ministers" in future Measures?

3. Further Considerations

We have also identified the following issues that will need to be addressed as the regulations and provisions in the Measure are developed.

3.1 The DWP has arrangements with the Compensation Recovery Unit to recover social security benefits as a result of an accident, injury or disease, where a compensation payment has been made. We assume that a similar provision would apply to payments made under the proposed redress scheme.

3.2 How easy will it be to obtain advice before starting on the formal redress route? Who would provide this and who is best placed to provide this?

4. Further Comments

4.1 Independent Complaints Advocacy Service

The Department of Health awarded a contract to Citizens Advice in England for the Independent Complaints Advocacy Service which was delivered initially in six Government officer regions from 1 July 2003 to 31 March 2006. Project reports are available at <http://www.citizensadvice.org.uk/index/aboutus/icas.htm> and will be helpful in demonstrating how the CAB service in Wales could help deliver a similar project under the provisions of the proposed Measure. **Further briefing could be provided on this issue as required.**

4.2 Citizens Advice also produced an evidence briefing entitled CAB ICAS evidence on service improvement commitments in the NHS which is also available at <http://www.citizensadvice.org.uk/index/aboutus/icas.htm>. This includes evidence of client causes of complaints and the correlation with

commitments in service improvements. It also includes sections on lessons learnt in relation to “Improving the patient experience” and in relation to “Improving clinical outcomes”.

4.3 There should be a consideration to the role of social policy in any proposed delivery model for a redress scheme that would help ensure lessons are learnt more effectively. See equal aim of the CAB Service at 1.2.

4.4 Independent Advice and Support Services (IASS)

The Independent Advice and Support Service (IASS) is part of the Scottish Citizens Advice Bureau Service, and funded by local NHS Boards. It aims to support patients, their carers and relatives in their dealings with the NHS and in other matters affecting their health.

4.5 The service provides help for patients in the following areas:

(a) With feedback, comments and complaints

- Giving patients help and support to raise concerns with the NHS care provider and resolve issues informally
- Guiding patients through the formal NHS complaints procedure.

(b) With health improvement information

- Assisting patients with information on dealing with the consequences of ill-health or disability, for example with accessing disability benefits
- Providing advice on non-health issues which might impact on a patient’s health, to help them reduce the effect or to prevent future problems, lifting this burden from health professionals.

Further information on the future contracting for this project will be available on the Citizens Advice Scotland website <http://www.cas.org.uk> in due course.