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Monday, 17 September 2007

Ms Sian Wilkins  
Committee Clerk  
Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Dear Ms Wilkins

### **RCN Wales Consultation Response – NHS Redress (Wales) Measure**

The Royal College of Nursing Wales is grateful for the opportunity to contribute to this consultation exercise albeit with three working days to respond. RCN Wales represents in excess of 22,500 nurses the majority of whom are employed within NHS Wales. RCN Wales also welcomes the opportunity to comment on a proposed Assembly Measure which following the Government of Wales Act (2006) will allow the NHS in Wales to respond to situations giving rise to a complaint in a manner that is appropriate to the needs of Wales.

In response to the specific questions outlined in your consultation letter we would make the following submission:

#### **1. Why is a Redress Scheme required?**

In the broadest terms the college welcomes the provision to seek redress without having to resort to the principles of the common law. The provisions within the Measure are needed to reflect the fact that the vast majority of incidents giving rise to a potential claim or likely to have occurred due to a systems breakdown and not due to the failure to care or act appropriately of 1 individual. RCN Wales is of the opinion that the current route to seek redress is cumbersome, time consuming and likely to act as a disincentive to the pursuit of a settlement.

## **2. Does the proposed Measure achieve the policy objective?**

The RCN believes that the Measure sets the context in which the policy objective can be fulfilled. However, this will be dependent on the exact shape of the Statutory Instruments which follow. The college will take a close interest in the formation of these secondary legislative procedures and would welcome the opportunity to explore the relevant “SIs” at the earliest possible stage and during the consideration of the measure if possible.

## **3. What are the views of Stakeholders who will have to work with a redress system?**

RCN Wales is of the opinion that its members would welcome the continuation of the principles of Vicarious Liability but in such a way as to ensure that a settlement is possible without course to legal proceedings. Whilst the RCN encourages nurses to take up professional indemnity insurance and all its members are covered by such a scheme it feels that the burden to secure safe healthcare should remain with the NHS not individual nurses.

This in no way countenances poor clinical practice but places the delivery of nursing care within the context of a wide multi-disciplinary healthcare system. The RCN supports all steps taken to ensure safe clinical practices are undertaken within the regulatory framework of bodies such as the NMC and the GMC.

## **4. What are the practicalities of making the system work and does the proposed Measure make provision for these?**

A successful measure will need to ensure that patients and practitioners are clear as to the way in which claims will be dealt with. Without recourse to the specific Statutory Instruments it is unable to comment in more detail.

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

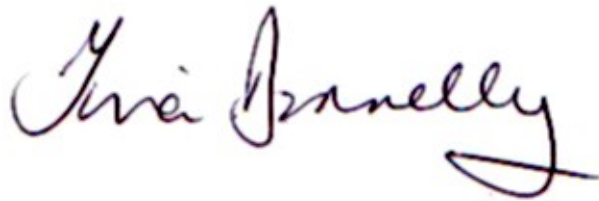
Yes. The RCN is in favour of the detail being undertaken through the formulation of regulations by Welsh Ministers provided that nurses and other healthcare practitioners are fully consulted. In the opinion of the College it would be helpful for as much detail as possible to be made available in line with the ongoing consultation on the measure.

**6. 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'?**

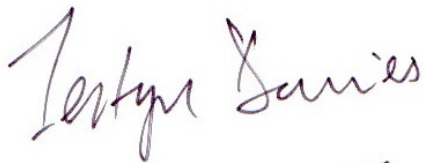
Without prejudice to its final positions the college is keen to explore in more detail with the committee steps that introduce into the measure the principle of no fault compensation. As it has set out in its general principles on devolution and the governance of Wales, RCN Wales is keen to support the furtherance of the powers of the National Assembly for Wales and the Welsh Assembly Government to deliver good health and good health policy.

Kind regards

Yours sincerely



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DIRECTOR, RCN WALES**



**IESTYN DAVIES  
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