

Agenda – Health, Social Care and Sport Committee

Meeting Venue:

Committee Room 2 – Senedd

Meeting date: 23 October 2019

Meeting time: 09.15

For further information contact:

Sarah Beasley

Committee Clerk

0300 200 6565

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Informal pre-meeting (09.15–09.30)

1 Introductions, apologies, substitutions and declarations of interest

(09.30)

2 Autism Services in Wales: Evidence session with the Minister for Health and Social Services

(09.30–10.00)

(Pages 1 – 17)

Vaughan Gething AM, Minister for Health and Social Services

Albert Heaney, Director, Social Services and Integration – Welsh Government

Research brief

[Written Statement: Improvements in autism services](#)

Paper from Welsh Government

3 National Health Service (Indemnities) (Wales) Bill: Evidence session with the Minister for Health and Social Services

(10.00–10.40)

(Pages 18 – 43)

Vaughan Gething AM, Minister for Health and Social Services

Frances Duffy, Director, Primary Care & Health Science, Welsh Government

Sarah Tyler, Lawyer, Welsh Government

[National Health Service \(Indemnities\) \(Wales\) Bill](#)



Cynulliad
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Cymru

National
Assembly for
Wales

[National Health Service \(Indemnities\) \(Wales\) Bill – Explanatory Memorandum](#)

Research brief

Paper 1 – British Medical Association Cymru

Paper 2 – Royal College of General Practitioners

Paper 2a – Health Education and Improvement Wales

Break (10.40 – 10.45)

4 National Health Service (Indemnities) (Wales) Bill: Evidence session with the Medical Defence Organisations

(10.45–11.45)

(Pages 44 – 51)

Mary-Lou Nesbitt, Head of Governmental & External Relations, Medical Defence Union

Dr Matthew Lee, Professional Services Director, Medical Defence Union

Emma Parfitt, Director of Advisory and Legal Services, Medical and Dental Defence Union of Scotland

David Sturgeon, Director of Development, Medical and Dental Defence Union of Scotland

Paper 3 – Medical Defence Union

Paper 4 – Medical Protection Society

Paper 4a – Medical and Dental Defence Union of Scotland

5 Paper(s) to note

(11.45)

5.1 Letter from the Minister for Health and Social Services regarding Healthy Weight; Healthy Wales

(Pages 52 – 53)

5.2 Letter from Chair of Children, Young People and Education Committee on children's rights in Wales

(Pages 54 – 55)

- 6 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of this meeting**
(11.45)
- 7 National Health Service (Indemnities) (Wales) Bill: Discussion of evidence and consideration of emerging themes**
(11.45–12.15)
- 8 Impact of the Social Services and Well-being (Wales) Act 2014 in relation to Carers: Consideration of draft report**
(12.15–12.30)

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HEALTH, SOCIAL CARE AND SPORT COMMITTEE

AUTISM SERVICES

EVIDENCE FROM THE MINISTER FOR HEALTH AND SOCIAL SERVICES

Purpose

The purpose of this paper is to provide the Health, Social Care and Sport Committee with an update on autism services.

Introduction

On 25 October 2018, I attended the Health, Social Care and Sport Committee to give evidence in relation to the Autism (Wales) Bill. At this session I agreed to return in a year to provide an update to Committee on autism services. This evidence paper provides an update on developments for autism services in the last year and in particular the areas which arose from the recommendations of the Committee's report *Autism (Wales) Bill Committee Stage 1 Report (December 2018)*.

Background

Following the publication of the updated Autistic Spectrum Disorder Strategic Action Plan (2016), the National Integrated Autism Service (IAS) has been rolled out through Regional Partnership Boards. £13m has been provided through the Integrated Care Fund to support this and implementation is supported by the National Autism Team, hosted by the Welsh Local Government Association and Public Health Wales. In July 2019 we published the second annual report on the delivery of our autism strategy¹. The three priority areas in the strategy are assessment and diagnosis; meeting support needs; and awareness raising, information and training.

Update

Neurodevelopment service

Since 2015, the Welsh Government has made available £2million annually to establish and deliver dedicated neurodevelopmental services across Wales. An autism diagnosis for children and young people would usually be undertaken by these teams. The service was set up under the Together for Children and Young People programme.

The service was set up to improve assessment services for young people under the age of 18 years who may have a neurodevelopment condition. Specialist services started to be set up in 2016 and are now available across all health boards in Wales. We have introduced a 26 week waiting time target for health boards and are working closely with health boards and the Welsh Informatics Service to make sure that the

¹ Welsh Government(2019) Autism Spectrum Disorder: Annual Report 2018-19
<https://gov.wales/autism-spectrum-disorder-annual-report-2018-2019>

data is accurate. Once I am assured about the validity of the data, it will be published on Stats Wales.

Demand for the service has significantly exceeded what health boards predicted. Therefore to better understand the demand and capacity of the service we intend to commission a scoping exercise, which will help inform future service development. The planned approach to that review is set out later in this paper.

I have recently agreed 'in principle' to extend our Together for Children and Young People programme. I expect this NHS led programme to continue to engage with people who use services, in order to drive improvements, improve quality and outcomes for people, including those who use neurodevelopment services across Wales

National Integrated Autism Service

The IAS has now been fully rolled out across Wales. IAS teams are operating in Cardiff and Vale, Cwm Taf, Gwent, Powys, North Wales, Western Bay and West Wales. The IAS has been working collaboratively at a local and national level, developing and maintaining close links with other agencies delivering support, particularly learning disability, mental health and social care services and with third sector organisations that are an essential element of the broad service offer.

Some recent examples of work being undertaken in collaboration with voluntary sector organisations include in recent months the delivery of a specially adapted patient education programme which particularly focuses on working with young people in Gwent. In Cardiff, a post diagnostic support and information programme for adults has been produced by 21 High Street, an autism charity based in Cardiff and the IAS. Both of these are now being rolled out across Wales.

Also all IASs and the National Autism Team are focusing on how best to support and work with autistic parents and carers. This work is being developed as a result of the enquiries from autistic parents as they have found that traditional parenting courses and support is not meeting their family's needs. New resources will be developed in partnership with parents and will also be shared with the wider childcare and family support sectors.

From April this year we have been piloting an outcome focussed data collection model to measure the impact of the services on the lives of autistic people being supported. In addition to this all the IAS are using the outcome star approach with each participant to agree goals and measure the distance travelled.

National Autism Team

The National Autism Team continues to have a central role in supporting the delivery of the Welsh Government's priorities for autism services. An annual work plan for 2019/20 has been agreed and published on their website². This includes supporting

² National Autism Team Work Plan 2019-20 https://www.asdinfo.wales.co.uk/resource/National-Autism-Team-Work-Plan-2019-20_eng.pdf

the Integrated Autism Service, as well as producing a wide range of resources for autistic people, their families and carers in collaboration with stakeholders which are available on the website www.asdinfo.wales.co.uk. The Team also published its second annual report in June this year³.

Some examples of what the Team has achieved in the last year include:

- A 62% increase in users of its website compared to the previous year, with an average 10,575 users per month - an increase of over 3,500 users on the previous year.
- The first National Autism Wales Conference “Promoting Autistic Wellbeing”, was held on 3rd April at the Liberty Stadium Swansea, its aim was to increase the wellbeing of autistic adults who are not necessarily in regular contact with public or third sector services, but for whom an event about wellbeing and increasing their capacity to cope with day-to-day life would be beneficial and positive. The event was a great success and its organisation was a good example of co-production in practice.
- The Team has completed a Work Based Learning (WBL) scheme co-produced with autistic learners, the National Training Federation Wales, the ASD Leads and Associated Community Training Limited (ACT). The aim of the WBL programme is to provide organisations with information and guidance on becoming autism aware, and to understand how to effectively support their learners with autism. This programme was launched by the Minister for Education on 24 September 2019.

Independent Evaluation

In April, I committed to the publication of the independent evaluation on the Integrated Autism Service⁴, the report stated that the IAS was a welcome new service, and made recommendations about areas that need more focus. In 2018 I also commissioned an extension to the evaluation to provide a clearer picture of current services, and to make sure we have the information we need to make the right decisions about future services. The evaluation report entitled a *Scoping Study for Alignment and Development of Autism and Neurodevelopmental Services*,⁵ was published and it provides further insight about the capacity of our services to respond to increasing demand for support.

We have accepted the recommendations made in the both of these independent reviews on autism services and are taking action.

³ National Autism Team Annual Report 2018/19
https://www.asdinfo.wales.co.uk/resource/National-Autism-Team_Annual-Report_2018-19_eng.pdf

⁴ Welsh Government (April 2019) Evaluation of the Integrated Autism Service and the Autistic Spectrum Disorder Strategic Action Plan: Final report
<https://gov.wales/evaluation-integrated-autism-service-and-autistic-spectrum-disorder-strategic-action-plan-final>

⁵ Welsh Government (2019) Scoping Study for Alignment and Development of Autism and Neurodevelopmental Services <https://gov.wales/autism-and-neurodevelopmental-services>

Code of Practice for Autism Services

The Welsh Government has committed to publish a Code of Practice on the delivery of autism Services under the Social Services and Well-being Wales Act 2014 and the NHS Act 2006. A consultation on our proposals for the Code opened on 30 November 2018 and closed on 1 March 2019. Four main stakeholder events were held in February, in Llandrindod Wells, Swansea, Llandudno and Cardiff. A consultation report on the responses was published in July⁶. Overall the responses were generally in support of the proposals. Most responses were based around suggestions of further issues which should be taken into account or requests for more clarity in some areas. Examples of the key issues for further investigation identified in the responses included detail on pathways and the role of the autism champion in Regional Partnership Boards.

Building on this first consultation, we continue to listen to autistic people through direct engagement at events and meetings across Wales. We held our first round of technical groups to advise on the code in July this year, they will meet again in November. We are organising further stakeholder events in both West Wales and North Wales during November. We are also attending events such as ADFest for people with learning disabilities, meetings with the Department of Work and Pensions (DWP), Social Care Wales, Health Education and Improvement Wales and representatives from several of the Royal Colleges. We are also meeting local authority workforce leads.

We are also working with our partners in local authorities and health boards to listen to the views of local stakeholder groups. For example, my officials recently met with a group of autistic adults in Powys to discuss their views and experiences to help to inform the development of the Code. We will continue this engagement with autistic adults across regions.

We are listening to the feedback and taking action. For example in response to requests for a clear and comprehensive approach that is also accessible, we will publish a succinct draft code of practice, with a separate guidance document to explain what is expected, and we are expanding the scope of the regulatory impact assessment to ensure the code is deliverable without having a negative impact on other services.

In my Written Statement on autism services on 23 September⁷ I have committed to sending a pre-consultation copy of the draft code to the Committee by the end of this calendar year for feedback. There is a great deal of work still to be done to ensure the Code of Practice when it is published places clear responsibilities on statutory organisations, but that it is also developed in a way that enables it to be implemented in practice. Our current plan is that a public consultation on the code, the

⁶ Report on the Consultation on Proposals for the Code of Practice on the Delivery of Autism Services <https://gov.wales/code-practice-delivery-autism-services>

⁷ Written Statement – Improvements in Autism Services <https://gov.wales/written-statement-improvements-autism-services>

accompanying guidance and the Regulatory Impact Assessment will be published before Easter 2020.

Demand and Capacity review

As part of the development of the Code of Practice on the delivery of autism services we are undertaking a comprehensive Regulatory Impact Assessment, to ensure the requirements of the code are realistic and can be delivered. To provide the necessary information to inform this assessment, we are undertaking a demand and capacity review of children's neurodevelopmental (ND) services, the Integrated Autism Service (IAS) and wider autism support. The first benchmarking phase will provide an accurate picture of how the ND and the IAS services are operating and managing rising demand within services.

Phase two of this review, will take into account wider autism services and consider the views of autistic people and their parents and carers. It will also focus on workforce barriers and seek to address gaps in provision. The review will also consider the relevant recommendations made in the first independent evaluation report published in April 2019 and the Scoping Review published in September.

Many of the issues highlighted in these reports are common across health and social care, within mental health and children services. Discussion with our partners including autistic people and services tells there is no easy solution to address increasing demand. It is not as simple as increasing funding to recruit more staff, because there is a shortage of suitably trained specialists. It will not be enough to impose legal duties and tighter targets, as this will place even more pressure on hard pressed services to concentrate on achieving targets at the expense of much needed support. We know that a focus on reducing waiting times is achieving results, but there is a cost as in many areas clinicians do not have capacity to provide post diagnostic support for children and their families. These are parents who are seeking re-assurance and support following their child's diagnosis and staff report their own frustration about the limitations in the range of support they can offer.

We are establishing a task and finish group to scope the second phase of the review which will include autistic people and their representatives. We will also invite representatives from education, the third sector, and from Social Care Wales and Health Improvement Education Wales. We want this work to be a thorough analysis and to provide options for improving services which are sustainable for the future. This review will need to work alongside the development of the Code of Practice and RIA and we anticipate it will be completed within 12 months so that the final Code of Practice will be published by spring 2021.

Alongside this the needs of autistic people go beyond the priorities which can be captured in a code. We are working to support services which assist autistic people to find and sustain employment. We have been working closely with the Department of Work and Pensions, Job Centre staff; to train and support their disability employment advisors. There are many examples of good practice, for example in North Wales and in most regions the IAS provide weekly drop-in sessions at local job centres, in SE Wales there are autism job clubs supported by the IAS and in SW Wales the local disability employment adviser lead attends the local authority autism

stakeholder groups. Links are also being made to local FE colleges to support autistic leavers' progress beyond college.

We are also working across Welsh Government to ensure that employment services across Wales will take account of the needs of autistic people. Our new employability service 'Working Wales' will deliver a national entry point to employability support. The service is delivered by Careers Wales as a national service of advice and guidance and provides employment focused support that is flexible and appropriate to individual circumstances.

We want to ensure that voluntary sector organisations have the opportunity to be part of our programme of autism reform. Alongside the collaborative work already being undertaken between local services, voluntary sector organisations have had the opportunity to submit an application to the Sustainable Social Services Third Sector Grant Scheme 2020-23. We have received several applications seeking to support autism services, and all applications are being assessed. I anticipate the outcomes of the assessment will be known by the end of November.

In my written statement, dated 23 September 2019, I also outlined that our priority for neurodevelopmental and autism services over the next year is to ensure that services are sustainable for the long-term. The investment we are making to children's neurodevelopmental services will continue and we are monitoring the outcomes closely. In that same statement, I announced that the £3m a year currently funding the Integrated Autism Services until March 2021 will now become recurrent without prejudice to any changes we may seek to make to the operating model of these services following the conclusion of our evaluation studies. I believe these actions reaffirms our commitment to improving lives for autistic people and their families and carers.

Agenda Item 3

By virtue of paragraph(s) vi of Standing Order 17.42

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CF10 4DQ	CF10 4DQ

NHS (Indemnities) (Wales) Bill

Inquiry by the National Assembly for Wales Health, Social Care and Sport Committee

Response from BMA Cymru Wales

15 October 2019

INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the inquiry into the NHS (Indemnities) (Wales) Bill by the Health, Social Care and Sport Committee.

The British Medical Association (BMA) is an independent professional association and trade union representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care.

RESPONSE

As the representative body for GPs in Wales, representatives of the BMA's Welsh General Practitioners Committee have been part of the Welsh Government's Indemnity Stakeholder Reference Group (SRG), having lobbied for government action in this area to address the unsustainable rise in indemnity costs to GPs. This led to the launch of the GMPI scheme for future liabilities (FLS) from April 2019, and the Ministerial commitment to introduce an existing liabilities scheme (ELS) for claims prior to that date.

Our reading of the bill as laid is that it will introduce a regulatory regime which allows NHS Wales to cover existing liabilities via the introduction of a 'direct indemnity scheme', which will subsequently be described by Welsh Government through regulations and directions. This is subject to the successful conclusion of negotiations with the Medical Defence Organisations (MDOs) who currently cover these liabilities.

We are supportive of the Welsh Government's intention to introduce an ELS scheme through this course of action. Our main priority is ensuring that the created scheme does not put Welsh GPs at a disadvantage when compared to English colleagues, which could create a barrier to

recruitment and retention. We are heartened by the commitment in the Bill's explanatory memorandum to align the English and Welsh schemes as much as possible. As the representative body for Welsh GPs, we anticipate being involved in the development of the scheme, in the same manner as we were for the introduction of GMPI. We look forward to discussing this with Welsh Government officials and other partners.

It would not be appropriate at this stage to comment on discussions between Governments (Welsh and UK) and Medical Defence Organisations, therefore we will refrain from doing so.

We do not anticipate any unintended consequences for Welsh GPs from the bill as it stands.

Yours sincerely

A handwritten signature in black ink, appearing to be 'P. White', written in a cursive style.

Dr Phil White
Chair, GPC Wales

17 October 2019

Dr Dai Lloyd AM
Chair
Health, Social Care and Sport Committee
National Assembly for Wales

Dear Dr Lloyd,

National Health Service (Indemnities) (Wales) Bill

Thank you for the opportunity to submit evidence with regard to the National Health Service (Indemnities) (Wales) Bill. The matter of indemnity cover has been a concern for our members and we have welcomed the recent engagement from Welsh Government to clarify aspects of the Future Liabilities Scheme (FLS). We hope that this is indicative of a partnership working approach with consistent lines of communication. While the proposed National Health Service (Indemnities) (Wales) Bill is a short proposal it would have been preferable if there had been a greater period of time in which our response could have been considered prior to submission. The bill was published on the 14th October, written evidence required by the 17th, and an oral evidence session on the 23rd.

The College agrees with the logic of the Bill and the necessity of it to enshrine in law the regulatory powers needed for the Welsh Government to set up and manage a scheme to directly indemnify providers of primary medical services. We agree with the points raised in the Exploratory Memorandum to expand the scope of the current powers and expand the range of bodies which may be included in the scheme.

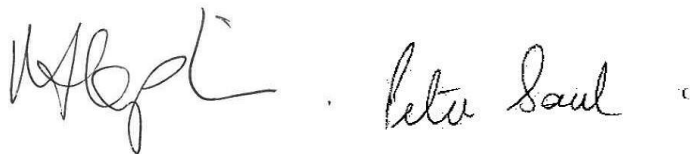
We welcome that the Bill will mean that Welsh Ministers, via the introduction of the ELS Regulations, are delivering on the commitment to introduce a state backed indemnity scheme for GPs in Wales. A policy the College had been advocating for.

We agree that there is a serious risk that if this Bill is not enacted that GPs in Wales may be at a disadvantage relative to GPs in England and GP recruitment and cross border activity could be adversely affected. This is a vital issue which must be considered whenever there is a policy change effecting the terms under which GPs work in Wales.

RCGP Wales is supportive of the National Health Service (Indemnities) (Wales) Bill. We would encourage Welsh Government to maintain their engagement with GP representative bodies. It is our view that while the FLS, which we appreciate is not part of this Bill, provides welcome cover against claims of medical negligence it could be enhanced or supplemented to better account for the whole remit of GP work including medical training and research.

Should you or the Committee wish to discuss any points raised in this response further, please do not hesitate to let us know.

Best wishes,

Handwritten signatures of Dr Mair Hopkin and Dr Peter Saul. The signature on the left is 'M Hopkin' and the signature on the right is 'Peter Saul'.

Dr Mair Hopkin
Joint Chair
RCGP Wales

Dr Peter Saul
Joint Chair
RCGP Wales

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Patron: His Royal Highness the Duke of Edinburgh Registered charity number 223106



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WALES

Addysg a Gwella Iechyd
Cymru (AaGIC)
Health Education and
Improvement Wales (HEIW)

Our Ref: DB/22/10/2019

Date: 22 October 2019

SeneddHealth@assembly.wales

Health Education and Improvement Wales
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heiw@wales.nhs.uk

Dear Sirs,

Re: Response of HEIW to the consultation in respect of the National Health Service (Indemnities) (Wales) Bill (“Indemnities Bill”)

To assist the Health, Social Care and Sport Committee (the Committee) in its undertaking of a consultation process in respect of the above Indemnity Bill, I am pleased to outline below the response of HEIW’s Board in respect of the matter.

Whilst being very supportive of the elements within the Indemnities Bill we confirm that the consultation is timely from HEIW’s perspective. This is because a possible gap has recently been identified in respect of the coverage provided by the Welsh Risk Pool indemnity for the education supervision provided by NHS GPS and Consultants.

No current indemnity for the educational supervision provided by GPS and Consultants to medical trainees

It has recently been brought to light that the indemnity provided by the Welsh Risk Pool does not provide cover for the educational supervision provided by GPs and Consultants to medical trainees.

This is an area of concern for HEIW as the lack of indemnity cover creates the risk that primary and secondary care workers will be reluctant to take on these essential supervisory roles.

We confirm that HEIW has recently written to the Welsh Risk Pool to request that they clarify the position in respect of the indemnity for this element of work undertaken by GPs and Consultants. The letter is attached for information at Appendix 1.

Given this we would respectfully request that the Committee ensures that the amended Section 30 of the National Health Service (Wales) Act 2006 enables the Welsh Risk Pool to provide indemnity cover for such educational supervision provided by GPs and Consultants to medical trainees.

Indemnity for the Education Provision provided by all NHS Staff

The recent work undertaken by HEIW in respect of securing the Indemnity on education supervision provided for Consultants and GPs has also raises the broader question of ensuring that the Welsh Risk Pool indemnity also provides cover for all training undertaken by NHS staff.

Given this we would also respectfully request that the Committee ensures that the final amended version of the Act enables th Welsh Risk Pool to provide comprehensive cover for the all training supervision provided by NHS staff.

Yours faithfully,



Dafydd Bebb
Board Secretary
HEIW



GIG
CYMRU
NHS
WALES

Addysg a Gwella Iechyd
Cymru (AaGIC)
Health Education and
Improvement Wales (HEIW)

Our Ref: DB/21/10/2019

Date: 21 October 2019

Welsh Risk Pool

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heiw@wales.nhs.uk

Dear Sirs,

Re: Indemnity for the educational supervision

Indemnity for educational supervision provided by GPs and Consultants to medical trainees

It has recently been brought to light that the indemnity provided by the Welsh Risk Pool may not provide cover for the educational supervision provided by GPs and Consultants to medical trainees.

This is a possible area of concern for HEIW as such a lack of indemnity cover will create the risk that primary and secondary care workers will be reluctant to take on these essential supervisory roles.

Given the above we would be grateful if the Welsh Risk Pool will clarify the position and confirm that its indemnity covers educational supervision provided by GPs and Consultants for medical trainees.

Indemnity for the Education Provision provided by all NHS Staff

Consideration of the above matter has also raised the broader question of ensuring that the Welsh Risk Pool indemnity also provides cover for all educational supervision provided by NHS staff.

Given this could the Welsh Risk Pool also confirm that its indemnity covers educational supervision provided by all NHS trainers.

• Chairman/Cadeirydd: **Dr Chris Jones**
• Chief Executive/Prif Weithredwr: **Alex Howells**
HEIW Headquarters/ Pencadlys HEIW, Ty Dysgu, Cefn Coed, Nantgarw, Cardiff, CF15 7QQ.
Telephone/Ffôn: 03300 585 005

Should you require any further information or background information then please do not hesitate to get in touch.

Yours faithfully,



Dafydd Bebb
Board Secretary
HEIW

Agenda Item 4

Pwyllgor Iechyd, Gofal Cymdeithasol a Chwaraeon

Health, Social Care and Sport Committee

HSCS(5)-29-19 Papur 3 / Paper 3

GP Indemnity in Wales

GPs are required by the General Medical Council to hold indemnity so that patients who are damaged by clinical negligence can claim and receive compensation. Before 1 April 2019, GPs had to fund their own indemnity and in order to do so almost all joined one of three medical defence organisations (MDOs). Approximately 43% of Welsh GPs are members of the Medical Defence Union (MDU), a mutual non-profit making organisation owned by its members who are principally UK doctors and dentists. In return for payment of an annual subscription members get access to the MDU's benefits of membership which include discretionary indemnity for clinical negligence claims, and other services such as assistance with complaints, disciplinary and criminal investigations arising from members' clinical work.

It is important to understand that claims against GPs are usually made 3-5 years after the incident that gave rise to them but can be made as many as 10, 20, 30 or more years later. For example, with some cancers if a GP misses a diagnosis it may be 4 or 5 years before symptoms are severe enough for the patient to seek further medical help and the cancer is diagnosed. The patient then has up to 3 years to sue. Claims on behalf of young children, for example where missed meningitis results in brain damage, may be brought much later and take many years to resolve, due to the need to understand how the child develops and what their needs will be. This means that indemnity for GPs is usually provided by the MDOs on an 'occurrence' basis so that GPs can seek assistance with and indemnity for the claim when it is made, even if the incident giving rise to the claim happened years before.

Over the last few years, indemnity has become increasingly unaffordable for GPs in England and Wales. This is not because of any fall in clinical standards, which remain high, but because of legal and economic factors that are beyond GPs' or MDOs' control. It was within the powers of the Westminster Government to address rising costs by changing the law, but it repeatedly failed to do so and the costs for GPs rose dramatically. Further, the Lord Chancellor decided to reduce the personal injury discount rate (used to calculate personal injury awards for future care) from March 2017 by an unprecedented 3.25%. The practical effect of this change was the doubling or trebling of high value claims where the cost of future health and social care is a major factor: for example, a claim against a GP that had been valued at £8.4 million was likely after the discount rate change to settle for £17.5 million.

This change applied in Wales and meant that GPs could no longer afford to pay for their own indemnity. In order to address this, on 14 May 2018 the Welsh Government announced plans to introduce a scheme for the state to provide clinical negligence indemnity for all contracted GPs in Wales. The scheme (the General Medical Practice Indemnity scheme – GMPI) was introduced on 1 April 2019 and GPs will no longer have to fund their own indemnity. Claims arising from any incidents that happened after that date would be handled and paid by the Welsh Government on behalf of GPs.

The Welsh Government also plans to put in place arrangements to meet GPs' liabilities for claims arising from incidents before 1 April 2019 – historic claims. However, when the state indemnity scheme started, the Welsh Government had not done so and Welsh GPs remain

responsible for their historic claims - claims that began before 1 April and claims that have yet to be made as a result of incidents that happened before that date. Because they are now state- indemnified for their 'future' claims, the MDU's Welsh GP members no longer pay the MDU a subscription for their indemnity. As the MDU relies on members' continuing subscriptions to help to meet their needs for historic claims, the new scheme has created a financial gap. The Welsh Government was aware there would be a gap if it did not address historic claims and, the MDU tried repeatedly to reach an agreement with it before 1 April to extend state indemnity to our Welsh GP members' historic claims. The inevitable and perverse effect of not reaching agreement is to reduce the funds available to assist GPs with the vastly escalating costs of indemnifying historic GP claims.

After 1 April we continued to try to find a solution with the Welsh Government but, regrettably, as no agreement was reached and our GP members are left with their historic liabilities, the MDU had to resort to judicial review proceedings which remain pending. The court requires the parties to try to settle the problem out of court, and ongoing litigation should not prevent this, but despite our attempts to open a constructive dialogue, the Welsh Government has not engaged in any meaningful discussions with the MDU.

The NHS (Indemnities) Bill

On 16 July, the First Minister announced that an GP Indemnity Bill would be included in the legislative programme for the forthcoming sitting of the Assembly with the aim of ensuring 'all clinical negligence claims, whenever they are reported or incurred are covered', though no further details were forthcoming.

The National Health Service (Indemnities) (Wales) Bill was laid on the 14th October. The Bill will amend section 30 of the NHS (Wales) Act 2006, enabling Welsh Ministers to make regulations to establish an Existing Liability Scheme (ELS) to indemnify GPs for historic negligence claims.

The Welsh Government and the MDOs recognise that the establishment of this scheme will require negotiation and agreement, specifically around the transfer of assets required to meet historic liabilities. The Explanatory Memorandum associated with the Bill suggests that the current estimate of liabilities is in the region of £100m. To date, however, the Welsh Government has not entered substantive discussions with the MDU regarding the level of asset transfer that may be required.

Further, the Bill timetable suggest that the scrutiny of the legislation will be limited, and that the MDOs will not be asked to take part in the Stage 2 consultation. We would be happy to provide further briefing as required to highlight the complexity of the current system and provide further information about potential costs.

The MDU

The MDU was, and still is, a mutual, non-profit making organisation owned by our members. We remain a company run by doctors for doctors. Few organisations that were around in 1885 still exist under the same ownership structure today. The MDU does – and we're proud of our rich history of guiding, supporting and defending our members.

**THE HEALTH, SOCIAL CARE & SPORT COMMITTEE OF THE
WELSH ASSEMBLY**

EVIDENCE SUBMISSION

FROM THE MEDICAL PROTECTION SOCIETY (MPS)

The National Health Service (Indemnities) (Wales) Bill

Stage 1 Scrutiny

18 October 2019

Opening remarks

1. The Medical Protection Society (MPS) welcomes this opportunity to make a brief submission to the Health, Social Care and Sport Committee of the Welsh Assembly – as it scrutinises the National Health Service (Indemnities) (Wales) Bill.
2. MPS welcomes the introduction of this Bill and considers it to be both a necessary and important piece of legislation.

About MPS

3. MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of more than 300,000 members around the world. Membership provides access to expert advice and support together with the right to request indemnity for complaints or claims arising from professional practice.
4. Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.
5. Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.
6. We are not an insurance company. All the benefits of membership of are discretionary as set out in the Memorandum of Articles of Association.

The legislation

7. As at paragraph 2, we believe this legislation is both necessary and important.
8. The Welsh Government introduced the General Medical Practice Indemnity (GMPI) earlier this year, which is responsible for claims arising out of NHS contracted work carried out by General Practitioners (GPs) - and other health professionals working in general practice in Wales - for adverse incidents that occurred on or after 1 April 2019.
9. Prior to the inception of the GMPI, GPs and other healthcare professionals in general practice in Wales had to make their own indemnity or insurance arrangements for this work. The vast majority of GPs did so through their membership of MPS or one of the other two medical defence organisations (MDOs).
10. Alongside the GMPI, the Welsh Government intends to create an Existing Liability Scheme (ELS). This would mean that the Welsh Government would also assume responsibility for all existing claims against GPs, as well as claims that are brought in the future, where the adverse incident date was before 1 April 2019 and related to treatment under an NHS contract. This would bring GPs in Wales into line with their hospital colleagues.
11. The legislation before the Committee is essential to the delivery of an ELS for GPs in Wales, and it accordingly amends s30 of the National Health Service (Wales) Act 2006 to grant Ministers the requisite powers.
12. It is important that the profession has clarity on their indemnity arrangements, and this Bill is an important component of achieving that clarity.
13. A similar ELS scheme has existed in England since April 2019. MPS were the first MDO to successfully reach agreement with the UK Government over an ELS for general practice members in England. As a result, the UK Government will assume responsibility for all existing claims against MPS general practice members in England, as well as claims that are brought in the future where the adverse incident date was before 1 April 2019 and related to treatment under an NHS contract. This means that these MPS members will be able to turn to a state-backed scheme for help no matter when in the future they become aware of a claim, or how much that claim eventually settles for.
14. 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. The passage of this legislation is essential for that to be achieved.
15. MPS is in advanced negotiations with the Welsh Government regarding the transfer of assets to an ELS scheme.
16. We are committed to ensuring a smooth transition to any new ELS scheme. When an ELS scheme was established in England, MPS reached an agreement with the UK Government which consists of us continuing to manage existing claims for an interim period. We would be keen to replicate this transitional arrangement with the Welsh Government.

17. Our members are at the heart of everything we do, and our driving priority is securing a positive outcome for GPs in Wales. No matter when in the future they become aware of a clinical negligence claim against them, we think the best outcome for them would be to be able turn to a Government backed scheme for assistance.
18. MPS will continue to play a vital role on behalf of our GP members – protecting their reputations by offering medicolegal advice and assistance for General Medical Council (GMC) proceedings, complaints, coroners' inquests, disciplinary matters, criminal investigations and all other issues arising out of their professional practice. Members who add Claims Protection to their membership will also have the right to request indemnity for clinical negligence claims arising from any fee-paying or private work.

Conclusion

19. MPS commends this Bill to the Committee. We offer the legislation our full support and trust that it will successfully complete all its scrutiny stages in the Assembly.
20. Should the Committee have any further questions for MPS, or require further information, then we are at their disposal.

Contact

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**HEALTH, SOCIAL CARE AND SPORT COMMITTEE: CONSIDERATION OF THE
GENERAL PRINCIPLES OF THE NATIONAL HEALTH SERVICES (INDEMNITIES)
(WALES) BILL**

**MEMORANDUM FROM THE MEDICAL AND DENTAL DEFENCE UNION OF
SCOTLAND**

1. The Medical and Dental Defence Union of Scotland (MDDUS) is a mutual Medical Defence Organisation (MDO) founded in 1902 by and for healthcare professionals, with an expert staff of doctors, dentists, lawyers and risk advisers who are leaders in the medico-legal and dento-legal field.
2. MDDUS provides its nearly 50,000 members throughout the UK access to professional indemnity and expert medico-legal and dento-legal advice. As the fastest growing not for profit mutual in the sector, we have a reputation for both value for money and operational excellence.
3. The MDDUS welcomes the Health, Social Care and Sport Committee's scrutiny of the proposed NHS (Indemnities) (Wales) Bill. The absence of proper public debate and consultation at all stages of recent policy development on state-backed indemnity has been an unfortunate feature of Government activity in both England and Wales to date. Private, separate discussion with individual stakeholders, whilst necessary, should have been in addition to, rather than a replacement for, such standard and desirable features of policy development.

STATE-BACKED INDEMNITY FOR GPs – A MISSED OPPORTUNITY FOR REFORM

4. MDDUS considers that the question of whether the State should pay directly for GP and other primary care team members' indemnity is, essentially, a public policy issue for Government and a contractual one for the profession.
5. As a mutual indemnifier, MDDUS recognises the impact of the required increases in indemnity costs on recruitment and retention of GPs in recent years. MDDUS is, however, dismayed at the process undertaken in the development and implementation of indemnity policy and, in particular, the distraction of effort from the more central issues facing the NHS and clinical negligence as a result.
6. The decision to move to state-backed indemnity arose, in large part, because of changes made to the Personal Injury Discount Rate (PIDR). The decisions to set the PIDR at minus 0.75 in 2017, and to increase this to just minus 0.25 in 2019 following the Lord Chancellor's review, are based on a widely criticised assumption that a rational investor would opt to receive a negative return. One clear result of these changes has been making the bringing of clinical negligence claims more attractive and hence potentially more expensive to the NHS. The failure of both the

Department for Health and Social Care and the Welsh Government to have any apparent impact on the Lord Chancellor's decision represents a significant failure of joined-up Government thinking on the main driver of rising clinical negligence claims and GP indemnity fees.

7. We contend that the focus of Government should have been to make changes to the tort of clinical negligence in medical malpractice to help restrain costs and remove the incentive to run cases which are less than well-founded. The evidence base for tort reform being successful in reducing cost to the health care system of such claims is well documented in Australia and the United States. The UK's three MDOs have individually, and at different times, put forward comprehensive proposals for change in this area; none of which have been pursued.
8. In the absence of such change, the shift of responsibility for Government funding claims is likely to lead to an increase in claims activity, given perceptions of Government's larger resources and, importantly, the fact that the rebuttal rate – i.e. those claims which are dismissed at nil cost – is significantly better in the industry than for Government.
9. MDDUS believes a further missed opportunity for reform is the very tentative nature of changes to the regime of fixed recoverable costs. Despite the then Secretary of State for Health calling for action in this area in mid-2015, changes have still not been put in place. The number of cases on which the proposed cap is to be set is at a level that, in our judgement, is more likely to lead to an increase in costs, rather than a decrease.
10. The decision to put state-backed indemnity in place was made without a full public consultation, and this has inhibited debate on these issues. We consider wider engagement on possible alternative approaches could, in the long term, have produced greater benefits for the NHS and the profession in the long-term. State backed indemnity as implemented simply shifts ever increasing liabilities between parties, and will commit a greater percentage of a finite health budget to fund these costs.

STATE-BACKED INDEMNITY FOR GPs – A FLAWED OPERATING MODEL

11. A further problem is the operational model adopted for state-backed indemnity. We are dismayed that there was no consultation on the model to be adopted in either England or Wales and nor was any public procurement process undertaken.
12. We believe this failure is likely to lead to significant jeopardy for individual GPs as the state-backed monopolistic provider envisaged in both England and Wales will not have any responsibility to protect the professional standing of the doctor concerned in a claim. This will potentially increase the chances of the doctor being subject to calls for action and complaints to the General Medical Council. MDOs' offerings covered both claims management and this wider cover. The wilful destruction of this integrated service and the failure to at least offer GPs a meaningful choice of opting to retain it, (with a transfer payment for claims cover being made by Government to the relevant MDO) will, we believe, place the credibility of the scheme at risk in the medium-term.

13. Whilst relieving financial burdens on GPs therefore, we consider that the models adopted for delivery of the scheme are sub-optimal from the point of view of the taxpayer and the profession.

THE WAY FORWARD

14. MDDUS accepts that these decisions have been made and are working with each of the respective Governments constructively to seek to ameliorate their potentially harmful impact.
15. In that regard, we have agreed an Existing Liability Scheme (ELS) transaction with the UK Government to transfer our existing GP liabilities to them. We remain in discussions with the Welsh Government on the same issue. Our position, as has been made clear on many occasions, remains that the ELS is a poor piece of public policy, as we do not need any form of public support to be able to give assurance to our existing GP members that we could meet all of their expected and estimated past liabilities. However, the Board of MDDUS has concluded that it is in the best interests of existing and potential members to make the transaction. This is especially so, given that the UK Government has proceeded with an ELS transaction with one of our competitors which would distort competition in the absence of a similar agreement with us.
16. MDDUS has developed GP Protection to continue to provide for our GP members and wider primary care team, the protection they previously enjoyed before the introduction of the Future Liabilities Scheme on the 1st April 2019. This provides a 24/7 helpline supporting on matters of ethics and other issues and representation and advice on complaints, disciplinary, regulatory, ombudsman, alleged criminal and inquest matters together with claims benefits for good Samaritan acts and non NHS activities.

THE CURRENT BILL

17. Turning to the Bill itself, MDDUS does not wish to comment on any specific provisions. We think that it makes sense for the Welsh Government and Assembly to have the same decision-making scope on questions of medical negligence as is open to the UK Government and Parliament.
18. We trust that in future these new powers will be used in a way that has a far stronger evidence base, addresses the core rather than peripheral issues and engages properly with stakeholders to ensure optimal outcome for taxpayer, practitioner and the medical defence sector as a whole in a way that we fear will not be the case from the recent changes.

MDDUS
October 2019



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-P/VG/2058/19

Chair
Health, Social Care and Sport Committee

Chair
Children, Young People and Education

16 October 2019

Dear Chairs,

Following your interest in the consultation and development of the Healthy Weight; Healthy Wales, I wanted to make you aware that the final strategy will be launched on 17 October 2019.

Healthy Weight: Healthy Wales our long term strategy to prevent and reduce obesity in Wales is a culmination of the views of our stakeholders, international evidence and research. The Strategy is a 10 year plan to reduce and prevent obesity for the people of Wales. Whilst I am the lead Minister, this long term plan adopts a cross government and cross sector approach to tackling obesity.

Obesity is complex and cannot be solved by the government or NHS working in isolation; the evidence available suggests a partnership and whole-systems approach is the only way to achieve positive change. In line with the approach of A Healthier Wales, this is the first time that the Welsh Government has adopted a co-ordinated approach to tackling obesity and the range of proposals highlights how existing programmes and approaches can be refocused, whilst strengthening governance and leadership.

The four themes of the Strategy illustrate the system-wide approach that will be required to tackle obesity, recognising that the food and physical environment influences choices. They include consideration as to how interventions in areas such as transport, planning, early years, education, communities and health services can be brought together to develop a coherent approach.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Accompanying the strategy will be 5 two-yearly delivery plans which will span the lifetime of the strategy. The first delivery plan for 2020-22 will follow in early 2020 and provide detail of the exact action proposed to see changes in population behaviour and habits, encouraged and promoted through our settings and environments, and through local and nation-wide leadership. Over the next two years we will begin to develop policy and legislation and I will introduce new funding to help achieve our aims. This will allow us to put a greater focus together with partners on prevention and early intervention through all systems as part of our approach to building a healthier Wales. The strategy will help to ensure that we can leverage and maximise additional funding and opportunities to drive change across partners, to see a shift in how we use spend towards prevention.

There is strong support for the proposals we have set out in the strategy, together with energy and backing within our communities to support positive lifestyle change. I want to ensure that our strategy unlocks this potential. I remain grateful for the cross party support and the understanding of the significance of this issue. I intend to make a further statement on the Strategy in the chamber next week.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Dai Lloyd AM

Chair, Health, Social Care and Sport Committee

18 October 2019

Dear Dai,

Children's Rights in Wales

I am writing in relation to the Children, Young People and Education Committee's inquiry into children's rights in Wales.

Thirty years since the United Nations Convention on the Rights of the Child (UNCRC) opened for signatories, the Committee is undertaking a short inquiry to review the impact of the Rights of Children and Young Persons (Wales) Measure 2011.

The 2011 Measure placed a duty on Welsh Ministers to have due regard to the UNCRC and its optional protocols. The Measure means that the Welsh Government should ensure that any legislation, policies and decisions which impact on children comply with their human rights.

The Committee received 26 submissions as part of its public consultation which closed in September 2019. It also sought the views of children and young people through its "Meeting in a Box" resource. This resource aimed to empower young people to share their views on children's rights using a specially designed lesson plan that youth workers, teachers and group leaders could deliver. The Committee spoke directly with children at a number of engagement events across Wales, and also took evidence from a range of stakeholders at its meeting on 16 October 2019.

Health was highlighted in many of the written submissions received by the Committee, in specific relation to the point in Committee's Terms of Reference that refers to the extent to which the Welsh Government has sought to ensure that its duties within the Measure are translated into the work of the public bodies it

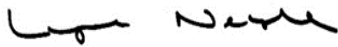


provides funding to, including local authorities and NHS bodies. Therefore, as part of its evidence gathering, the Committee took evidence on 16 October from representatives of Noah's Ark Children's Hospital for Wales.

Given the relevance of this work to your remit, I am writing to make you aware that the Deputy Minister for Health and Social Services will be attending the Committee meeting scheduled for 6 November. If you or any Members of your Committee would like any more information about our work, or would be interested in attending this meeting, please contact the Committee Clerk.

We will of course keep you updated on developments and will share with you any written outputs.

Yours sincerely,



Lynne Neagle AM
Chair

