

# Proposed changes to the Putting Things Right process

## General information

Your name:

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Organisation (if applicable):

Royal College of Physicians of Edinburgh

Are you responding as an individual, or on behalf of an organisation? (select only one option)

- Individual
- On behalf of an organisation

Other (please specify):

If you want to receive a receipt of your response, please provide an email address:

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box:

## Overview

Putting Things Right (PTR) is the process through which concerns and complaints about NHS Wales are investigated. PTR arrangements are governed by the [National Health Service \(Concerns, Complaints and Redress Arrangements\) \(Wales\) Regulations 2011](#) (“the PTR regulations”).

Welsh Government is seeking opinions from stakeholders across Wales on our proposed changes to the PTR process.

## Background

Welsh Government wants to enable a culture shift in NHS Wales towards a system that is always listening, learning and improving, and that has the trust and confidence of patients and their families.

## Proposals

- Place patients at the heart of the process.
- An improved focus on compassionate patient-centred communication.
- Improving the Putting Things Right process to be more inclusive.
- The inclusion of escalation processes for urgent concerns of deliberate abuse or harm from care, or after someone dies.
- Refresh the arrangements to provide free legal advice and medical expert reports.

The proposed PTR approach:



## Your own experience

We would like to hear about your individual experience of raising concerns and complaints.

### Question 1

If you would like to tell us about a concern or complaint you have raised about care received from NHS Wales, please do so below.

N/A

## Stage one of the concerns and complaints process

Investigations by NHS bodies into concerns and complaints have two stages: early, informal resolution of the problem and a second stage with a formal investigation. At present, the early resolution stage is limited to two working days. This deadline is frequently missed, so the early resolution stage rarely takes place, and the concern or complaint moves automatically into the formal stage regardless of the wishes of the person raising the concern or complaint.

### Question 2

Do you agree that there should be a review of the procedure NHS bodies follow before the formal investigation commences?

- Yes
- No

Please give your reasons.

The Royal College of Physicians of Edinburgh welcomes the review of the procedure followed before formal investigations begin and considers that it is appropriate to extend the period of the early resolution stage. It is concerning that the current system can mean complaints automatically move into the formal stage regardless of the patient's wishes and we believe this should be reformed such that the patient's views and wishes where possible remain central to the process. Reform could lead to more issues being resolved at Stage 1 to the patient's satisfaction. We consider that clinicians have a key role to play in helping to develop and streamline this process and ensure it is time efficient.

### Question 3

Do you agree that there should be clear regulatory requirements regarding the actions to be taken during the early resolution stage (stage one)? If so, please give your suggestions in the text box below.

- Yes
- No

Please give your reasons.

Clear and concise requirements would be useful, for example in relation to timescales and when and how a Stage 2 complaint can be taken forward in a timely fashion if it is clear that the patient is not satisfied after Stage 1.

We want to emphasise compassionate communication, and propose a mandatory offer of a listening meeting, where the patient or person who raised the concern can tell the organisation about their concern and their desired outcome if they so wish, with a clear focus on listening to the complainant.

If a complainant feels the matter is not appropriate for the early resolution option (stage one), it can move straight to the formal stage (stage two).

#### Question 4

Do you agree that the two-day deadline for stage one of the Putting Things Right concerns and complaints process should be extended?

- Yes
- No

Please give your reasons.

As per the reasons in our answer for question 2.

#### Question 5

If you think the early resolution phase should be extended, do you think 10 working days, or 15 working days is a more appropriate time frame?

- 10 working days
- 15 working days
- I do not think it should be extended

Please give your reasons.

We consider 15 days may offer the greatest opportunity for a Stage 1 option to take place and also recognises the severe time pressures on clinical staff who may be involved. Obviously, the meeting should hopefully be arranged at the earliest possible point within that 15 days and all members given sufficient notice to ensure all can be present for meetings to reflect the importance to patients.

### Question 6

Do you agree that it should be compulsory for NHS bodies to offer a listening meeting? (The complainant may accept or reject this offer.)

- Yes
- No

Please give your reasons.

We consider that offering such a meeting is a positive proposal to ensure the patient/relative perspective is understood and a resolution can be found.

### Improved communication in complaint handling

Some complainants perceive letters responding to their concern or complaint as defensive, adversarial or frightening due to legalistic terms used, or that the response focuses on agreeing a settlement rather than learning from the problem.

We want to make sure that people feel listened to and that they fully understand the response the NHS body provides to their concern or complaint.

### Question 7

When patients receive letters from the NHS body responding to concerns or complaints, would it be helpful to also include a factsheet explaining legal and/ or technical terms in the letter?

- Yes
- No

Please give your reasons.

We believe that many patients would welcome a clear and concise factsheet of this kind.

### Question 8

Do you think the regulatory requirements for the content of response letters from the NHS body, as outlined above, should be reviewed, with the aim of reducing legalistic language and improving clarity?

- Yes
- No

Please give your reasons.

We would generally support all efforts to improve the clarity of all NHS responses so that they can be as accessible as possible to all patients and families.

### Question 9

Should anything else be included in these letters from the NHS body?

- Yes
- No

Please give your reasons.

N/A

We plan to provide the offer of an in-person meeting to discuss the findings of an investigation of a concern in which redress has been considered. This may be applicable in circumstances where new information has come to light since the interim report was provided. Complainants will have the opportunity to discuss the findings of the investigation and have clarity on technical or legal content.

### Question 10

After an investigation report is concluded, would it be helpful to have a meeting with the NHS body where complainants can discuss the outcome of the investigation and the NHS body's response?

- Yes
- No

Please give your reasons.

Fellows working in the NHS in Wales considered that it would be helpful to give the complainant the option of attending such a meeting where they could receive a reading of the complaint response and an opportunity to hear from, and question, team members. This would enhance an understanding of the answers provided and remove any potential ambiguity.

We propose to align the PTR regulations with national reporting policy timeframes, which permit a range of response times of 30, 60, 90 or 120 days depending on the complexity of the investigation. People raising concerns or complaints will be kept informed of the timeframe of the investigation and on its progress.

### Question 11

Do you agree that the PTR regulations should reflect the national incident reporting policy and include a range of response times of 30, 60, 90 or 120 days depending on the complexity of the investigation?

- Yes
- No

Please give your reasons.

It seems logical that PTR regulations and response times reflect national policy to ensure consistency.

### Reflecting changes in NHS Wales

Welsh Government intends to bring the PTR regulations up to date to reflect changes in NHS Wales since 2011, when the regulations were introduced. There is now more focus on integrated care, where organisations come together to plan and deliver joined-up health and social care services, and greater use of the independent sector to deliver NHS-funded care. Patients should not be disadvantaged, treated differently, or have reduced access to redress because of who provides care.

### Question 12

Do you agree that independent healthcare providers who are funded by NHS Wales to provide care should be covered under Putting Things Right redress arrangements?

- Yes
- No

Please give your reasons.

We consider that this would be an optimal position but understand that some independent healthcare providers may require some education, training and support to be in a position to achieve this.

We will consider whether it is possible to bring primary care providers such as GPs, optometrists, pharmacists, and dentists into the PTR redress process.

### **Question 13**

Do you agree that primary care providers such as GPs, optometrists, pharmacists, and dentists should be covered under the Putting Things Right redress arrangements?

- Yes
- No

Please give your reasons.

We would encourage substantive dialogue with these groups and their representative bodies to discuss the most effective complaints processes for these groups. Most importantly this would provide a consistent approach in all areas which would be of huge value for patients and families in navigating the process and provide transparency throughout.

## **Children and young people**

Welsh Government has a legal duty to consider the United Nations Convention on the Rights of the Child (UNCRC) when developing or reviewing policy, so we are seeking input on how to better reflect the needs of children and young people in the PTR process.



### Question 14

What do you feel needs to be done to make the Putting Things Right process more inclusive for children and young people?

Please give your reasons.

We would encourage engagement with children's groups and organisations on this to ensure their views and needs are understood.

### Redress in the form of financial compensation

Over the past decade, damages for each type of personal injury have increased significantly. As a result, more cases enter litigation as they go over the existing £25,000 threshold. We intend to raise the financial threshold for cases that can be dealt with through PTR from £25,000 to £50,000, so that more cases may be covered by PTR redress. This proposal does not in any way limit the damages awarded to the person who has been harmed.

### Question 15

Do you agree that the upper limit of damages for cases in the Putting Things Right redress process should be raised from £25,000 to £50,000?

- Yes
- No

Please give your reasons.

We consider that this is appropriate and hopefully may lead to more cases being covered by PTR redress.

### Urgent concerns and deliberate harm

It is vital that there is clarity for the process of raising concerns and complaints in the rare cases where patients have been deliberately harmed. Welsh Government wants to ensure these mechanisms are clearly referenced and explained in the PTR guidance and supporting materials.

### Question 16

Do you agree that the Putting Things Right guidance should be reviewed and updated to include the rapid escalation and reporting pathway to local safeguarding hubs and other relevant authorities such as the police for cases where imminent harm or abuse to a patient is alleged?

- Yes
- No

Please give your reasons.

We consider it extremely important that there is clear and understandable guidance that sets out what should be done in relation to urgent concerns and deliberate harm.

Where police investigation is taking place in regard to a complaint, the NHS investigation often pauses until the police and/or safeguarding investigations have been completed. Currently, the NHS response should be provided within 30 working days, with extensions in exceptional circumstances. We intend to provide for exception to this time frame for where a criminal or safeguarding investigation needs to take precedence.

### **Question 17**

Do you support the proposed exemption to the existing time frame for concerns or complaints where a criminal or safeguarding investigation needs to take precedence?

- Yes
- No

Please give your reasons.

We consider it to be logical that time frame exemptions are available when criminal or safeguarding investigations have to take precedence.

## **Bereavement**

Families and loved ones often have questions about events that led up to a death. These questions may comprise a concern but not necessarily a complaint. We propose, where possible, dealing with these concerns via the early resolution process, where NHS bodies must offer a meeting to discuss concerns or complaints.

### Question 18

In the event of a patient's death and where their loved ones had concerns about their care, do you agree that the NHS body should use the listening meeting offered in the early resolution phase (stage one) in order to try and resolve the bereaved person's concerns quickly?

- Yes
- No

Please give your reasons.

We consider this would be appropriate.

### Provision of free legal advice

The PTR process includes the provision of free independent legal advice for complainants which is funded by the NHS and which does not affect the level of damages offered under the NHS redress arrangements. Internal data from NHS Wales Shared Services Partnership says that currently only 31% of patients raising a concern or complaint use the funding available for this legal advice.

### Question 19

Would you be more likely to consult a solicitor for assistance with a concern or complaint if you knew legal advice would be provided to you free of charge? For example, this could include the joint instruction of a medical expert to review the case or to give legal advice on any settlement offer or agreement.

- Yes
- No

Please give your reasons.

N/A

We plan to increase the fees the healthcare provider may pay to lawyers using the PTR redress process in order to provide greater access to free legal advice for people raising concerns and complaints.

The current arrangements for paying for legal advice are provided for under the 2011 PTR regulations, and are set out in Appendix O of the PTR guidance as outlined below.

At present, the claimant's legal representative may receive £1600 for:

- considering Breach of Duty and investigating causation including the commissioning of up to two expert reports or
- reviewing the appropriateness of the offer made to the complainant by the NHS body

They may receive a further payment to review any additional report on the condition and prognosis for estimation of damages.

The legal representative may receive an additional £868 to advise the complainant where the NHS body admits Qualifying Liability but refuses to offer redress.

We propose to simplify the current fee system and replace the above with:

- payment 1: for providing advice on the admission of liability made (£1750)
- payment 2: for providing advice on the quantum of damages where settlement is reached under the redress arrangements of (£1000)

The revised fees take account of increased costs since 2011, the date PTR was first implemented. All figures above represent the fees prior to the addition of VAT.

As is the case currently, additional payments may be available for instructing additional experts or advising the complainant where the NHS body admits Qualifying Liability but refuses to offer redress.

## **Question 20**

Do you agree that the fixed legal fees paid by the healthcare provider should be increased, with the aim of increasing the number of solicitors providing legal advice to people raising concerns and complaints?

- Yes
- No

Please give your reasons.

N/A

## Welsh language standards

We would like to know your views on the effects that our proposed changes to the PTR process would have on the Welsh language; specifically, on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

### Question 21

What, in your opinion, would be the likely effects of the proposed changes to PTR on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

Please give your reasons.

N/A

### Question 22

Do you think that there are opportunities to promote any positive effects?

- Yes
- No

Please give your reasons.

N/A

### Question 23

Do you think that there are opportunities to mitigate any adverse effects?

- Yes
- No

Please give your reasons.

N/A

## Question 24

In your opinion, could the proposed changes to Putting Things Right be formulated or changed so as to:

- have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or
  - mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?
- 
- Yes
  - No

Please give your reasons.

N/A

## Question 25

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

While we welcome in general terms the proposals contained within this consultation, we also consider that NHS Boards and Trusts must continue to promote a culture of compassion and transparency which we consider will assist in ultimately reducing the number of complaints.

We would also wish to emphasise that most clinicians are exceptionally busy with their frontline duties and therefore have limited time for writing complaint reports- which are often required to be extremely detailed- and the time pressures on clinical staff must be factored into any effective complaints system to ensure that patients are provided with as comprehensive a report as possible.