

Welsh Government

Consultation on proposed changes to the Putting Things Right process



A response by the Association of Personal Injury Lawyers

April 2024

Introduction

We welcome the opportunity to respond to the Welsh Government's proposals to review the Putting Things Right (PTR) process. The PTR process is an important mechanism for addressing concerns and complaints raised by patients and their families. As an organization that represents injured people, APIL supports the proposals aimed at enhancing the patient or complainant experience of the process and foster a culture of transparency and accountability.

We support the proposals concerning stage one of the concerns and complaints process, namely extending the deadline for the early resolution stage. We believe that 10 working days is a reasonable period for the NHS body to prepare its initial response to the concern. To further improve stage one and to ensure effective communication, we also suggest an acknowledgement of the complaint/ concern raised within 2 working days of receipt.

We oppose the proposed increase in the upper limit of damages for cases in the PTR redress process from £25,000 to £50,000. This increase raises significant concerns regarding the suitability of the PTR process for cases of increased complexity and sensitivity, and the availability of free independent legal advice. APIL also raises concerns about the level of fees paid to solicitors. Without a significant increase in solicitor fees, there is a risk that legal representation may become scarce or of insufficient quality.

APIL has only responded to the questions within our remit.

Consultation questions

Question 2: Do you agree that there should be a review of the procedure NHS bodies follow before the formal investigation commences?

Yes, APIL agrees with this.

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)?

Yes, APIL agrees with this.

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, APIL agrees with this. The current two-day deadline is proving to be ineffective and is often not met, as acknowledged in the consultation document. We support the proposal to extend the deadline to ten working days. This adjustment would facilitate better management and utilisation of the early resolution stage, while ensuring that concerns are not automatically escalated to the formal stage without considering the preferences of the person raising the concern or complaint.

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?

We believe extending the timeframe to 10 working days would be more appropriate. This period should afford the NHS body reasonable time to prepare its initial response letter. However, we suggest that the responsible body should acknowledge receipt of the notification of the concern/complaint within 2 working days. Patients complaining through the redress scheme will often be dealing with pain and/or emotionally distressed. We suggest the acknowledgment of the complaint would improve experiences in the scheme and reassure the person complaining that the NHS body received their concern and will send a more detailed response within the 10-day deadline for stage one.

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. APIL welcomes this proposal, which reflects a commitment to patient-centred care and open communication. The introduction of a mandatory offer for a listening meeting is crucial to ensuring that the patient's concerns are heard, allowing them to discuss their desired outcome for the complaint/concern during the early resolution stage. We believe that this proposal has the potential to enhance the patient/complainant experience in the PTR process and improve outcomes.

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?

APIL supports this proposal. Including a factsheet alongside response letters from NHS bodies is essential in ensuring that patients and their families fully understand the response. Providing explanations in layman's terms for legal and technical terminology fosters clarity, empowers patients/complainants, and enables them to make more informed decisions.

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?

No, we do not think this would be necessary considering the proposal above that NHS bodies would be required to provide patients with a factsheet explaining the technical terms. We believe the requirements in the current PTR Regulation 24 (1) remain appropriate. We acknowledge the patients' comments about the letter content in the consultation document and agree that the letters should not be perceived as defensive or adversarial. NHS bodies

should work towards accommodating the requirements while ensuring that the language used is also compassionate.

Question 9: Should anything else be included in these letters from the NHS body?

No.

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. We believe the offer of a meeting to discuss the outcome of the investigation is an important addition to the process. Some complainants/patients will feel more comfortable discussing the outcome in a face-to-face or remote meeting rather than in writing.

Question 11: Do you agree that the Putting Things Right 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, APIL supports this proposal. Aligning the PTR regulations with the national incident reporting policy timeframes is a logical step forward to ensure consistency. The introduction of updates for individuals raising concerns or complaints is also a welcomed addition. These updates not only enhance the accountability and responsiveness of the investigation process but also prioritise the needs and experiences of those involved in raising concerns. APIL suggests that a clear and accessible contact point should be established for complainants/patients to reach regarding their complaints or concerns. This would ensure that people raising concerns feel heard, foster trust in the system, and facilitate effective communication.

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?

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, APIL agrees with both proposals. Our members have encountered cases where treatment was carried out in a private hospital but funded by the NHS. These cases proceeded directly to litigation, and the same applies to primary care providers. However, had PTR redress been available, patients might have decided to go through the 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?

We suggest that children should be allowed to participate in the listening meeting. It should be explained to them in simple terms, where appropriate, what the PTR consists of and the possible outcomes of the investigation.

In England, Cafcass represents the interests of children and young people in family court cases. They independently advise the courts about children's best interests, focusing on their needs and making sure that children's voices are heard and are at the heart of the decision-making. We suggest that the PTR process should follow a similar approach. In cases involving children and young people, an independent adviser should be available to support and represent them, along with their families, during the process to ensure that their view of the events is listened to, as well as their desired outcome for the investigation.

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?

No. APIL opposes the proposed increase in the upper limit of damages for cases in the PTR redress process from £25,000 to £50,000. Doubling the value bracket raises concerns regarding the suitability of the PTR process for cases of increased complexity and sensitivity, such as stillbirths or other maternity cases. For instance, these cases would require more medical and expert reports, which would be difficult to obtain with the fee structure proposed. The advice on liability and quantum for a claim up to £50,000 will be more time-consuming and complex, and the proposed fee will not be attractive for lawyers. In cases involving delay in surgery or misdiagnosis cases there may also be additional evidence needed in relation to loss of earnings or rehabilitation required.

This increase, coupled with the current fee structure, would limit the availability of independent legal advice, as the fees paid to solicitors are low, and the complexity of cases would increase. Even if the fee structure is updated and the fees paid increase, it will be difficult for lawyers to take on this work.

There is already an element of discretion under Part 6, section 29 of the regulations, which allows the NHS body to consider an award exceeding £25,000 if the investigation conducted concludes that there is a qualifying liability. Our members report that they have settled complaints through the PTR scheme where financial compensation exceeded £25,000. There will be cases slightly above £25,000 which are still adequate for the redress scheme and where the person seeking financial redress will prefer to go through the PTR scheme. APIL believes that the discretion element in the regulations can address the concerns in the consultation that cases are removed out of the redress scheme due to changes in damages since 2011. We oppose an increase in the upper bracket, for all the reasons above, but also because this proposal would be out of kilter with other reforms and schemes in personal injury, such as the proposed scheme fixed recoverable costs in lower damages clinical negligence claims proposed for England and Wales¹.

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, APIL agrees with this proposal.

¹ <https://assets.publishing.service.gov.uk/media/6502e6835b07380013029ea3/fixed-recoverable-costs-consultation-response.pdf>

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, APIL agrees with this proposal.

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?

APIL agrees with this proposal. The NHS body should use the listening meeting provided in the early resolution phase to address concerns in bereavement cases. Bereaved families require prompt responses to their concerns, as the absence of the deceased prevents a firsthand account of the events that led to the loss of their loved one. The failure to receive responses and see their concerns addressed frequently pushes bereaved families to pursue litigation and drop out of the PTR process.

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.

The PTR information page should clearly state that free independent legal advice, funded by the NHS, is available and does not affect the level of damages offered under the NHS redress arrangements. Currently, there is no information on the PTR guidance page regarding the funding available for legal advice. We believe this page should be updated to better inform patients of their right to free independent legal advice during the redress process. Additionally, patients should be provided with a list of panel firms authorised to offer legal advice under the NHS redress regulations.

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, APIL agrees with this proposal. Legal fees paid by the healthcare provider must be increased to ensure patients'/complainants' access to free independent legal advice. The consultation paper mentions that *"some [patients] note that their solicitor would not agree to work within the current fee structure in PTR."* The current fee structure is limiting legal representation options for individuals raising concerns or complaints.

We are particularly concerned about the potential consequences of not setting fees at the right level if the proposed increase in the upper limit of damages for cases in the process goes ahead. This adjustment will introduce greater complexity to the cases involved, requiring more experienced legal professionals (please see question 15). Without review of the fee structure and the work required in these higher value cases, there is a risk that legal representation may become scarce or of insufficient quality – only junior practitioners or paralegals handling cases, which would not always be appropriate for cases up to £50,000 (if the limit is extended).

Additionally, we query how the Welsh Government envisages the interaction between the PTR process and the new regime proposed for clinical negligence cases valued up to £25,000². The PTR can currently offer financial redress up to £25,000, but these claims will also be subject to the new regime. We can foresee situations where individuals seeking financial redress would be confused about the best option open to them. If solicitor fees are not set at an appropriate level, there is a risk that the PTR process will cease to be used by those seeking financial redress, and cases will simply go through the new regime.

Question 21: What, in your opinion, would be the likely effects of the proposed changes to Putting Things Right 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.

To ensure that the Welsh language is not treated less favourably than English, all the documents, leaflets, letters, guidance, and communication should also be available in Welsh. There should also be more Welsh-speaking staff to attend listening meetings and a version of the PTR website page in Welsh.

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?**

Please see the response to question 21.

² <https://assets.publishing.service.gov.uk/media/6502e6835b07380013029ea3/fixe-recoverable-costs-consultation-response.pdf>