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# Putting Things Right Redress Procedure

The aim of this procedure is to set out the way in which concerns should be managed in Public Health Wales ("PHW") when there are considerations of harm, primarily raised following an incident, Duty of Candour trigger or complaint.

## Linked Policies, Procedures and Written Control Documents

[All corporate policies and procedures are available on the Public Health Wales website](#)

- Claims Management Policy
- Claims Management Procedure
- Putting Things Right Policy
- Complaints Management Procedure
- Incident Procedure
- Duty of Candour Procedure
- Risk Management Policy
- Risk Management Procedure

## Scope

This procedure applies to all Public Health Wales staff, visitors, contractors, temporary staff including agency staff and volunteers and any reference to staff should be interpreted as including these groups.

The procedure established the importance of the co-operation of staff and management in the investigation, response and review of complaints, incidents and concerns.

## Equality and Health Impact Assessment

An Equality and Health Impact Assessment has been completed

## Approved by

Quality, Safety and Improvement Committee

## Approval Date

18 July 2023

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## **Disclaimer**

**If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Corporate Governance](#).**

<b>Summary of reviews/amendments</b>				
<b>Version number</b>	<b>Date of Review</b>	<b>Date of Approval</b>	<b>Date published</b>	<b>Summary of Amendments</b>
2	2023	18/07/2023		Updated procedure
1	2018	27/09/2018	26/10/2018	New procedure

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## **1. INTRODUCTION AND PURPOSE OF PROCEDURE**

### **Note:**

The term “concern” should be taken to mean any complaint, claim or reported patient safety incident (about NHS treatment or services) which includes triggers for Duty of Candour to be handled under the Putting Things Right arrangements. For the purposes of this procedure, the term concern means any complaint or incident notified about NHS treatment or services provided by Public Health Wales.

Public Health Wales acknowledges that, as a large and complex provider of Public Health services and functions, there will be occasions where sometimes things do not go as planned or will go wrong. The organisational response, across all levels, will be to minimise the reoccurrence of similar events occurring in the future. The over-riding principle, when incidents (including Duty of Candour Triggers) and concerns are reported, is to be able to learn from them rather than attribute individual blame.

This procedure sets out the arrangements under Putting Things Right by which Public Health Wales will manage and respond to concerns with consideration of Redress to meet the requirements of the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011.

If Public Health Wales did not provide a service that a service user should have received, we will aim to provide it if possible. If we did not do something well, we will aim to put it right. If the service user lost out as a result of a mistake on the part of Public Health Wales we’ll try to put the service user back in the position they would have, had the mistake not been made.

A concern may be notified by a person (“Representative”) acting on behalf of a service user who:

- (a) Has died;
- (b) Is a child;
- (c) Is unable to notify the concern themselves because they lack capacity within the meaning of the Mental Capacity Act 2005 (1);
- or (d) Has requested the representative to act on their behalf.

## **2 WHAT IS REDRESS?**

Redress relates to situations where a service user may have/had been harmed and that harm was caused by the NHS in Wales.

During the course of an investigation into a complaint or incident/ Duty of Candour trigger, Public Health Wales must consider, where harm has or may have been caused, and the likelihood of any qualifying liability in tort arising.

Redress can comprise of any combination of the following:

- the giving of an explanation
- a written apology
- a report on the action which has or will be taken to prevent similar concerns arising
- the making of an offer of compensation in satisfaction of any right to bring civil proceedings in respect of a qualifying liability in tort

### **3 WHAT IS A QUALIFYING LIABILITY?**

A qualifying liability is when there is proven personal injury or loss arising out of, or in connection with, the care or treatment of a service user due to a service provided by Public Health Wales.

Consideration must be given to the legal test which establishes whether a medical professional has breached their duty of care which could lead to negligence to assess whether or not there may be a qualifying liability.

Considerations of Qualifying Liability:

By law, any health care professional must provide a reasonable standard of care while going about their duties. This is known as a duty of care. Where a health care professional breaches their duty of care, liability for negligence may arise.

To satisfy the test, a healthcare professional must show that they acted in a way that a responsible body of healthcare professionals in the same field would regard as acceptable, this is known as the Bolam principle.

**The four factors to consider when determining if there is a Qualifying Liability are listed below:**

- 1) Was there a duty of care?**
- 2) Has there been a breach of duty?**
- 3) Has harm been caused?**
- 4) Has damage been caused as a result of that harm? (physical injury/psychiatric injury and financial loss)**

Please note Redress cannot be offered where there is no qualifying liability in tort.

#### **4 WHEN DOES REDRESS NEED TO BE CONSIDERED?**

- When a complaint is raised and there is harm alleged/potential harm
- Where an investigation into an incident/ Duty of Candour trigger or a complaint is being undertaken by the investigating officer, and it is determined that harm has or may have been caused, the investigating officer must have consideration for Redress.

#### **5 WHEN DOES REDRESS NOT APPLY?**

If at any time during the management and investigation of either a complaint or incident, the following applies:

- Redress cannot be offered where there is no qualifying liability in tort.
- Redress cannot be offered if the concern is or has been subject to civil proceedings.
- The Redress arrangements should not be engaged where it is considered at the investigation stage that the amount of financial compensation would exceed the limit set out under the Redress arrangements, currently £25,000.

#### **6 WHO CAN TRIGGER REDRESS?**

An assessment of Redress will be done by the Putting Things Right Team for all complaints and incidents and Duty of Candour Triggers notified.

Any matters which could be considered for Redress will be referred to the Claims Manager who will confirm if the Redress process needs to be applied, in conjunction with the incident/complaint investigator.

Executive Directors and Divisional Leads have a duty to highlight any potential incidents, complaints and Duty of Candour notifications they are made aware of that need to have consideration of Redress with the Putting Thing Right Team.

The Incident Investigator also has a duty to make an assessment of Redress for any notified incidents/ Duty of Candour Triggers which include an allegation of harm has or may have been caused.

All staff are responsible for having a consideration of Redress, and must contact the Claims Manager via [legalsupport.phw@wales.nhs.uk](mailto:legalsupport.phw@wales.nhs.uk) as soon as possible for advice and support regarding any potential Redress matters.



When an incident is first identified by a member of staff or via a member of staff being notified from another Health Board/Trust, the event should be reported as an incident/ Duty of Candour Trigger, with a view of learning lessons. If during the course of an incident investigation it is identified that harm has or may have been caused, consideration for Redress will need to be applied. The matter will need to be referred to the Claims Manager via [legalsupport.phw@wales.nhs.uk](mailto:legalsupport.phw@wales.nhs.uk) as soon as possible to consider if we need to contact the service user or family member to involve them in the Redress/Duty of Candour investigation. If Redress needs to be considered, a new potential Redress matter will be opened on Datix by the Claims Manager.

## **7 HOW DO I TRIGGER REDRESS?**

If a staff member during the course of their day to day activity or during the course of an investigation identifies that harm has or may have been caused to a service user, the Claims Manager must be contacted immediately via [legalsupport.phw@wales.nhs.uk](mailto:legalsupport.phw@wales.nhs.uk) for appropriate advice and support to be provided.

The matter must be reported as an incident/ Duty of Candour Trigger and/or complaint record using the Datix system in the first instance which will then be linked to a new Redress record on Datix. The Claims Manager will be responsible for creating a new Redress record and linking this to the complaint and/ or incident/ Duty of Candour record.

## **8 WHO IS RESPONSIBLE FOR INVESTIGATING REDRESS?**

The Claims Manager will oversee and lead on all Redress investigations with support from the Head of Putting Things Right. The Claims Manager will work in conjunction with a Senior Investigation Officer from the area in which the Redress matter rests. A Senior Investigation Officer must be made available as soon as possible to support with any Redress investigation.

The Senior Investigation Officer will be responsible for identifying and implementing actions from any Redress matters and sharing these within their Division/across the organisation as appropriate. They will also be responsible for supporting the Claims Manager with drafting the Learning From Events Report ("LFER") and Case Management Report ("CMR"), which will be reviewed and authorised by the appropriate Divisional Leads. This is done on completion of a Redress Investigation where a qualifying liability has been identified. The Senior Investigation Officer is responsible for

identifying the cause of the Redress incident and creating an action plan to complete and monitor actions taken as a result of a Redress case and share this with their Division/across the organisation as appropriate.

## **9 HOW TO ENSURE REDRESS IS CONSIDERED FOR COMPLAINTS AND INCIDENTS**

Please follow this [flowchart](#) to consider applying Redress to Incidents

Please follow this [flowchart](#) to consider applying Redress to Complaints

Please follow this [flowchart](#) for investigating qualifying liability

## **10 REDRESS PROCESS**

Redress follows [Part 6 of The National Health Service \(Concerns, Complaints and Redress Arrangements\) \(Wales\) Regulations 2011](#).

As part of this process the following scenarios may be identified:

<b>Regulation Response Type</b>	<b>Position of Redress investigation</b>
Regulation 24	<ul style="list-style-type: none"> <li>• No Qualifying liability</li> </ul> OR <ul style="list-style-type: none"> <li>• Qualifying Liability identified however damages likely to exceed £25k PTR threshold</li> </ul>
Regulation 26	<input type="checkbox"/> Interim response due to potential Qualifying Liability
Regulation 33	<input type="checkbox"/> Outcome following Qualifying Liability investigation

## **11 REGULATION 24 INVESTIGATION**

### **11.1 When? Where no qualifying liability is found**

In many concerns it will be likely that liability for actual harm is not an identified issue and there may be no requirement to consider this aspect any further. In other cases, PHW may have sought independent expert advice and have concluded that there is no liability in tort.

Where no qualifying liability is found, PHW can respond to the concern specifically outlining that there is no liability and issue a final **Regulation 24** response.

OR

### **11.2 When? Where harm alleged, if proven, would be awarded damages in excess of £25,000**

In cases where the alleged harm, if proven, would be awarded damages which would clearly exceed the financial limits for Redress (currently £25,000), PHW can issue a final response under Regulation 24 explaining that the quantum of any potential claim arising out of the concern exceeds the financial threshold in the Regulations and so the Redress arrangements will not be entered into.

### **11.3 Investigation Process and Timescales**

The investigation should aim to be completed within 30 working days of receipt of the concern and an investigation report prepared by the Investigating Officer as a response to the concern, together with a draft final response to the complainant.

When the Duty of Candour is triggered, the time period for responding to a concern runs from the date the NHS body makes the 'in person' notification to the service user or Representative under Regulation 4 of the Candour Procedure Regulations.

Standards for completion of the Regulation 24 response:

- An apology where appropriate and summary of what the concern was about
- An apology if the response is delayed and reasoning why
- An explanation of how the concern was investigated
- Address all aspects of the complaint – itemised where appropriate and dealing with each issue in a sensitive manner
- Identify what is being done to rectify the situation that led to the concern arising
- Written in a language that the person raising the concern will easily understand, avoiding medical or technical jargon.
- When such information needs to be included in the response a simpler explanation in layman terms will be given
- Where appropriate apologise for poor practice
- An offer to discuss the response to the concern with the relevant Senior Manager within the relevant service.
- Details of the person's right to raise their concern with the Public

Services Ombudsman for Wales

- Copies of any expert opinion obtained as part of the investigation
- Copies of any relevant medical records, where appropriate
- The outcome of any disciplinary action must not be included; however it may be appropriate to disclose that some issues were addressed under the disciplinary procedures.

The Regulation 24 response (where harm is or may have been caused) must either contain:

- A description of why in the opinion of Public Health Wales there is no qualifying liability

**OR**

- A description of why in the opinion of Public Health Wales that this will likely exceed PTR limit but coming to no conclusion on breach of duty or causation. The complainant should be directed to solicitors to pursue a claim.

A template Regulation 24 response can be found [here](#)

## **12 REGULATION 26 INVESTIGATION**

### **12.1 When? Where it has been identified there is or may be a qualifying liability valued at less than £25,000**

If a complaint/incident investigator identifies that there may be a qualifying liability, a Regulation 26 Interim response must be sent. The investigator must have consideration of the following:

- that we owe the person raising a concern a duty of care and that duty has or may have been breached

**and**

- that it is possible that but for the negligence the service user would not have suffered harm

The interim report under Regulation 26 needs to be issued within 30 working days or whichever is the later, either:

- The day upon notification of the concern was received; or

- Where the Duty of Candour is triggered, the day upon which the 'inperson' notification under Regulation 4(1) of the Duty of Candour Regulations was given.

## **12.2 Qualifying liability identified**

When it has been identified that there is or may be a qualifying liability, the Senior Investigating Officer must confirm this on the incident/complaint record on Datix. The Claims Manager will then link the incident and/or complaint record to a new Redress record on Datix.

This will highlight the need for Qualifying liability to be considered.

An online meeting (Concern Discussion Meeting) will be scheduled within 2 working days of notification of a new Redress matter being logged. Attendance will be required from the Claims Manager, Senior Investigation Officer, Head of Putting Things Right and Assistant Director of Nursing & any other person deemed appropriate at that stage.

The Concern Discussion Meeting will be arranged by the Claims Manager. There will be a requirement for the Senior Investigating Officer to present the position to all attendees of the Concern Discussion Meeting. The purpose of the Concern Discussion Meeting will be to consider the current position and approach going forward. Datix must be fully updated at all times to reflect the present position.

## **12.3 Regulation 26 Response**

The Senior Investigation officer will liaise with the Claims Manager to draft the interim Regulation 26 response using the template found [here](#).

## **12.4 Regulation 26 interim response must include:**

An interim response must be issued within 30 working days of receipt of the concern or 30 days from the in person Duty of Candour notification, whichever is the later, together with an interim report.

The interim report must include the following:

- a summary of the nature and substance of the issues contained in the concern
- a description of the investigation undertaken to date
- a description of why in the opinion of the Public Health Wales there is or may be a qualifying liability
- a copy of any relevant medical records where necessary

- an explanation of how to access legal advice without charge
- an explanation of advocacy and support services which may be of assistance
- an explanation of the process for considering liability and Redress
- confirmation that the full investigation report will be made available to the person seeking Redress
- Details of the right of the person to take their concern to the Public Services Ombudsman for Wales;
- An offer of an opportunity to discuss the contents of the interim report with the Investigation Lead or nominated representative

### **12.5 Delay**

If it is not possible to issue the interim response within 30 working days of first receipt of a concern, the person raising the concern must be informed of the reason for the delay and wherever possible informed regularly of the progress made and the interim report should be sent within 6 months of first receipt of the concern.

If, in exceptional circumstances, the interim response cannot be issued within 6 months, then the person raising the concern must be informed of the reason for the delay and given an expected date for receipt of the interim response.

### **12.6 Sign Off**

All Redress response letters are issued by the office of the Chief Executive. The Chief Executive or a designated representative sees all Redress responses prior to issuing, and signs them accordingly. The response should therefore be written in a style that reflects that it is from the Chief Executive.

The Senior Investigating Officer must send their investigation report and the draft final response to the Claims Manager for review once approved by the relevant Senior Manager. The Claims Manager will perform a final consistency check to ensure that the response addresses all the issues raised. This will then be shared with the concerns team to progress via the organisations standard Quality Assurance process.

The final signed response letter will be saved onto the Datix Redress module by the Chief Executive's Office and will be copied to the Senior Investigating officer and the Claims Manager.

## **13. Legal Advice**

Where Redress arrangements are engaged, legal advice without charge will be available to the person who notified the concern should they want it, if there is potential for a qualifying liability to be found.

This advice is available in relation to:

- The joint instruction of clinical experts including clarification of issues arising from their reports.
- Any offer of Redress made in accordance with Part 6 of the Regulations
- Any refusal to make an offer
- Any settlement agreement that is proposed.

A list of Solicitors currently available to support the Redress process can be found [here](#)

### **13.1 Suspension of the limitation period for Claims**

The time allowed for a person to bring a legal claim can be suspended while a case is being considered for Redress. The claims 'clock' can be stopped from the date on which the concern was first received up until 9 months after the date of any offer of Redress, if it is accepted by PHW that *there is or may be a qualifying liability*.

This is to ensure that no person is disadvantaged, or prevented from bringing legal action, should they be unhappy with the outcome of the Redress investigation.

Further detail on this is in the [Putting Things Right Guidance](#) paragraph 7.11 – 7.18.

## **14 REGULATION 33 RESPONSE – OUTCOME OF QUALIFYING LIABILITY INVESTIGATION**

In order to determine whether an offer of Redress can be made, it is necessary to undertake some additional investigations to include the following matters:

- Whether there is a qualifying liability
- An up to date assessment of condition and prognosis
- Compensation Recovery Unit Certificate (CRU)
- Quantification of any financial loss

## 14.1 Outcome of considering qualifying liability

Redress can only be considered if there is a proven qualifying liability in tort (a civil wrong). For an investigation to establish if there is a qualifying liability the following must be considered:

- Firstly, it must be established that there has been a breach of the organisation's duty of care. This means that the care or treatment was below the standard which would have been provided by a responsible body of similar professionals carrying out similar treatment to that complained of.

### AND

- Secondly it must be established that the breach of duty caused the harm the service user suffered.

It is only when these **two tests are satisfied** that a payment of compensation can be considered.

## 14.2 Redress Panel

A [Redress Panel](#) has been convened to:

- Consider individual cases and agree if any remedial action is required.
- If remedial action is agreed, consider the financial compensation award for each Redress case up to £25,000 where a qualifying liability has been established as advised by NHS Wales Legal Advisors.
- Consider and recommend if any offers of treatment are necessary
- Approve and authorise the Redress Investigation Report prior to disclosure
- Ensure appropriate action is taken in respect of Redress Cases and ensure lessons learnt are shared and action plans are monitored through to completion, and that cases are fed into the appropriate committee for monitoring of action and implementation.

### 14.3 Redress Panel Members

The Redress panel is made up of the following and is convened by the Claims Manager as and when necessary:

<b>Redress Panel Members</b>
1. Claims Manager - Chair
2.Executive Director of Quality, Nursing & Allied Health Professionals
3.Deputy Director of Operations and Finance
4. Executive Director of People & Organisational Development
5.Deputy Medical Director

### 14.2 Redress – financial

Where liability in tort is accepted, an offer can be made of financial compensation up to the value of £25,000, which is approved by the Redress Panel. There is some leeway to make offers above this amount under Redress but these must be considered on a case by case basis and supported by Legal & Risk Services.

The Claims Manager will provide advice and support for any matters relating to financial compensation under Redress.

### 14.3 Redress- communicating the decision

Within 12 months of first receipt of the concern, PHW must communicate (to the complainant) its decision to either:

- Offer Redress in the form of financial compensation, treatment or both

Or

- Not to make an offer

A Regulation 33 Response and the final copy of the investigation report must be sent to communicate PHW's decision to either offer Redress in the form of financial compensation, treatment or combination of both or, if no liability could be established as a result of investigations carried out in accordance with Part 6 of the Regulations, not to make an offer.

A template Regulation 33 Response can be found [here](#).

By accepting the offer of Redress the person or representative must sign a waiver found [here](#) to any right to take the same concern to court.

The investigation report must be provided to the person who raised the concern and is seeking Redress as soon as is reasonably practice and within 12 months of whichever is the later, either:

- The day upon which the notification was the concern was received;  
or
- Where the Duty of Candour is triggered, the date upon which the 'in person' notification under Regulation 4 (1) of the Duty of Candour Regulations was given.

#### **14.4 Delay in communicating the decision**

In exceptional circumstances, if PHW is not able to make a decision within 12 months, then the reason for the delay and an expected date for the decision must be notified to the person who raised the concern.

The person who raised their concern, or their representative, must be advised that they have 6 months to respond to the communication. If they are unable to respond within 6 months, they must explain why. If no response is received within 9 months, the claims limitation 'clock' will restart.

In some cases (e.g. relating to a child or a person lacking capacity) a proposed Redress settlement will require approval by a court. In these cases, the NHS must pay all reasonable legal costs to obtain the approval of the court.

#### **14.5 Redress – Investigation Report**

Where a person is seeking Redress, the findings of the investigation must be recorded in the Investigation Report, a [template report can be found here](#). The Investigation Report must be provided to the person who raised the concern and is seeking Redress within 12 months of first receipt of the concern. In practice, communication of the Redress decision and provision of the Investigation Report should occur at the same time.

The Investigation Report must contain:

- Copies of any independent expert advice used to determine whether or not there is a liability

- A statement by the Welsh NHS body confirming whether or not there is a liability
- The rationale for their decision

It is not necessary for an Investigation Report to be provided:

- Before an offer of Redress is made
- Before a decision not to make an offer of Redress is communicated
- If the investigation of Redress is terminated for any reason
- If the report contains information which is likely to cause the person or other applicant for Redress significant harm or distress

#### **14.6 Investigation reports which exceed the 12 month time limit**

In exceptional circumstances, if PHW is not able to provide the Investigation Report within 12 months, then the reason for the delay and an expected date for its issue must be notified to the person who raised the concern.

#### **14.7 Investigation documents**

All correspondence relating to the investigation, e.g. written statements, emails, action plans, investigation reports etc should be uploaded to the Redress record on Datix. It should be noted that this information will be disclosed in the event of a concern progressing to litigation. Therefore, staff should be advised that their statements may be disclosed if the concern progresses to litigation.

#### **14.8 Mediation**

Where appropriate, the resolution of the concern through mediation or alternative dispute resolution should be considered. The Community Health Council is able to offer a mediation service.

### **15 LESSONS LEARNT**

Outcomes of any investigation must be used to maximise opportunities for learning and quality improvement.

The Head of Programme, Service Area or Function is responsible for ensuring that lessons are identified, loaded to DATIX and are responsible for putting in place measures to ensure that any lessons identified are implemented.

## **15.1 Learning From Events Report (LFER)**

Where qualifying liability is established, there is a requirement to submit a Learning From Events report to the Welsh Risk Pool to outline what learning has been identified and actioned following the Redress investigations. This is to satisfy that learning has been established in order to reduce the risk of recurrence and satisfy the reimbursement of funds paid out under the Redress scheme.

The Claims Manager will liaise with the programme/service to ensure that the LFER is completed in detail and submitted to the WRP within 60 working days of qualifying liability being admitted.

A Learning From Events Report template for Redress can be found [here](#).

It is the responsibility of the relevant Divisional teams to ensure lessons learnt from these concerns are implemented and disseminated. It is essential that the investigation form on Datix is fully completed to outline the investigation into the concern as this is essential to assist in identifying themes and trends and sharing this and this information will also be printed to form part of the Quality Assurance process.

Any learning will be shared in accordance with the Duty of Candour procedure at the monthly governance meeting, as well as at monthly Newsletter circulations and will also be available on the Duty of Candour Sharepoint page.

## **16 STORAGE OF REDRESS CASES**

All Redress cases will be logged and stored electronically on the Datix system under the Redress module. It is noted that there may be some overlap during investigating Redress with the complaint and incident record. It is important that both the Complaint and/or Incident record are fully completed prior to closing to confirm the outcome of the Redress investigation.

Any paper documents received during the Redress process must be scanned and uploaded to the electronic Datix Redress record and placed in the confidential waste once uploaded.

## **17 APPENDICIES- ELECTRONIC LINKS**

<b>Resource Title</b>	<b>Externally available</b>	<b>Internally available</b>
<a href="#">Flowchart - Redress and Incidents</a>		X
<a href="#">Flowchart – Redress and Complaints</a>		X
<a href="#">Flowchart- considering Qualifying Liability</a>		X
<a href="#">Redress Regulations</a>	X	
<a href="#">Regulation 24 Template - No Qualifying Liability</a>		X
<a href="#">Regulation 24 Template – exceeds PTR threshold</a>		X
<a href="#">Regulation 26 Template</a>		X
<a href="#">Solicitors dealing with Redress</a>		X
<a href="#">Redress- Learning From Events Report Template</a>		X
<a href="#">Regulation 33 Template</a>		X
<a href="#">Redress Waiver Template</a>		X
<a href="#">Putting Things Right Guidance</a>	X	
<a href="#">Redress Investigation Report Template</a>	X	