

## **Government response to Legal Advice Note SL(5)520 -The National Health Service (Existing Liabilities Scheme for General Practice) (Wales) Regulations 2020**

The advice note includes the following point to note:

1. Matters to which the Welsh Ministers must have regard when deciding the amount of indemnity payments

Regulation 8 sets out the matters that the Welsh Ministers must have regard to when deciding the amount of an indemnity payment made under the Scheme.

Under regulation 8(2), the Welsh Ministers must have regard to “an award of damages” made by a court against an eligible person. However, regulation 8(2) does not say that the award of damages has to be in respect of a liability to which the Scheme applies.

For example:

- The Welsh Ministers are deciding the amount of an indemnity payment in respect of Omission X by a general practitioner. Omission X is covered by the Scheme.
- A court has awarded damages against the same general practitioner in respect of a totally separate Omission Y. Omission Y is not covered by the Scheme.

Members may wish to seek clarification from the Welsh Government as to whether / why the Welsh Ministers must have regard to the award of damages in respect of Omission Y when deciding the amount of the indemnity payment in respect of Omission X.

That issue also arises under regulations 8(3) and 8(4).

It is also noted that, when it comes to the Welsh Ministers having regard to “settlement of a claim” (i.e. a settlement other than in the course of legal proceedings) under regulation 8(5), such a settlement **does** have to be in respect of a liability to which the Scheme applies.

That issue also arises under regulation 8(6).

### **Government response**

The Welsh Ministers are not required to have regard to the award of damages in respect of Omission Y when deciding the amount of the indemnity payment in respect of Omission X. The Welsh Government do not believe the provision lacks clarity in that regard.

Any payment made pursuant to regulation 8 (Relevant matters in determining the amount of a payment under the Scheme) may only be made in respect of eligible persons and liabilities under the Scheme, all of which are defined within the Regulations. The only awards of damages which should have regard paid to them for the purposes of regulation 8 are those which relate to the case for which the Welsh

Ministers are considering indemnifying the eligible person under the Scheme and which falls within scope of the Regulations.