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Dear Chief Executive

Solicitors' Risk Management Reports on Claims

The NHSLA's role to contribute to improvements in NHS risk management and thereby the safety of patients and staff has been met historically via a programme of standards and assessments supported by education. Direct links between the claims management and risk management functions of the NHSLA have, however, always been limited. For example, claims data is used to determine the risk areas addressed in the NHSLA standards and provided to other organisations to inform their work to improve safety, but there is currently no action taken in relation to individual claims .

The 2008/09 financial year saw an increase of more than 11% in the number of clinical claims received by the NHSLA, a trend which is continuing in 2009/10. Furthermore, payments made on claims under the Clinical Negligence Scheme for Trusts (CNST) rose to more than £600 million in 2008/09, an increase of 34% on the previous year, and again the trend in 2009/10 is upward. The money to pay these claims is collected from contributions (premiums) paid by Scheme members to the NHSLA and could otherwise be spent on providing patient care.

In response to the increase in claim numbers and payments, the NHSLA has decided to introduce a new risk management initiative. The initiative aims to ensure that organisations are learning from their own claims and, where appropriate, the knowledge gained is shared with the wider NHS with the objective of reducing the number and severity of incidents giving rise to claims.

All healthcare organisations are currently required to report clinical incidents to the National Patient Safety Agency (NPSA) which in turn publishes alerts, guidance, tools and reports aimed at improving safety. However, the claims management process may add still further to the safety agenda by: providing a more thorough investigation of an incident than would otherwise be possible; being more definitive because of the time delay as more is known about what happened; having the benefit of external input and opinion; offering more thorough arguments from both sides; and providing an opportunity to follow up on recommendations made at the time of the incident to see if they have been implemented and made a difference.

With immediate effect, solicitors on the NHSLA's clinical panel have been asked to prepare a risk management report (which will be anonymised to ensure compliance with data protection and other pertinent legislation) on all new CNST claims. This is

in addition to the claims report which they currently provide, and will be updated when further relevant information becomes available, with a final report being issued when the claim is resolved. The risk management report will be sent by the solicitor to the Claims Manager at the Trust with a request that it is shared with the Risk Manager and other appropriate colleagues for action. A copy of the report will also be sent to the NHSLA who will use the information in two ways:

Individual Trusts

- a) In most instances, no further action will be taken immediately on receipt of a new or updated report. However, in a small number of cases, the NHSLA will write to the organisation to seek confirmation that suitable action has been taken as a consequence of the incident, together with details of the action taken.
- b) At the beginning of each financial year, the NHSLA will send a risk management report on all the organisation's new and outstanding claims, and those resolved during the previous year, asking what action has been taken in relation to the claims listed.
- c) The responses received will be reviewed and evaluated. Poor responses which fail to indicate that the lessons have been/are being learned, or the absence of a response by the required date will be followed up by a telephone call or visit. In addition, a few organisations that have provided an apparently good response may be selected and followed up too.
- d) Where the outcome of the follow up is not satisfactory, the NHSLA will pursue the matter direct with the Chief Executive of the organisation.
- e) If the Chief Executive is unable to assure the NHSLA that the organisation is addressing the issues, further action will be taken. This may include, for example, an additional full assessment against the NHSLA standards, or referral to the Care Quality Commission or other relevant body.
- f) Both the annual risk management report on claims and response provided by the organisation will be shared with Det Norske Veritas (DNV), our risk management services provider, to inform the assessment of the organisation.

Sharing Lessons

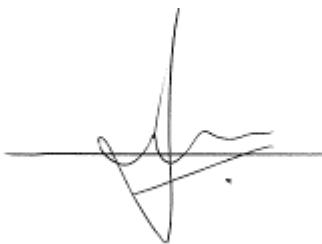
- a) The NHSLA will publish an annual report on the lessons to be learned from claims.
- b) The information gathered will be used to generate summary sheets for publication via the NHSLA website and may be provided in such a way as to allow organisations to benchmark their claims and risk management actions in relation to similar organisations.

- c) Where information is of particular relevance to another body e.g. a Royal College, this will be identified by the NHSLA during periodic reviews of the information collected, and shared directly by making contact with that body.
- d) Where any significant trends are identified, the NHSLA will either undertake further study into the area or share the information with another body that is in a position to properly consider the merits for research and take this forward as appropriate.
- e) The summary information will be used to inform the future development of the NHSLA risk management standards and assessments.
- f) Selected individual claims will be used to produce case studies to illustrate the lessons to be learned, linked to the NHSLA risk management standards where appropriate.
- g) Organisations will be encouraged to discuss their risk management report on claims and the action taken with other healthcare organisations at local risk management forums, possibly through a session facilitated by the NHSLA or DNV.
- h) Summary information and selected claims will be used by the NHSLA, DNV and panel solicitors to inform training sessions, presentations and written articles for publication to facilitate wider learning and encourage research.

It is hoped that by ensuring healthcare organisations are informed about the lessons to be learned from incidents giving rise to their own claims and have acted on them, and by sharing these lessons more widely, the NHSLA will contribute still further to a safer NHS.

If you or your colleagues would like to ask any questions or make comments about this initiative, please email riskmanagement@nhsla.com

Yours faithfully



Steve Walker
Chief Executive

Cc: All Trust Claims Managers
All Trust Risk Managers
All NHSLA clinical panel solicitors