

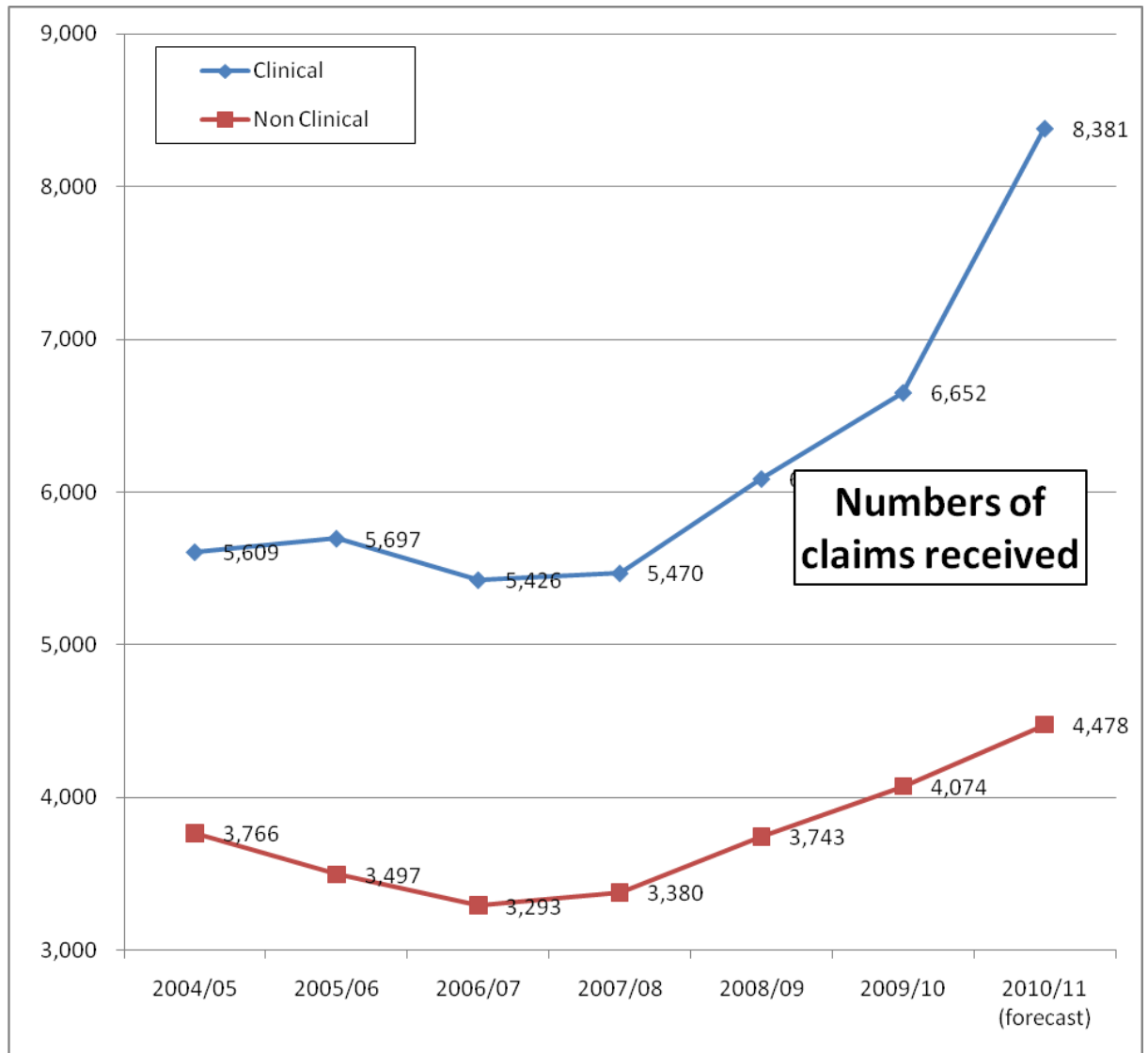
Business Plan 2011/12

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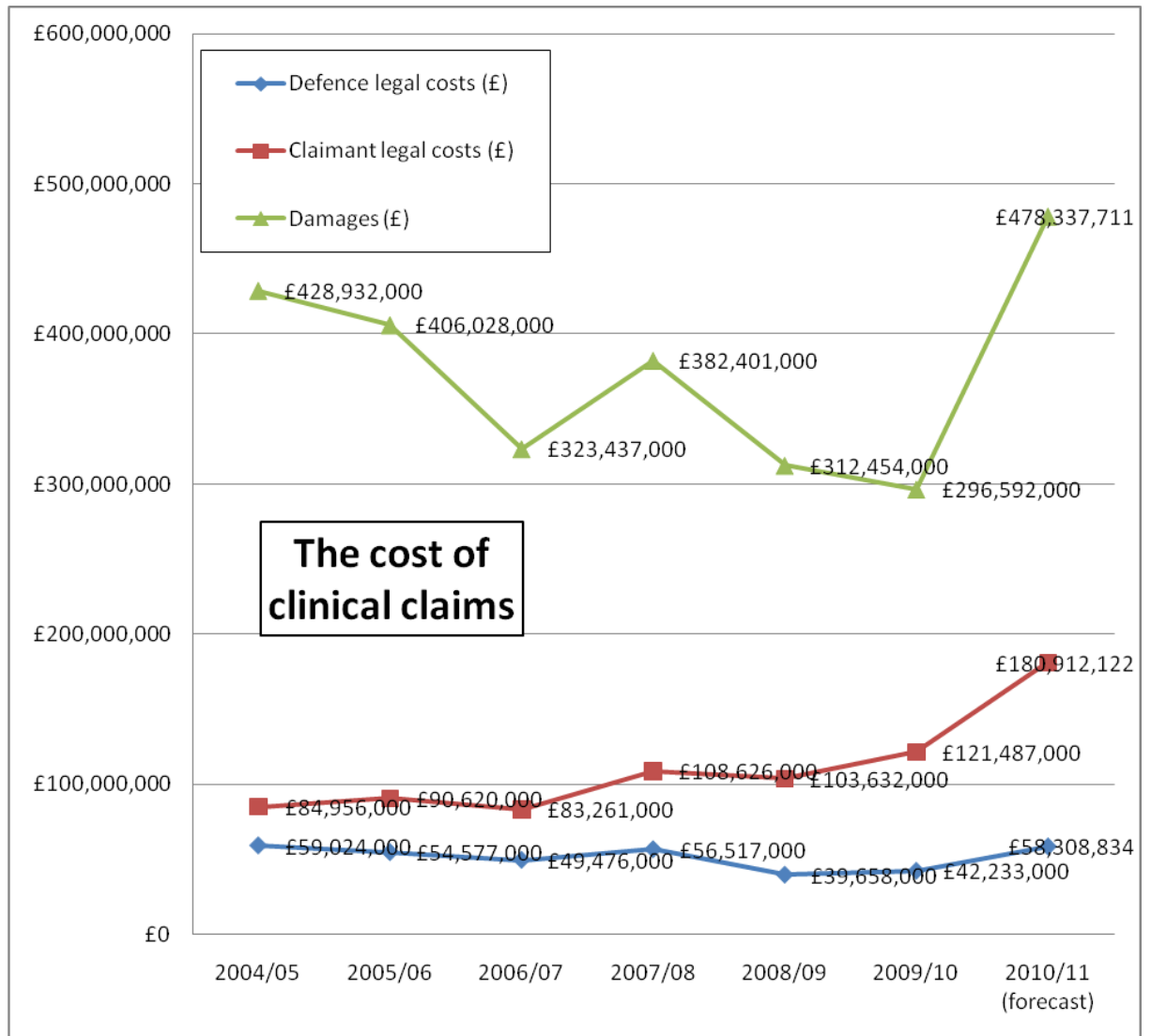
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1 Introduction - a time of transition

- 1.1 2011/12 will be one of the most significant years in our organisational history. In July 2010 *Liberating the NHS: report of the arm's length body review* recommended that we be retained and that an industry review be commissioned "to identify these potential opportunities for greater commercial involvement, recognising the impact on future organisational form, with a view to its likely removal from the arm's-length bodies sector as soon as is practicably possible". This business plan sets out how we will maintain our business during the transition, move to implement the outcome of this review in the best interests of our members (primarily NHS trusts in England) and other partner organisations and our workforce and continue to deliver an efficient and effective service to the NHS in England, using fewer central financial resources.
- 1.2 The Department of Health has asked that, given the significant changes that will be needed across the NHS during the period of the current spending review, this plan covers the next four years. By the end of this period, ours is likely to be a very different organisation and so our long-term plans are, by their very nature, speculative.
- 1.3 We work in a challenging financial and business environment, at the interface between the legal world and the NHS, and this environment is also in a period of transition and major change. Our own contribution to this includes a reduction of 30% in our funding from the Department of Health over the coming three years.
- 1.4 The numbers of claims lodged against NHS organisations have risen significantly since 2007, as shown in the graph below. Given the long lag between incident and claim notification, which for clinical claims is on average more than 2 and, in some cases, as long as 40 years, our expenditure is to a very significant extent the inevitable consequence of past events. A major factor behind our work for law reform is that we believe that the existing regime, including claims farming and referral fees, is a driver behind the recent surge in claim numbers after several years of stability. Our Framework Document obligation to minimise the overall costs of clinical negligence and third party liabilities to the NHS and thus maximise the resources available for patient care encompass an obligation to use our experience, knowledge and data to influence law reform in the interests of our scheme members whilst remembering our parallel obligations to patients.



- 1.5 In addition to increases in claims numbers there has been a significant increase in claimant legal costs in recent years as the use of conditional fee arrangements (CFAs) has allowed uplifts of up to 100% plus the recovery of After the Event (ATE) insurance premiums. There is also evidence of claims farming and referral fees further inflating these legal costs.



1.6 The legal landscape is also in transition, as the recommendations of Lord Justice Rupert Jackson's *Review of Civil Litigation Costs: Final Report* (December 2009), and Lord Young's *Common Sense - Common Safety* (October 2010) are considered for implementation. Further, the Ministry of Justice is proposing to withdraw Legal Aid from clinical negligence claims, which would mean more claimants turning to CFAs. We will continue to work with DH, MoJ and the judiciary as changes are made in the interests both of NHS organisations and the access of harmed NHS patients and workers to justice and appropriate recompense.

1.7 On the basis of all the available data, our actuaries anticipate a continued rise in claims numbers and thus costs. Contributions are, therefore, expected to continue to rise by at least 10% each year during the coming four years, the rate we had predicted to DH and the NHS last year.

- 1.8 Our view is that we have firm control over our own administrative costs and those arising from defending claims and, after a fitness for purpose review in 2009/10, are confident that our structure is appropriate and robust for the changes we face in 2011/12.
- 1.9 Our business plan describes how we will:
- 1.9.1 deliver our services, identifying further operational efficiencies where possible
 - 1.9.2 continue to control those costs within our power and
 - 1.9.3 work with the NHS, through our risk management programme, to limit the number and severity of incidents giving rise to claims.
- 1.10 Quality, Innovation, Productivity and Prevention (QIPP) continues to dominate the agenda for NHS organisations in England. We have always had these as our drivers and this business plan is our organisational vision of how they will be developed during 2011/12 and beyond, during what will be a challenging transitional period for the Authority and the wider NHS. One of our strengths has always been the support we provide to NHS organisations and this will continue to be part of our ethos.
- 1.11 The Department of Health (DH) sets the Authority's principal functions, based on its own strategy and priorities for the NHS in England, in our Framework Document:
- 1.11.1 To administer schemes to allow NHS bodies to pool the costs of liabilities to patients, employees and the public.
 - 1.11.2 To contribute to improvements in patient safety through its risk management programme
 - 1.11.3 The robust defence of unmeritorious claims and the timely and equitable resolution of justified claims
 - 1.11.4 The provision of advice and support to NHS organisations in England on equal pay and age discrimination claims
 - 1.11.5 The provision of a Human Rights Act Information Service to the NHS in England
 - 1.11.6 To discharge the Secretary of State for Health's appellate role in relation to decisions of primary care trusts in England.
- 1.12 It is these functions which provide the context for our activities and set our aims and objectives and strategic direction for 2011/12 and the four years to 31 March 2015.

2 Strategic aims for 2011/12 to 2014/15

- 2.1 In addressing and meeting the six principal functions for the coming four years, the Authority will focus on three key areas as its strategic aims:
 - 2.1.1 Further improving the effectiveness and efficiency of our processes in order to resolve claims and disputes more effectively
 - 2.1.2 Continuing to contribute to the development of better risk management practices in the NHS in England to improve the safety of patients and NHS staff
 - 2.1.3 Enabling change and innovation by providing risk management and indemnity advice to support new models of service delivery.

3 Financial Strategy 2011/12 – 2014/15

- 3.1 Our financial strategy for the four years 2011/12 to 2014/15 is based on the following assumptions:
 - 3.1.1 Claims expenditure for each year will rise by approximately 10% per annum in line with judicial/ claims inflation.
 - 3.1.2 No provisions have been made for any possible adjustment to the court discount rate, which is currently being reviewed by the Lord Chancellor.
 - 3.1.3 Grant in Aid Administrative expenditure is being reduced by 30% by 2013/14 in line with the commitment sought by the Department of Health.
 - 3.1.4 The DH has provided special funding for the work on Equal Pay, which is reflected at its current full year cost in each of the four years. It has been agreed with DH that regular reviews of funding will continue until such time as more accurate predictions about volumes can be made.
 - 3.1.5 Running costs for the Authority are reducing as a result of our new accommodation arrangements and the freeze in public sector pay arrangements means only small amounts of growth in our staff costs.
 - 3.1.6 Since claims payments account for 98.4% of our expenditure we are assuming contribution levels will increase by 10% per annum.

3.1.7 We have made no financial assumptions based upon change in the legal landscape.

4 Delivering our strategic aims - our key prioritised objectives for 2011/12

4.1 Six key objectives have been developed for 2011/12 as a means of delivering our strategic aims:

4.2 **Strategic aim 1: improving effectiveness and efficiency;** key objectives: (1) best value; (2) maintaining business continuity; (3) delivering quality services.

4.3 **Strategic aim 2: better risk management practices;** key objectives: (4) working for a safer NHS; (5) working closely with our partners.

4.4 **Strategic aim 3: enabling change and innovation;** key objective: (6) delivering for the NHS and responding to change.

4.5 Best value

4.5.1 The Authority will continue to work with the DH to ensure that financial and human resources are used in the most effective way and that all financial targets are closely monitored, amended where agreed and subsequently met by year end.

4.5.2 Our current targets around best value and efficiency primarily derived from:

- Grant in Aid (GIA) targets for administration costs for DH funded projects
- Identifying and delivering increased efficiency in use of financial resources
- GIA Cash, near cash & resource limits for ELS/ Ex RHA Scheme and Equal Pay
- An overall Resource Limit regarding the charges to the accounts of the Authority relating to its member funded schemes.

4.5.3 Contribution levels in 2011/12 will be approximately 10% higher than in 2010/11 which is in line with judicial/ claims inflation and our own predictions last year. In 2011/12 we will continue to work to control the level of future increases as far as possible. Where external pressures are identified they are risk assessed, including indicative costing, and discussed with DH colleagues at the earliest opportunity as many such pressures will impose financial implications on the Authority

outside of its control (for example decisions of the judiciary) and thus adjustments to targets may be necessary.

- 4.5.4 The Authority will continue to take an active part in lobbying for the reduction of legal costs as a proportion of damages payments to patients as part of seeking best value for the NHS as a whole.
- 4.5.5 We will review our organisational structure to ensure it meets wider government expectations around hierarchical levels and effective governance.

4.6 **Maintaining business continuity**

- 4.6.1 During a challenging transitional period, our focus will be on the outcome of the industry review of our activities and the future shape and form of our organisation. However, after the relocation of our operations to London SW1 and Leeds in 2010, we also need to ensure that our business in support of the NHS in England is maintained without any diminution of quality or efficiency.
- 4.6.2 This will require a renewed focus on our engagement with our workforce and this will be a personal objective for every manager during 2011/12. The major improvements to our remote working solutions in 2010/11 have given our employees much more flexibility about where and when they work, which has been received very positively and is something for us to build on in 2011/12. We will use our appraisal and personal review processes to maintain and develop the skills and expertise of all our people and keep them all fully informed about the progress of the changes to our organisational form and functions.
- 4.6.3 Changes within the legal landscape may present financial pressures for the Authority which would require discussion with DH and our membership. During 2011/12 for example, there are likely to be further development of initiatives flowing from the reports from Lord Justice Jackson and Lord Young as well as the Lord Chancellor's current review of the discount rate. Any reduction would have a significant financial impact upon the level of damages awarded to claimants and, possibly, their preference for lump sum as opposed to periodical payment settlements.

4.7 Delivering quality services

- 4.7.1 We will continue to identify ways of improving and developing the quality of our services during 2011/12, which will include implementing the recommendations from the industry review.
- 4.7.2 As always, the Authority's raison d'être remains the delivery of value to the NHS, DH and non-NHS providers protected by our schemes. In 2011-12 that will include contributing to major debates on law reform, and possibly implementation of any changes. It will also include detailed work with DH colleagues to address the indemnity needs of a significantly changed health care sector following implementation of the White Paper, *Equity and Excellence: Liberating the NHS*.
- 4.7.3 The Jackson and Young reports referred to above, both recommended a scheme whereby low value claims could be resolved quickly and economically, without detriment to patients. We support these recommendations and will continue to work with DH, MoJ, and any other interested agency on the proposal, which may lead to a pilot scheme.
- 4.7.4 We anticipate working with NHS and DH colleagues as well as the private and third sectors to ensure that adequate indemnity is available, economically, in all circumstances within the post White Paper NHS, including legacy liabilities incurred by organisations which will or already have disappeared or been reorganised and how those liabilities might be funded.

4.8 Working for a safer NHS

- 4.8.1 The Authority will continue to seek means to promote learning from its experience of litigation to reduce the number and severity of incidents giving rise to claims against NHS organisations from patients and staff, creating a safer environment and saving money.
- 4.8.2 The Authority outsources its risk management standards, assessments and education services to a specialist supplier. During 2011/12 the arrangements for the provision of these services will be reviewed to ensure that they continue to meet the needs of the NHS and the Authority.
- 4.8.3 During 2011/12 the feasibility and value of further developing and implementing changes to our standards and assessment tools will be considered further.

4.8.4 The Authority will look to complete another claims based risk management analysis in respect of a specific cohort of claims in 2011/12 to follow our 2010/11 study of maternity claims and add still further to the knowledge available to the NHS.

4.8.5 In 2010 a new initiative was launched whereby risk management reports on clinical claims prepared by panel solicitors are used as basis for closing the loop between claims and risk management. The reports are sent to each organisation against which the individual claim was made and are used by us to build a database of lessons to be learned from claims, which will be shared on an individual and collated basis within the NHS. We will also follow up with each healthcare organisation to verify that appropriate actions have been taken in response to the lessons to be learned from the claims for which they are responsible.

4.9 **Working more closely with our partners**

4.9.1 The Authority will continue to develop and maintain its links and working practices with its partners to improve the effectiveness of all aspects of our work, especially in relation to claims and risk management. Our partners are primarily NHS trusts and organisations and also include the DH, independent sector and third sector providers of NHS care, professional bodies and various national agencies.

4.9.2 We will continue to work with partners to investigate options to streamline the assessment process.

4.9.3 Following the successful launch of a Risk Management Forum in 2010/11 comprising senior representatives from NHS acute organisations the Authority will look at further ways of engaging more with other types of healthcare organisations in relation to our risk management programme.

4.9.4 We will continue to seek the views of our stakeholders on the services that we provide e.g. via a post assessment questionnaire and delegate evaluation of learning events, and will review those services based on the feedback received.

4.10 **Delivering for the NHS and responding to change**

4.10.1 We will continue to support the NHS with risk management and indemnity advice regarding new models of service delivery and changing priorities.

4.10.2 We will engage in new areas of work in 2011/12 if requested by the DH, subject to agreeing appropriate funding and other arrangements as necessary.

4.10.3 We will, via a renewed focus on engagement with our workforce, keep them fully informed about the progress of changes to our organisational form and function, and ensure that business continuity is maintained during a period of transition.

5 Supporting objectives

5.1 Headcount

We will continue to work within the Department of Health requirements in relation to any recruitment controls in place. The organisation chart below shows 121.15 wte in post, representing 122 employees and 4 non-executive directors, down from 133.87 wte in post in December 2009. We will continue to make recruitment decisions only in full support of our business objectives.

5.2 Grant In Aid (GIA) Funding

Reduce GIA funding related to administration of the Authority by at least 10% in real terms in 2011/12. The detailed plans of the Authority confirm this will be achieved in year and are attached at Appendix A. Appendix C lists our investment funding plans.

5.3 Information Technology (IT) services

The Authority will continue to seek to maintain its position as a leader in the application of IT solutions to assist with improvements in efficiency and effectiveness, whilst maintaining the highest levels of data security.

5.4 Equal pay and age discrimination

5.4.1 Maintain a high level of sign-up rate, satisfaction and engagement amongst NHS organisations in England.

5.4.2 Work with NHS organisations and partner solicitors to move towards resolution of test issues.

5.4.3 Working arrangements between the Authority and the DH are covered in a detailed Service Level Agreement (SLA).

5.5 Information Governance

- 5.5.1 The Authority's information governance strategy sets out standardised organisational operational requirements and brings together day to day practice with regard to information governance.
- 5.5.2 Information on the Authority's activities, including claims and other data, will be made as widely available as possible using our website, in the interests of transparency and to assist in meeting our obligations under the Freedom of Information Act. Requests for information received under the Act will continue to be dealt with in accordance with statutory requirements.
- 5.5.3 In sharing data, as in all other aspects of its activities, the Authority will adhere to the principles of the Data Protection Act. Data security will be considered as a significant part of any project and maintained at the highest level and the Authority will take steps to safeguard data it holds as far as possible and ensure that sensitive and confidential information is handled and held in a safe and secure manner.

5.6 Family Health Services Appeals

The Authority will continue to work with DH to develop key performance indicators which meet the objective of improving the efficiency and effectiveness of our service for handling appeals against decisions taken by primary care trusts in England.

5.7 Human Rights Act Information Service

The Authority will continue to maintain and develop this service for the NHS, which will include the continued publication of our regular newsletter, in a cost effective and efficient manner, supported by our external partners at [One Crown Office Row](#).

5.8 Communications

- 5.8.1 We will continue seek to improve communication with our partners in a proportionate and cost effective manner.
- 5.8.2 We will ensure that NHS organisations understand that assessment and inspection are essential aspects of indemnifying them against risk.

5.8.3 We will publish further issues of the risk management e-newsletter which was launched in 2010, as a means of disseminating key message to the NHS.

5.8.4 We have agreed with DH that we will self-regulate national communications and publications to an NHS audience and keep an audit trail of gateway decisions as required by the DH gateway requirements.

5.9 Other Key Performance Indicators

The Authority has other Key Performance Indicators (KPIs) covering all areas of operations which are agreed with DH. Some of these in relation to claims are not published externally, to protect the position of the NHS in relation to the effective management and resolution of litigation.

6 Governance

6.1 Board

6.1.1 The Board of the Authority maintains appropriate governance systems and receives quarterly reports on key objectives and achievement against the balanced score card agreed with our DH sponsor.

6.1.2 Non-executive and executive members will continue to undertake joint learning and development activities, as part of our *Creating a Community of Leaders* programme, to ensure that the Board remains effective and fit for purpose at this time of change and transition for our organisation.

6.1.3 Internal and external audit carry out reviews of systems and procedures, reporting to an Audit & Risk Committee chaired by a non-executive director.

6.1.4 The internal risk register and risk management strategy, along with an effective committee structure reporting to the Board, are also used to support the governance infrastructure and provide an appropriate assurance framework for the management of risks. This plan will form part of these arrangements, leading to the regular consideration and review of risks, along with the development of appropriate strategies to control and minimise identified risks to the achievement of objectives.

6.2 Risk management

6.2.1 Risk register

Attached at appendix B is a list of the strategic risks on the Authority's risk register, which are regularly reviewed and updated by the Board and Audit & Risk Committee. This document is not published outside the Authority because it includes sensitive information.

7 Contingency Planning

7.1 Our Business Continuity Plan and supporting documents set out the arrangements for maintaining operations in a variety of circumstances, including loss of access to premises and a loss of a significant proportion of the workforce for an extended period.

8 Support services

8.1 In parallel with the specific review of our organisation, there has been a review of how support services, such as finance and IT, are provided to Department of Health arm's length bodies and we are likely to see changes in these areas during 2011/12. We are very supportive of the objectives of this review and will fully engage with the process. Changes may require us to support our affected employees and work to ensure that efficiency and effectiveness are maintained to support our key business operations.

9 Human Resources

9.1 HR efficiencies

9.1.1 The HR function, with a ratio of employees to HR wte of 151:1, is well above the OEP quoted private sector world class ratio of 130:1. Value for money will continue to be an overriding principle in its delivery.

9.2 HR governance

9.2.1 The Authority's Board and other governance frameworks will continue to monitor a variety of workforce indicators, including establishment levels, employee turnover, recruitment, sickness absence, levels of pay and equality and diversity statistics, to ensure the associated HR issues flowing from the business of the Authority are properly managed.

9.3 HR delivery plan

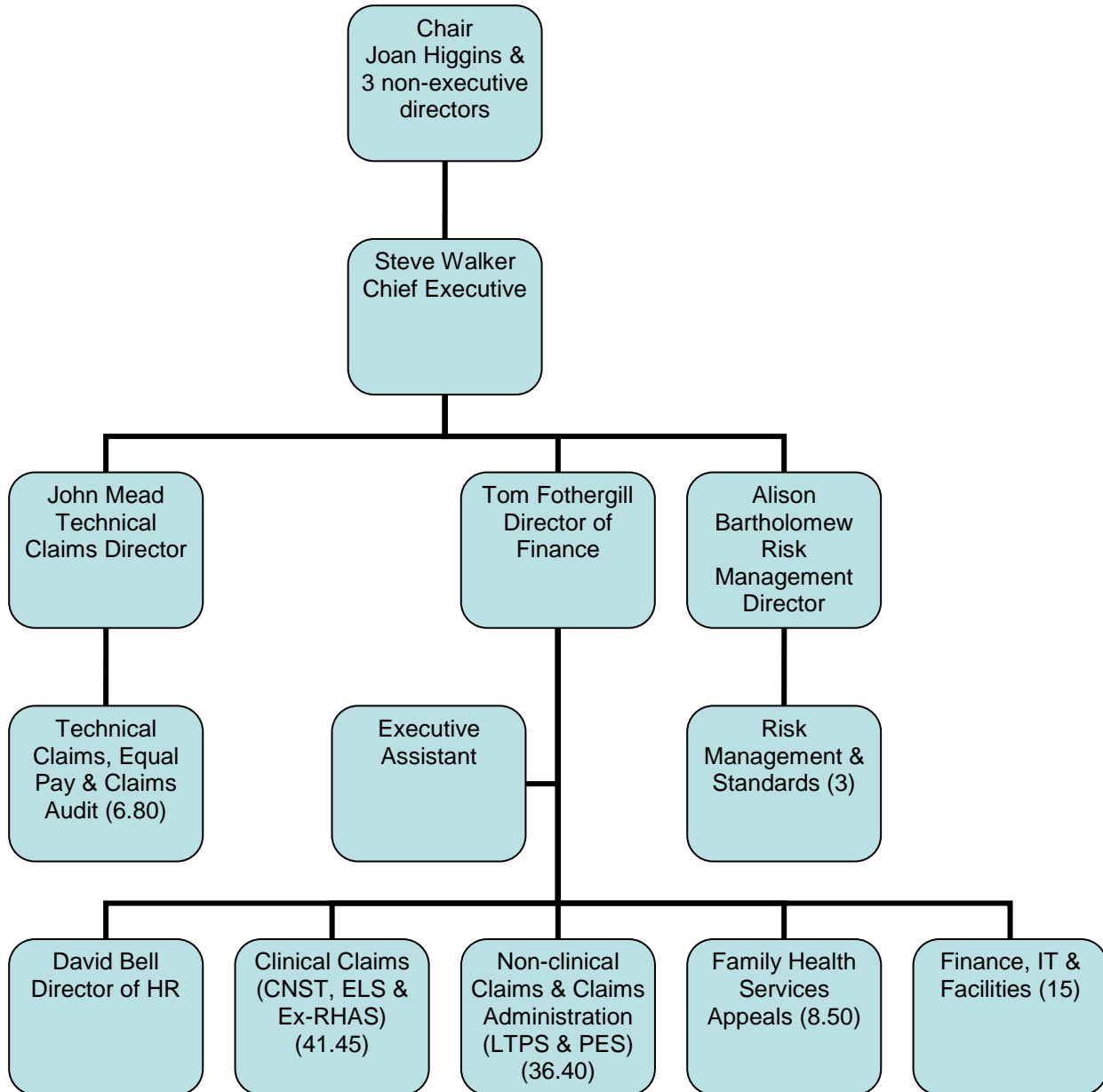
- 9.3.1 The Authority will continue to work with employees and their representatives to maintain and develop its reputation as a good employer. This will include the development of consistent employment policy in line with good practice across the NHS.
- 9.3.2 There may be changes to the delivery of HR services as a result of the move to a shared services model for Department of Health arm's length bodies during 2011/12.
- 9.3.3 We will continue to operate our employment practice in support of the health and well being of our workforce, in line with the findings of Boorman review of the health and well being of NHS workers,
<http://www.nhshealthandwellbeing.org/>.
- 9.3.4 Turnover remains low in relation to comparable organisations, which is a significant indicator of employee engagement. This will be monitored during the transition of our organisation, but no target is set.
- 9.3.5 Sickness absence will continue to be closely managed in line with our target of 3.2% or lower.

9.4 Learning Plan

- 9.4.1 Learning and development, including leadership and management skills, are even more significant during a period of change and transition and so will remain a high priority in individual personal development plans and for the organisation. We continue to be a partner in the Hubhub, our innovative collaborative talent management programme for future leaders with other organisations and to develop our in-house *Creating a Community of Leaders* programme.
- 9.4.2 Use of the NHS Knowledge and Skills Framework (KSF) will continue to be monitored using e-KSF, to meet the objective of a full appraisal every 12 months and a personal development plan for each employee, allowing development needs to be highlighted and linked to our organisational objectives.
- 9.4.3 We will investigate options to increase our use of e-learning and streamline our process for delivering and recording mandatory and other learning activities.

9.4.4 We will continue to review the existing learning achievements of employees in line with the skills pledge made in 2007/08 and the new government arrangements replacing the pledge.

10 Organisation Chart with whole-time equivalents (November 2010)



The Board comprises the Chair, the Chief Executive, the Director of Finance and the three non-executive directors.

11 Estate

- 11.1 The Authority will continue to ensure that its estate is used to maximum effectiveness. Our relocation in 2010/11 and our use of home and flexible working have allowed us to meet all government targets around office accommodation.

12 Sustainable development

- 12.1 The Authority will work with managers, employees and other stakeholders to continue to develop and embed the principles of sustainable development, as set out in the [NHS Good Corporate Citizen model](#), across all areas of its operation in line with our action plan, which is published on our website.

13 Equality and diversity

- 13.1 Quality services are delivered in an environment in which equality and diversity are fully embedded in all areas of an organisation's activities. The Authority will continue to apply good practice in equality and diversity.
- 13.2 Equality impact assessments will be conducted on the changes made following the review of our organisation.
- 13.3 There will be a review of our Equality Scheme in 2011/12, once the government's requirements following the Equality Act 2010 have been finalised.

Appendices

- A 2011/12 to 2014/14 Indicative Budget
- B Risk Register (not published outside the Authority)
- C Investment Funding
- D Procurement business case schedule – there are none scheduled for 2011/12 at this point, pending the outcome of the ALB review