

## SUPPORTING PCTs

Conscious of a lack of understanding in PCTs about liability and indemnity issues, and about the role of the Authority and its schemes, the NHSLA has been giving particular attention during the last year to considering how this knowledge gap can be closed. This has been addressed at a series of risk management workshops for PCTs which introduced the new risk management standards for PCTs combining the CNST and RPST requirements. We have also now published two in a series of PCT Bulletins, intended to provide staff at working level with a ready reference to key basic facts and information about developments for, and in, PCTs.

Four common characteristics mark PCTs out from acute trusts as having the potential to raise particular indemnity and risk issues:

- ◆ PCTs commission, as well as provide, care for patients.
- ◆ PCTs have a new governance role for the management, quality development and integration of all primary care services.

We believe it is likely that claims may in future be made against PCTs on the basis that they share liability, along with the provider, for shortcomings in the quality of care commissioned from others in the NHS, including independent contractors.

- ◆ PCTs often do not directly employ all their staff. Many are seconded or "shared" in various ways both with other NHS bodies and, increasingly, with local authorities. One consequence of this may be claims where ownership of the liability may not be immediately clear.
- ◆ PCTs typically rely heavily on service level agreements with other PCTs and NHS trusts, both for core functions such as human resources and finance, and also often for clinical services. More claims may, therefore, arise in future from the delivery of services by one NHS body on behalf of another.

The role of the NHSLA is to indemnify the NHS for all its normal business, and PCTs have already begun to change the way in which that business is done. We are committed to ensuring that new ways of working and risk-taking by PCTs are not discouraged because of any inhibiting effect of rules and policies devised for yesterday's NHS. We are revisiting these as our understanding of PCTs grows, and will flex them as necessary.

*For more information on the Authority's work with PCTs, please contact Sarah Hepworth (Sarah.Hepworth@nhsa.com).*



**Litigation Authority**

# INFORMATION FOR STRATEGIC HEALTH AUTHORITIES

**AUGUST 2003**

The NHS Litigation Authority (NHSLA) is a Special Health Authority, set up in 1995 to administer schemes under which NHS bodies can pool the costs of any "liabilities to third parties for loss, damage or injury arising out of the carrying out of their functions". The NHSLA currently administers risk-pooling schemes covering both the clinical and non-clinical risks of NHS trusts and PCTs, together with other schemes dealing with the historic liabilities of now defunct NHS bodies. In order to encourage good management of risk, all members of these risk-pooling schemes are subject to regular independent assessment against a number of risk management standards. Since January 2003 the Authority has acquired a further role in providing a free information service to NHS bodies on human rights issues.

This leaflet provides background information on the Authority's remit, with a particular focus on the areas which are likely to affect or be of interest to Strategic Health Authorities:

- ◆ where they are directly involved in a claim, for example because they are a "successor body" to the NHS organisation being sued; and
- ◆ in their performance management role with NHS trusts and PCTs.

The NHSLA's overall aim, set out in its Framework Document, is "to promote the highest possible standards of patient care and to minimise the suffering resulting from any adverse incidents". We look forward to working together with Strategic Health Authorities to achieve this aim.

Further background information about the NHSLA, including our latest Annual Report and Framework Document, is available on our website at [www.nhsa.com](http://www.nhsa.com).

## THE NHSLA'S INDEMNITY SCHEMES

- ◆ The Clinical Negligence Scheme for Trusts (CNST), a voluntary scheme to which all NHS trusts and PCTs currently belong, covers clinical incidents occurring on or after the date when the trust joined the scheme. Each trust's annual contribution to the Scheme is actuarially assessed, based on factors such as the size of its workforce and the specialties it provides, with the total contributions each year equating to the anticipated expenditure under the Scheme for that year. Until April 2002, trusts had an "excess" level and were responsible for handling, and funding, claims below that level. Since April 2002 however, following a "call-in" of these lower value claims, all CNST claims are now handled centrally by the NHSLA, although the trust remains the legal defendant.
- ◆ The Existing Liabilities Scheme (ELS) covers clinical incidents which occurred before 1 April 1995, the date when the CNST first became available. Most ELS liabilities derive from the predecessors to Strategic Health Authorities although some were incurred by early NHS trusts. Since April 2000, all ELS claims, regardless of value, have been handled centrally by the NHSLA although again the trust or Strategic Health Authority remains the legal defendant. Settlements are funded by the Department of Health.
- ◆ The Ex-RHA Scheme covers clinical liabilities arising from the former regional Health Authorities.
- ◆ The Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES) are two non-clinical schemes, known collectively as the Risk Pooling Schemes for Trusts (RPST). These have been in place since April 1999 and cover public and employers' liability claims against NHS bodies together with other "first party" losses which in the past would have been covered by commercial insurance. More and more Strategic Health Authorities are themselves joining RPST.

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## STRATEGIC HEALTH AUTHORITIES' ROLE IN REPORTING ELS CLAIMS

The NHSLA now manages all ELS claims centrally. However, the NHS organisation against which the claim is being made (often the Strategic Health Authority) is responsible for responding to the claimant's initial request for disclosure of records, undertaking the preliminary analysis and reporting the claim to the NHSLA.

Where there has been a request for disclosure of records under the pre-action protocol in connection with a possible claim under the ELS, the procedure of disclosure, preliminary analysis and reporting should be adopted as set out in sections 2-5 of the CNST Reporting Guidelines which similarly apply to ELS claims. The Guidelines are available on the NHSLA website at [www.nhsla.com](http://www.nhsla.com) in the "documents" section. When claims are reported to the NHSLA, an ELS Claim Report Form should be completed and sent in with the preliminary analysis. A copy of the claim form is enclosed with this leaflet and can be supplied electronically on request. The costs incurred in carrying out the preliminary analysis and preparing a report are not reimbursable under the ELS.

*If relevant Strategic Health Authority staff have any queries in relation to the above, they should not hesitate to contact Scott Henning (020 7430 8756), ELS Scheme Manager.*

## RISK MANAGEMENT STANDARDS

All member NHS trusts and PCTs are assessed at least once every two years against a series of risk management standards. The CNST standards cover clinical areas such as learning from experience, response to major clinical incidents, consent, health records, induction, training and competence and clinical care. The RPST standard, on the other hand, considers formal risk management accountabilities, strategy, organisational structure, processes, training and the reporting and management of incidents, complaints and claims. There are separate CNST standards for maternity services and single sets of combined CNST and RPST standards have been developed for ambulance trusts and PCTs to address the specific risks faced by these organisations. The standards are set at three levels: those trusts who achieve level 1 in all areas receive a 10% discount from their contributions, while achievements at level 2 and level 3 lead to discounts of 20% and 30% respectively. All the risk management standards are available on the NHSLA's website at [www.nhsla.com](http://www.nhsla.com).

Development and maintenance of the risk management standards and all assessments are carried out by a contractor, Willis Ltd, on behalf of the NHSLA, and each trust and PCT has nominated assessors for both CNST and RPST. Strategic Health Authority governance leads are encouraged to join CNST and/or RPST assessors on visits to NHS trusts or PCTs in their area to gain a better understanding of the risk management standards and assessment process. The knowledge gained should enable the Strategic Health Authority to help trusts and PCTs achieve compliance with the standards by establishing long term solutions to risk management issues. An article on this subject, written by the clinical governance leads at a Strategic Health Authority, will appear in the next issue (Number 27) of the NHSLA Review.

*For more information on our risk management programme, please contact our Risk Manager (Alison.Bartholomew@nhsla.com or telephone 020 7430 8823).*

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## HUMAN RIGHTS ACT INFORMATION SERVICE

A new function for the NHSLA is the establishment of an information service on the Human Rights Act 1998. This service aims to keep NHS organisations aware of any developments in case-law which affect healthcare delivery, both proactively through regular newsletters and reactively in response to requests from individual NHS bodies.

*If your Strategic Health Authority has not already done so, please contact our Human Rights Act Information Manager (Katharine.Wright@nhsla.com or telephone 020 7430 8797) to let her know who in your organisation would be the best person to receive this information.*