

The NHS Litigation Authority

Factsheet 1: background information

1 Introduction

The NHS Litigation Authority (NHSLA) was established on 20 November 1995 to indemnify English NHS bodies against claims for clinical negligence. We are a Special Health Authority and, therefore, part of the National Health Service. We are not an insurance company. Initially, our sole function was to administer the Clinical Negligence Scheme for Trusts (CNST), a risk-pooling scheme in respect of clinical claims arising from incidents on or after 1 April 1995. Almost immediately, however, our role increased significantly in order to cover claims arising from incidents occurring before April 1995. This was achieved through the creation of two separate schemes: the Ex-RHAS, a scheme which covers claims against the former Regional Health Authorities and the Existing Liabilities Scheme (ELS) which covers all other clinical negligence claims arising from pre-April 1995 incidents.

From 1 April 1999 our responsibilities were expanded to include non-clinical claims under the Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES). More recently, the Authority has acquired further, more diverse, functions: the provision of an information service to the NHS on the impact of the *Human Rights Act 1998* (from January 2003), the functions of the former Special Health Authority, the Family Health Services Appeal Authority (from April 2005), the provision of advice and assistance with litigation on equal pay (from August 2005) and the provision of advice and assistance in relation to age discrimination claims (from April 2009).

Our functions, explained in greater detail in our *Framework Document* (which you can see on our website www.nhsla.com), can be summarised as follows:

- to ensure claims are dealt with consistently and with due regard to the proper interests of the NHS and its patients;
- to manage the financial consequences of such claims and to advise the Department of Health of the likely future costs;
- to advise the Department of Health on both specific and general issues arising out of claims against the NHS;
- to manage and raise the standards of risk management throughout the NHS;
- to assist NHS bodies to comply with the *Human Rights Act* by providing a central source of information on relevant case-law development;
- to provide mechanisms for the proper, prompt and cost-effective resolution of disputes between NHS primary care organisations and those providing, or seeking to provide, services for patients; and
- to provide advice about, and assistance with, litigation concerning equal pay and age discrimination claims involving NHS bodies in England.

Our website www.nhsla.com also includes information about how we operate as an organisation, including our Equality Scheme, our commitment to sustainable development, our employment policies and job vacancies.

2 Structure and accountability

The Authority is accountable through our Chair to the Secretary of State for Health, who is accountable to Parliament. Our broad policy objectives and the financial framework within which we operate are determined by the Secretary of State, whilst the Board has responsibility for determining how those objectives are met and our operational effectiveness as a public sector organisation. The Chief Executive is responsible for the day-to-day management of the Authority, reporting to the Board and to the Department of Health. In particular, he is the Authority's accountable officer, responsible to the Chief Executive of the NHS for the Authority's spending and performance. We have six business areas: claims; risk management; human rights act information service; family health services appeals; equal pay claims and finance and IT. We have offices in central London and Leeds. The executive team is based at 151 Buckingham Palace Road, London SW1W 9SZ.

We have appointed two panels of solicitors to handle clinical negligence claims and the litigation aspects of claims under the non-clinical schemes. Lane Clark & Peacock provide us with actuarial advice in respect of contributions under the schemes. In addition, Det Norske Veritas (DNV) (www.dnv.com) are contracted to provide risk management services, including the assessment of all trusts against clinical, non-clinical and organisational standards. (For further information on risk management services, see section 4 below.)

3 Our schemes

We manage three main schemes (CNST, ELS & LTPS) to indemnify NHS bodies against clinical and non-clinical negligence claims, together with a fourth scheme (PES) which covers NHS bodies for property losses. All claims under these four schemes (with the exception of some low-value non-clinical claims) are handled internally, whilst DNV, working closely with and overseen by our internal risk management team is responsible for the risk management aspects. In each of the three main negligence schemes, the NHS body concerned remains the legal defendant in all claims. The Authority is the defendant for claims made under the Ex-RHAS, a scheme dealing with the clinical liabilities of the former Regional Health Authorities.

Further details of the four main schemes are given below.

Clinical Negligence Scheme for Trusts (CNST)

This scheme became effective on 1 April 1995 when all NHS hospitals in England had achieved trust status. Membership is voluntary but all Foundation Trusts, NHS Trusts and PCTs were members of the scheme at 31 March 2009. The CNST

provides cover for claims arising from clinical incidents occurring on or after 1 April 1995 (or whenever the relevant trust joined the scheme).

Until April 2002, members were liable to pay an excess on claims, and handled lower value claims themselves. However, the excess was removed in 2002 and we now deal with all clinical negligence claims in house, regardless of their value. The *Rules* governing membership of CNST are available on our website (www.nhsla.com/claims/schemes/CNST/), along with the *Clinical negligence reporting guidelines* setting out how members should report the claims they receive to us.

Contributions from members are assessed actuarially in advance each year. Contributions are based upon a range of factors, including the type of trust, the specialties offered, and the number of whole-time-equivalent clinical staff employed. This information is obtained directly from the Information Centre for Health and Social Care (in around September each year). The information is then used to calculate the level of risk that each trust faces. The total contributions collected from member trusts equate to the anticipated expenditure in the following year. Discounts are available to trusts that comply with the programme of risk management standards and to those with a good claims history. Further details of the way contributions are set can be found on our website at www.nhsla.com/financeIT/FAQs

Existing Liabilities Schemes (ELS)

Following the introduction of CNST, many clinical claims relating to incidents occurring before April 1995 remained outstanding. These liabilities were mainly with the Health Authorities, but some were with trusts which had been created before 1 April 1995. The ELS came into effect on 1 April 1996, and covers clinical incidents occurring before 1 April 1995. ELS is not a contributory scheme: the funding to meet ELS claims is provided by the Department of Health. When reporting claims to us, trusts and Strategic Health Authorities should follow the procedures set out in the *Clinical Negligence Reporting Guidelines* which apply equally to ELS claims.

Liability to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES)

Collectively, these schemes are often referred to as the Risk Pooling Schemes for Trusts (RPST). From 1 April 1999, we began to handle public and employers' liability claims against trusts and other NHS organisations, in respect of accidents occurring on or after that date. We also took responsibility for managing property, fidelity guarantee and other "first party" losses from the same date. The *Rules* governing membership of RPST are posted on the Authority's website (www.nhsla.com/claims/schemes/RPST/), along with the *RPST reporting guidelines* setting out how members should report claims to us.

Like CNST, LTPS and PES contributions are calculated on an annual basis using actuarial techniques. The returns required from members to complete this exercise include information on assets and staffing.

Scheme members

Members of our schemes must:

- inform us as soon as possible if there are any alterations to services being provided, assets or other relevant factors;
- follow the guidance on NHS indemnity, and the CNST and LTPS/PES rules (all available on our website, www.nhsla.com);
- follow our claims reporting guidelines in respect of each scheme;
- participate in our risk management assessment process.

4 Risk management standards and assessments

One of our key functions is to contribute to the incentives for reducing the number of negligent or preventable incidents in the NHS in England. We achieve this through our extensive risk management programme.

The core of our risk management programme is provided by our standards and assessments. Most healthcare organisations providing NHS care, including independent sector organisations, are regularly assessed against these risk management standards which have been specifically developed to reflect issues which arise in the negligence claims reported to us. There is a set of risk management standards for each type of healthcare organisation incorporating organisational, clinical, and health and safety risks:

- Acute, PCT & Independent Sector Standards
- Mental Health and Learning Disability Standards
- Ambulance Standards
- Maternity Standards

The latest versions of these standards and the results of assessments are available on our website at www.nhsla.com/riskmanagement.

NHS organisations which provide labour ward services are subject to assessment against both the Acute (and PCT) Standards and the Maternity Standards.

All the standards are divided into three levels, one, two and three. NHS organisations which achieve success at level one in the relevant standards receive a 10% discount on their CNST and RPST contributions, with discounts of 20% and 30% available to those passing the higher levels. The Maternity Standards are also divided into three levels and organisations successful at assessment receive a discount of 10%, 20% or 30% from the maternity portion of their CNST contribution.

Our risk management standards and assessment process are supported by a programme of guidance and training, including learning events. This programme also offers an informal support visit to each trust and organisations are strongly advised to

take advantage of this opportunity for focused guidance in relation to the relevant standards. In addition, a range of tools are available to assist trusts in achieving compliance with our standards. Further details are available on our website (www.nhsla.com/riskmanagement).

We seek to work closely with other organisations concerned with healthcare standards and the safety of patients and NHS workers, especially the [National Patient Safety Agency](#) and the [Care Quality Commission](#). We are a signatory to the [Concordat between bodies inspecting, regulating and auditing healthcare](#), which aims to ensure that the burden of inspection on NHS bodies is minimised.

If any member NHS body has any queries or requires advice or assistance in relation to any aspect of our risk management standards or assessment process, please contact the assessor allocated to the organisation directly or our internal risk management team at riskmanagement@nhsla.com.

5 Human Rights Act Information Service

Since January 2003, we have provided a Human Rights Act Information Service for the NHS. This service aims to minimise the cost to the NHS of obtaining legal advice in relation to the *Human Rights Act 1998* by providing NHS bodies with access to a free central source of information on developing case-law (www.nhsla.com/humanrights). In addition to maintaining a database summarising all human rights cases of relevance to the NHS, we publish a quarterly newsletter highlighting new cases and case-sheets, which bring together information about key cases in specific areas, such as mental health, consent or end-of-life issues. Information can also be provided in response to individual queries from NHS staff. Where legal advice, rather than information on case-law, is required, the service can refer NHS bodies to solicitors with appropriate expertise. The HRA Information Service can be contacted by email at humanrights@nhsla.com.

6 Family health services appeals

We are responsible on behalf of the Secretary of State for Health for resolving disputes between Primary Care Trusts (PCTs) and GPs, dentists, ophthalmologists and pharmacists who provide (or seek to provide) primary care services to patients. We determine each case on its own merits, applying the relevant regulations, legal judgments and case precedents. Whilst some regulations require parties to be offered the right to make oral representations, the majority of procedures permit flexibility in adjudication and allow for either determinations on the papers or following an oral hearing. The Directions from the Secretary of State governing these functions permit an officer of the Authority, to determine most case types or to appoint an adjudicator. However, the pharmaceutical “control of entry” regulations (which determine whether a pharmacist may offer pharmaceutical services in a particular area) require the establishment of a committee. Advice may be sought from an adviser or persons appointed to receive oral representations prior to a determination. There is always the possibility of a judicial review of any of our

determinations and, accordingly, we take appropriate legal and other professional advice.

Under the fitness to practise regulations, PCTs are required to notify us of matters regarding primary care performers. The information is stored on a national database and PCTs can check individuals and bodies corporate providing, or seeking to provide, primary care online using a secure facility.

We took responsibility for these functions from the former Special Health Authority, the Family Health Services Appeal Authority, in April 2005. More information and copies of determinations are published on our website (www.nhsla.com/FHSAU).

7 Equal pay and age discrimination claims

In July 2005, the Secretary of State for Health issued formal Directions, giving us a new role of advising and assisting NHS bodies in England dealing with litigation concerning equal pay. We have not created a formal scheme, such as CNST, to carry out this work and the funding of claims remains the responsibility of individual NHS bodies. We have a group of specialist defence solicitors and are able to offer NHS bodies expertise in managing both large-scale legal actions and defence lawyers. More information is on our website at www.nhsla.com/equalpay.

In 2009, we were given a similar responsibility in relation to age discrimination claims; more information is on our website www.nhsla.com/age+discrimination.

8 Publications

We publish a number of documents about our work, which are available on our website at www.nhsla.com/publications/.

August 2011