

INFORMATION

The National Health Service Litigation Authority

Framework Document

1 Introduction

Status and Purpose

- 1.1 The National Health Service Litigation Authority (“the Authority”) is a Special Health Authority set up under Section 11 of the NHS Act 1977. Its date of commencement is 21 November 1995.
- 1.2 The principal task of the Authority is to administer schemes set up under Section 21 of the National Health Service and Community Care Act 1990. This enables the Secretary of State to set up one or more schemes to help NHS bodies pool the costs of any “loss of or damage to property and liabilities to third parties for loss, damage or injury arising out of the carrying out of [their] functions”. There are currently five schemes:
 - i a scheme covering liabilities for alleged clinical negligence¹ where the original incident occurred on or after 1 April 1995 (the “Clinical Negligence Scheme for Trusts” or CNST);
 - ii a scheme covering liabilities for clinical negligence incidents which occurred before that date (the “Existing Liabilities Scheme” or ELS);
 - iii a scheme covering the outstanding liabilities for clinical negligence in respect of the former Regional Health Authorities;
 - iv a scheme relating to any liability to any third party where the original incident occurred on or after 1 April 1999 (the Liability to Third Party Scheme or LTPS);
 - v a scheme relating to any expenses incurred from any loss or damage to property where the original loss occurred on or after 1 April 1999 (the Property Expenses Scheme or PES).

For the purpose of this document, the five schemes are referred to together as “the Schemes”.

- 1.3 Additional tasks may be added by agreement between the Authority and the Secretary of State. With effect from 1st January 2003 these shall include a Human Rights Act Information Service (HRAIS).

Resource

- 1.4 The Authority will be responsible for
 - i expenditure on the Schemes whether centrally resourced i.e. funded by the Department of Health or by contributions from members.
 - ii the costs of administering the Schemes and any additional tasks as specified under paragraph 1.3.

¹ A clinical negligence liability is defined for the purpose of this document as “any liability in tort owed to a third party in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of a duty of care owed by that body to any person in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act on the part of a person employed or engaged by [an NHS trust or health authority] in connection with any relevant function of that [body]”. See regulation (4) of the NHS (Clinical Negligence Scheme) Regulations 1996, SI. 1996/251.

Clients

- 1.5 Membership of the CNST, LTPS and PES is voluntary and is open to all NHS trusts, PCTs and health authorities and the Health Protection Agency (which incorporated the old Public Health Laboratory Service) in England. All NHS bodies in England, whether members of CNST or not, may apply for financial support under the ELS.

2 Aim, Objectives and Functions

Aims and objectives

- 2.1 The Secretary of State's overall aims for the Authority in administering the Schemes are to promote the highest possible standards of patient care and to minimise the suffering resulting from any adverse incidents, which do nevertheless occur. In particular, the Authority will contribute to these aims by its efficient, effective and impartial administration of the Schemes, and by advising the Secretary of State on any changes that may be needed in the light of experience in running the Schemes and of changing circumstances.
- 2.2 Subject to this overriding aim, the specific objectives of the Schemes are set out below. The HRAIS is intended 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 centrally coordinated information service.

Maximising resources available for patient care

- i to minimise the overall costs of clinical negligence, third party liabilities and property expenses to the NHS and thus maximise the resources available for patient care, by defending unjustified actions robustly, settling justified actions efficiently, and contributing to the incentives for reducing the number of negligent or preventable incidents;

Proper payments

- ii to assess the amounts (if any) to be paid by each of the Schemes in relation to any particular claim, and to ensure that sums paid out are properly so paid;

Impact on patient care and NHS costs

- iii to minimise the risk that patient care in a particular community is jeopardised by a large settlement against a local NHS body;
- iv to spread the costs of settlements more evenly over time;

Incentives to improved quality

- v to contribute to the improvement of the quality of patient care by providing incentives within the schemes for NHS bodies to improve cost effective clinical and non clinical risk management (excluding motor insurance), and by disseminating relevant information on clinical and non clinical risks highlighted by claims management experience;

- vi to maximise the incentive for NHS bodies to ensure that contribute effectively to good quality improve claims management;
- vii to develop and where appropriate provide education, training and development aimed at promoting the skills and competencies required for good claims handling and risk management for NHS employees.

Access to appropriate remedies for genuine litigants

- viii to ensure that, where liability has been established, patients have appropriate access to remedies including, where proper, financial compensation.

Functions

2.3 The main function of the Authority in seeking to fulfil these objectives will be to administer the Schemes set up under Section 21 of the NHS and Community Care Act 1990 . efficiently and effectively on behalf of the Secretary of State for Health and with due regard to the interests of Scheme members, other NHS bodies, NHS staff, and users of the NHS. In particular, the Authority will

- i determine operational policy for the Schemes;
- ii determine standards of risk management and claims handling for Scheme members (and NHS bodies generally), and so manage the Schemes so as to encourage the adoption of these standards throughout the NHS;
- iii work closely with the Department of Health and any relevant Non-Departmental Public Body or Arms Length Body in relation to performance and risk management in NHS bodies;
- iv ensure the risk management standards developed by the Authority are complementary to the Department of Health's controls assurance initiative within the NHS;
- v determine individual applications under each Scheme for financial support to help to meet the cost of settlements;
- vi manage the handling of claims so as to ensure a fair outcome in the interests of the NHS and patients generally;
- vii assist the Department of Health in determining cash and resource limits for ELS;
- viii determine contributions from members towards the costs of the contributory Schemes;
- ix determine effective arrangements for the management of Schemes and appoint and oversee Scheme Managers, if deemed appropriate, who will be appointed by competitive tender for periods of three to five years and who will be responsible for functions to be determined by the Authority;
- x establish and maintain systems to ensure the correct payment to claimants under the Schemes;

- xi promote the availability of education, training and development packages available to NHS staff in respect of both claims handling and risk management contributing to and designing specific courses as appropriate;
- xii develop and disseminate good practice guidance for claims handling and risk management consistent with wider Department of Health and NHS initiatives;
- xiii assisting NHS bodies in compliance with the Human Rights Act;
- xiv to undertake any other functions as may be determined from time to time by the Secretary of State for Health.

The Authority, as with all other NHS bodies, is subject to the requirements of Clinical and Corporate Governance and expects members of the Schemes to comply with those requirements as appropriate.

3 Composition

- 3.1 The Authority will have a Board consisting of a non-executive Chairman and four other non-executive members, who will have experience of the NHS or in relevant fields such as litigation, clinical practice and insurance; and a maximum of four executive members, with as a minimum a Chief Executive, a Finance Director and a full or part-time Clinical Director. Board composition may, from time to time, be amended by the Secretary of State but will always maintain an appropriate balance of non-executive and executive members. The non-executive members will be appointed by the Secretary of State. Appointments will be made in line with Nolan principles set out in guidance by the Department of Health³.
- 3.2 In administering the Schemes, the Authority will need to remain sensitive to the views of Scheme members and other NHS bodies, while keeping in view the general policy objectives set out above. It will also need to retain the confidence of NHS health professionals that their legitimate interests will be taken into account. The Authority will therefore be expected to seek advice
- i on all significant issues of operational policy on the Schemes, from a *policy advisory group* representing the interests of Scheme members
 - ii on professional aspects of individual and groups of claims in relation to either of the clinical schemes, particularly where these are novel or contentious, from a *professional advisory panel* and to take due account of the views expressed. Details of these Advisory groups are given at Annex A.
- 3.3 The requirement to consult these two groups does not of course preclude the Authority from seeking other sources of advice as it sees fit.

³NHS Executive: *The appointment of chairmen and non-executive directors to NHS authorities and trusts (February 1995)*.

4 Accountability

Formal accountability

- 4.1 The Authority is accountable through its Chairman to the Secretary of State for Health, who is accountable to Parliament. The **Secretary of State** will determine the broad policy objectives and financial framework within which the Authority will operate, and will approve the corporate plan and annual business plan described below; but he will not be involved in the day-to-day management of the Authority or the determination of individual cases. In particular, the Secretary of State is responsible for
- i appointing and removing the Chairman and non-executive members (Section 11 and Schedule 5 of the NHS Act 1977);
 - ii determining, with the approval of the Treasury where necessary, the remuneration of the Chairman and of non-executive members;
 - iii approving any variation from Whitley terms and conditions for the Authority's employees;
 - iv giving directions, with the approval of the Treasury, about the Authority's accounts;
 - v receiving the Authority's annual statement of accounts;
 - vi determining, with the approval of the Treasury, the Authority's financial regime.
- 4.2 The **Board of the Authority**, through its Chairman, will be responsible for the operational effectiveness of the Schemes and in particular for
- i general issues of operational policy, including the broad principles affecting the setting of contributions and eligibility for benefits;
 - ii determining contribution levels for members of the contributory Schemes;
 - iii determining the level of financial assistance from the Schemes (if any) in each case (this may be delegated to the officers within broad principles and delegated financial limits laid down by the Board); and overall delegated limits agreed with the Department of Health;
 - iv resolving any cases in which there is a dispute between the Scheme Managers (as defined in para 2.3) and the Scheme member or health body;
 - v appointing the executive members of the Authority and determining their remuneration and conditions of service.
- 4.3 The Chief Executive will be responsible for the day-to-day management of the Authority, and in particular for
- i reporting regularly to the Board of the Authority and to the Department on the overall performance of the Schemes and the HRAIS;

- ii managing the Authority so as to ensure economy, efficiency and effectiveness in the operation of the Authority and of the Schemes, and the propriety and regularity of expenditure (see section 6).
- iii liaison with contributory scheme members;
- iv servicing the policy advisory group and the professional advisory panel;
- v regular liaison with the Scheme Managers (see 2.3ix) and other external agents and oversight of their performance of their contractual duties;

In particular, the Chief Executive will be the Accountable Officer for spending by the Authority “Request for Resources part 1”; a copy of the letter from the Permanent Secretary/NHS Chief Executive, who is the Accounting Officer for the vote as a whole, is at Annex B together with the associated Accountable Officer memorandum.

4.4 Finally, the **Permanent Secretary/Chief Executive of the NHS**, as overall Accounting Officer for the Vote, is responsible for:

- i ensuring that the conditions attached to any Department of Health funding of the Authority conform with the terms of the Vote;
- ii monitoring compliance with these conditions;
- iii satisfying himself that the financial and other management controls applied by the Department, and the Authority’s own management arrangements, are sufficient to ensure value for money and propriety of all expenditure falling to the Vote.

Relations with Parliament

4.5 The Secretary of State is answerable to Parliament on all aspects of the Schemes. However, Members of Parliament, Members of the European Parliament and the general public will be encouraged to write directly to the Chairman or Chief Executive of the Authority on any matters relating to its day-to-day operations.

Accountability to Scheme members

4.6 The Authority will be responsible for setting up arrangements to ensure that the views of Scheme members are fully taken into account in the development of the Schemes. This accountability will be exercised primarily through the work of the policy advisory group described above.

5 Planning and Reporting

Corporate Plan

- 5.1 By October of 2002 and every three years thereafter the Authority will present to the Secretary of State a corporate plan setting out the proposed evolution of the Schemes over the relevant three-year period. Once approved by the Secretary of State, on advice from the Permanent Secretary/ NHS Chief Executive, the plan will be published. The plan will be subject to annual review to reflect any changes with a fundamental review every three years.
- 5.2 The Corporate Plan will include:
- i Strategic issues such as:
 - a. Development of existing responsibilities
 - b. New activities and responsibilities
 - c. The management and control of all these responsibilities;
 - ii Projections as to the resources in respect of the schemes and the staff and premises;
 - iii Policy matters relating to clinical negligence schemes
 - a. ELS
 - b. CNST
 - c. Ex-RHA
 - iv Policy matters relating to the non-clinical schemes
 - a. LTPS
 - b. PES
 - v A statement on priorities for claims management and risk management educational, training and development activities for the Authority
 - vi Proposals for improvements in the efficiency of the operation of the schemes
 - vii Proposals for the measures to assess the effectiveness of the schemes in meeting their overall objectives
 - viii Advice on litigation aspects relating to HRAIS.
 - ix Policy matter in respect of any other function given to the Authority by the Secretary of State

Annual Business Plan

- 5.3 By 1 February of each year the Chief Executive of the Authority will present to the Permanent Secretary/ NHS Chief Executive a proposed Business Plan. The Authority will have been in discussion with the Department of Health regarding the cash and resource limited schemes in the months preceding the submission of the Plan. The Plan will include the following elements:
- i. a report against the previous year's Plan;
 - ii. for the coming financial year:
 - a. the proposed budget for each scheme;

- b. the expected expenditure for each scheme;
- c. the monitoring arrangements for all the Authority's contractors including scheme managers and solicitors;
- d. the administration costs for the Authority split between schemes and generically, and HRAIS;
- e. the organisational objectives of the Authority, including any planned organisational change and any quantitative targets and performance indicators which have been agreed with the Department of Health
- f. an indication of any uncertainty in these projections; and
- g. proposed ways in which such uncertainties will be managed.

This list is not exhaustive and the Authority and the Department of Health will be able to agree further areas as appropriate. The annual Business Plan will be published.

Annual Report and Accounts

- 5.4 Each year the Authority will produce an annual report and accounts, which will be signed by the Chief Executive and Finance Director; the Chief Executive will in addition sign a separate statement in the accounts⁴ reflecting his position as Accountable Officer. The report will include an assessment of the success of the Schemes in meeting their overall objectives as set out above, including performance against indicators and objectives to be agreed from time to time with the Department. The format of the accounts will be determined by directions issued by the Secretary of State with the consent of the Treasury. The accounts will be audited by auditors appointed by the Audit Commission and will then be used by the NHS Executive to produce the Authority's Summarised Accounts. After audit of the summarised accounts by the National Audit Office, the annual report and summarised accounts will be published and laid before Parliament.

Other reporting requirements

- 5.5 The Permanent Secretary/NHS Chief Executive, or his nominated deputy (normally one of the Directors of the Department of Health), will review the performance of the Authority at an annual meeting with the Chairman and the Chief Executive. The Chief Executive of the Authority will be expected to report regularly to the Department on the overall performance of the Authority, the Schemes, and HRAIS and to keep the Department informed on an exception basis on any significant issues of policy or operational performance.

6 Finance

Income and expenditure

- 6.1 The Chief Executive of the Authority is required each year to contain
- i the gross administrative expenditure of the Authority, in cash terms, within the agreed budget,
 - ii the total net administrative expenditure of the Authority, in cash terms (including expenditure on any additional functions agreed with the Department) within the sums agreed with the Department (see para 5.2).
- 6.2 The Authority is required each year to set the contributions of contributory Scheme members in such a way as to cover (taking into account any funds carried forward from previous years)
- i the actuarially expected outgoings of the schemes on claims settled during the year;
 - ii the agreed administrative expenditure;

plus a “contingency reserve” to cover the reasonably predictable fluctuations in scheme expenditure, which may if unspent be carried forward into the following year. This reserve should be sufficient to ensure that, barring exceptional circumstances, all expenditure on the contributory Schemes can be met from funds available from (a) contributions and (b) the reserve carried forward from the previous year.

⁴See the Accountable Officer memorandum at Annex B.

- 6.3 If, for reasons outwith the Authority’s control, expenditure in relation to contributory schemes exceeds the funds available the Authority may borrow from scheme members or strategic health authorities or from the Department of Health. Such borrowing should be repaid (from contributory scheme members’ contributions) as soon as is reasonably practicable which would normally be in the following year.
- 6.4 The Authority will comply with the requirements of Government Accounting, and any additional guidance or instructions on financial matters from the Department and the Treasury, so far as they are relevant.

Accounting systems

- 6.5 The Authority or its agents will maintain financial information on
- i members’ contributions to each contributory Scheme;
 - ii the contribution of the Schemes towards the cost of settlements;
 - iii the expected liability of the Schemes in respect of the cost of settlements relating to incidents already reported to the NHSLA;

- iv actuarial assessments of future costs of incidents not yet reported;
- v administrative expenditure attributable to each Scheme and the basis of attribution;
- vi financial information on HRAIS;
- vii expenditure on any further tasks which the Authority agrees to undertake on behalf of the Secretary of State, including an appropriate allocation of administrative expenditure;

and shall derive from relevant aspects of this information

- viii the annual accounts of each *Scheme*, on an appropriate basis⁵,
- ix the annual accounts of the administrative expenditure by the *Authority*, initially on a cash-flow basis.

This set of accounts will be included in the Authority's annual report to Parliament.

6.6 The Accountable Officer is responsible for ensuring that adequate management and accounting systems are in place to meet the Authority's objectives. This should include the ability to

- i assess the financial exposure of the Schemes at regular intervals;
- ii ensure that contribution income is received on time;
- iii monitor regularly the Schemes' administrative expenditure against budget;
- iv produce annual financial forecasts and accounts as required by the Secretary of State.

⁵The essential principle underlying the "pay as you go" nature of the scheme is that all settlements will be brought to account in the year in which they are concluded, even if the actual payment is (as in the case of a structured settlement) spread over many years. Similarly contributions from scheme members will be accounted for in the underwriting year to which they relate, even if they are actually received in the following financial year.

Capital Assets

6.7 The Authority will maintain a register of all of its tangible capital assets valued at £5,000 or more and will be responsible for their annual revaluation on a current cost basis and for accounting for them through depreciation charges in the financial accounts of the Authority.

6.8 Funding for capital investment, if any, will be considered within the framework of an approved investment programme included in the Corporate and Business Plans. Individual projects will be evaluated using standard Government investment criteria. Capital charges will be payable on any such funding.

Financial Delegations

6.9 Details of the financial authority delegated to the Authority are set out in Annex C. Delegated authority will be exercised in accordance with the guidance set out in Government Accounting.

Standing Orders and Standing Financial Instructions

- 6.10 The Chief Executive will ensure that the conduct of the Authority complies with Standing Orders and Standing Financial Instructions formally adopted by the Authority and approved by the Department of Health. In addition, the Chief Executive will ensure that these documents are supplemented by written procedure notes for each member of staff employed on duties involving the finances of the Authority.

Banking

- 6.11 The Chief Executive is responsible for ensuring that the Authority's banking arrangements are in accordance with the requirements of Government Accounting and are carried out efficiently, effectively and economically. The Authority should therefore ensure that these arrangements are suitably structured, represent value for money and are reviewed at least every two years.

Internal Audit

- 6.12 The Authority will be responsible for making arrangements for internal audit of the Schemes' finances commensurate with the size of the gross income and expenditure involved. One of the non-executive members should be specifically tasked with overseeing the internal audit process.

External Audit

- 6.13 External audit will be by auditors appointed by the Audit Commission. The annual number of audit days will be agreed between the Authority and the Commission.

7 Personnel

General Policy

- 7.1 The Authority will in general operate within NHS Whitley conditions of service. Changes to those conditions may be introduced only with the agreement of the Secretary of State

Delegation of Authority

- 7.2 The personnel management responsibilities set out in Annex D have been delegated to the Chief Executive, who may in turn delegate them to appropriate staff or agents.

Training and Development

- 7.3 The Chief Executive is responsible for ensuring that all staff receive training suited to their current and future needs within their employment with the Authority.

Retirement and Redundancy

- 7.4 Decisions on retirement and redundancy must be made in accordance with policies to be agreed with the Department of Health.

Equal Opportunities

7.5 The Authority will operate an employment policy of Equal Opportunity.

Health & Safety

7.6 The Authority will observe the requirements of the Health and Safety at Work Act in its premises.

Appointment of Chief Executive

7.7 Appointment of the Chief Executive will be through open competition. The appointment will be made by the Authority.

8 Review of Framework

8.1 This framework document will be reviewed by the Department of Health in consultation with the Authority every five years, and any necessary amendments agreed with them and where necessary with HM Treasury.

8.2 The Secretary of State or the Chairman of the Authority may propose modifications to the Framework document before the five-year review if these appear necessary in the light of experience or to take account of changed circumstances.

**Department of Health
December 2002**

Annex A

Advisory Machinery

Policy Advisory Group

1. The Terms of reference of the PAG are as follows:

To articulate to the Board, of the NHSLA the view of member body on the development of all schemes under the Authority's administration, HRAIS , in particular, the nature of the benefits from the schemes, the basis for assessing contributions, procedures for handling claims, risk management criteria and other matters appertaining to the trusts more generally.

2. The PAG will comprise fourteen members. The PAG will from time to time, consider how best to ensure that its membership remains both relevant and representative so as to enable it to meet its terms of reference. As such, membership should always reflect the structure of the NHS, through type of trust and region, as well as incorporating necessary expertise. The PAG may co-opt further members to the Group as they see fit, where additional and particular expertise is considered necessary whilst, at the same time, ensuring that its membership remains effective and efficient. However, for the purpose of the efficient operation of the Group, the total membership should be limited to seventeen members.
3. There will be a rotation programme of members with the founding members serving no more than five years from date of inception and with the first rotation of members taking place in July 2002. Subsequent members may serve a maximum of five years. The Chairman will be appointed on an annual basis and there will be no limit upon the number of times a member can be Chairman. The election of the Chairman will be by nomination from PAG members and by a simple majority vote.

The Professional Advisory Panel

4. The terms of reference for the PAP are as follows:

To advise the Authority on the implications of the CNST, ELS or ex-RHA scheme for the interests of NHS professionals, both in respect of general policy and of certain individual claims. This will be achieved by:

- ensuring the formal and informal lines of communication between the Authority and health professionals individually or through their employers or professional bodies are strengthened;

- support and further develop the mechanisms for reducing clinical risk and, in particular, ensure that the CNST standards have appropriate incentives and sanctions that reflect the requirements of public accountability and professional integrity;
- contributing to the assessment of the education, training and development requirements of principally clinicians but also managers and claims managers;
- assisting the Authority to analyse information that will assist in predicting clinical risk, adverse events and litigation.

5. The Professional Advisory Panel will meet three times a year. The quorum for all meetings will be seven. The NHS Litigation authority shall provide the secretariat to the PAP as well as arranging for a meeting room to be at the PAP's disposal.

- The Chairman will be appointed by the members of the PAP at its first meeting and will serve a period of no more than two years. Members can serve a minimum of two years and up to a usual limit of four years with the discretion of the Chairman and Board of the NHSLA. From time to time, specific expertise will be co-opted on to the panel.

Annex B

Accountable Officer Memorandum for Chief Executive of the National Health Service Litigation Authority

1. You are hereby appointed as the NHS officer responsible and accountable for funds entrusted to the National Health Service Litigation Authority (NHSLA). This memorandum describes your responsibilities as an Accountable Officer, and relates them to my overall accountability for funds voted by Parliament for the National Health Service. In fulfilling your role as Accountable Officer you will also wish to bear in mind your responsibilities to the Board of the Authority of which you are a member. The corporate role of the Board is clearly set out in the Codes of Conduct and Accountability issued by the Secretary of State in April 1994.

Functions of the National Health Service Litigation Authority

2. The functions of the NHS Litigation Authority are:
 - i determine operational policy for the Schemes;
 - ii determine standards of risk management and claims handling for Scheme members (and NHS bodies generally), and so manage the Schemes as to encourage the adoption of these standards throughout the NHS;
 - iii work closely with the Commission for Health Improvement (CHI) and the National Patient safety Agency (NPAS) with respect to their role in performance and risk management in NHS bodies.
 - iv ensure the risk management standards developed by the Authority take account of the controls assurance initiative within the NHS;
 - v determine individual applications under each Scheme for financial support to help to meet the cost of settlements;
 - vi where appropriate, take over the handling of the claim so as to ensure a fair outcome in the interests of the NHS and patients generally;
 - vii determine contributions from its members towards the costs of the **contributory** Schemes;
 - viii appoint and oversee Scheme Managers, if deemed appropriate, who will be appointed by competitive tender for periods of three to five years and who will be responsible for functions to be determined by the Authority;
 - ix set up systems to ensure the correct payment of financial support under the Schemes;
 - x assist NHS bodies in compliance with the Human Rights Act through the HRAIS;

- xi to undertake any other functions as may be determined from time to time by the Secretary of State for Health.

The essence of your role as Accountable Officer is to see that the authority carries out these functions in a way, which ensures the proper stewardship of public money and assets. The paragraphs below set out this responsibility in more detail.

Relationship between the Accounting Officer and Accountable Officers

- 3 My responsibilities as Accounting Officer are set out in a memorandum sent to me on appointment. In essence, I am responsible for the propriety and regularity of public finances in the NHS; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in my charge.
- 4 Your role as Accountable Officer for your authority is very similar to mine as Accounting Officer for the NHS in England. I require you to observe the same general requirements as are laid on me, and to ensure that the authority's officers also abide by them.

The chain of accountability

- 7 The Secretary of State for Health has delegated to me the responsibility for the management of the NHS. I am accountable both to the Secretary of State and, in my Accounting Officer role, directly to Parliament. A similar dual accountability applies to the Chief Executive of the NHS Litigation Authority, who is responsible both to his/her Board and, via the Accounting Officer, to Parliament. You are therefore accountable through me to Parliament for the stewardship of resources within the NHSLA.

Statutory Accounts

- 8 I sign the Summarised Accounts of health bodies in England, and the Appropriation Accounts of the Department of Health, and by virtue of this responsibility I can be summoned to appear before the Committee of Public Accounts (PAC) to deal with questions arising from those accounts or from reports made to Parliament by the Comptroller and Auditor General.
- 9 Your accounts are included with the summarised accounts laid before Parliament. You are, together with the Director of Finance, responsible for ensuring that the accounts of the NHSLA which are presented to the Board for approval are prepared under principles and in a format directed by the Secretary of State with the approval of the Treasury. These accounts must disclose a true and fair view of the NHSLA's income and expenditure, cash flows, gains and losses, and of its state of affairs. You will sign these accounts, along with the Director of Finance, on behalf of the Board.
10. Reflecting your role as Accountable Officer, you will sign a statement in the accounts (as indicated in the Manual for Accounts) outlining your responsibilities as Accountable Officer.
11. The PAC will continue to regard me as the main respondent to any enquiries, especially where the issues are wider than an individual authority. The Committee may however call other witnesses, and I may require you to accompany me at a hearing. I shall in any event look to you for support and information in my dealings with the PAC.

Effective management systems

- 12 You should ensure that the NHSLA has in place effective management systems which safeguard public funds and should assist the Chairman to implement the requirements of corporate governance as exemplified in the Codes of Conduct and Accountability. Managers at all levels should
- a. have a clear view of their objectives and the means to assess achievements in relation to those objectives;
 - b. be assigned well-defined responsibilities for making the best use of resources
 - c. have the information, training and access to the expert advice they need to exercise their responsibilities effectively.

Managers should be appraised and held to account for the responsibilities assigned to them under (a) and (b) above.

- 13 You are responsible for achieving value for money from the resources available to the authority, for avoiding waste and extravagance in the organisation's activities, and for following through the implementation of any recommendations affecting good practice as set out on reports from such bodies as the Audit Commission and the National Audit Office (NAO).
- 14 You should provide such information as is requested by the NAO. You should co-operate with external auditors in any enquiries into the use your authority has made of public funds. I may also ask you to provide information on any points raised by external auditors which generate public or Parliamentary interest. Your arrangements for internal audit should comply with those described in the NHS Internal Audit Manual. You must ensure prompt action is taken in response to concerns raised by both external and internal audit.
- 15 Effective and sound financial management and information are of fundamental importance. Whilst this is the operational responsibility of the Director of Finance you, as the Chief Executive and Accountable Officer, have a primary duty to see that these functions are properly discharged. As the Chief Executive of a trading body you are required to ensure the continuing financial viability of the NHSLA, in particular to ensure that expenditure is contained within available levels of income, and to achieve any other financial objectives set by the Secretary of State for Health with the consent of the Treasury, as appropriate. You should also ensure that the assets of the NHSLA are properly safeguarded.

Regularity and propriety of expenditure

- 16 You have a particular responsibility for ensuring that expenditure by the NHSLA complies with Parliamentary requirements. The basic principle which must be observed is that funds should be applied only to the extent and for the purpose authorised by Parliament. You must
- draw the attention of Parliament to losses or special payments by appropriate notation of the statutory accounts;
 - obtain sanction from the Department of Health for any expenditure which exceeds the limit

delegated to the authority; this includes any novel, contentious or repercussive expenditure, which is by definition outside your delegation;

- ensure that all items of expenditure, including payments to staff, fall within the legal powers of the NHSLA, exercised responsibly and with due regard to probity and value for money;
- comply with guidance issued by the Department of Health on classes of payments which you should authorise personally, such as termination payments to general and senior managers.

17 The Codes of Conduct and Accountability issued to NHS boards by the Secretary of State under cover of EL(94)40 on 28 April 1994 are fundamental in exercising your responsibilities for regularity and probity. As a board member you have explicitly subscribed to the Codes; you should promote their observance by all staff.

Advice to the Board of the Authority

18 As the Accountable Officer you have a responsibility to see that appropriate advice is tendered to the Board on all matters of financial probity and regularity, and more broadly on all considerations of prudent and economical administration, efficiency and effectiveness. The Director of Finance has a special responsibility to support you in this role; you should ensure that he or she is fully aware of this obligation and has the requisite skills and experience.

19 If the Board or the Chairman is contemplating a course of action which you consider would infringe the requirements of propriety and regularity, you should set out in writing to the Chairman and the Board your objection to the proposal and the reasons for it. If the Board decides nonetheless to proceed, you should seek a written instruction to take the action in question. You should ensure that the audit committee, which has specific terms of reference and delegated powers to inquire into matters of propriety and regularity, and which may require your attendance before it at any time, receives copies of the documents which describe your objections.

20 You should also inform the Department of Health, if possible before the Board takes its decision or in any event before the decision is implemented so that the Executive can if necessary intervene with the Board and inform the Treasury.

21 If the Board is contemplating a course of action which raises an issue not of formal propriety or regularity but affects your responsibility for obtaining value for money from the NHSLA's resources, it is your duty to draw the relevant factors to the attention of the Board. If the outcome is that you are overruled it is normally sufficient to ensure that your advice and the overruling of it are clearly apparent from the papers. If exceptionally you have given clear advice that the course proposed could not reasonably be held to represent good value for money and the Board seems likely to overrule you, you should inform the Department of Health so that it can intervene if necessary. In such cases, and in those described in paragraph 19 above, the Accountable Officer should as a member of the Board vote against the course of action rather than merely abstain from voting.

NIGEL CRISP
ACCOUNTING OFFICER

Annex C

Financial Delegations

- 1 The Authority has delegated authority to:
 - a approve and certify all current expenditure relating to the contribution of each Scheme to settlement of clinical negligence cases, subject to the limit at k below
 - b authorise administrative expenditure on the Schemes and related activities, provided that expected net spending for current year does not exceed the cash and resource limit for the Authority agreed each year by the Department of Health;
 - c accept receipts without limit;
 - d make special payments not exceeding 5% of the Authority's total paybill in that year, as performance awards to staff of the Authority;
 - e negotiate, organise and review money transmission arrangements with Banks which are members of the inter-bank payment clearing system;
 - f approve management contracts for the Schemes by competitive tender, following EC procedures as necessary; except that single tender approach may be used for any one contract of up to £50,000 in total;
 - g approve and certify payment for capital acquisitions, other than information technology (IT) equipment, with a value in excess of £250,000 provided that a minimum of three quotations have been sought by means of a competitive tendering exercise having regard to the OJEC rules for tendering;
 - h approve IT proposals up to a limit of £50,000 per project (including all project costs); a minimum of three quotations will be sought wherever practicable;
 - i make special payments (as defined in Government Accounting) of up to £50,000 for any individual claim as compensation, including payments to staff for loss of personal effects, except in the case of payments made under legal obligation where the limit is £100,000 plus costs;
 - j make payments up to £50,000 per claim in respect of losses of cash including overpayments of salaries and wages, fees and charges, fruitless payments and bad debts;
 - k approve claims or make ex-gratia payments in respect of litigation (whether against the Authority or against a Scheme member) up to £4 million for any individual claim.
- 2 Other than with the consent of the Department of Health, the Chief Executive shall ensure that the Authority does not:
 - a have a bank overdraft at any time or borrow money in any other manner other than as

described in paragraph 6.3 of the main text;

- b make loans or gifts of money or grant-supported assets;
 - c give guarantees, indemnities or letters of comfort, etc or incur any other contingent liability (whether or not of a legally binding form) except
 - i when a liability is of a standard type which is given in the course of normal commercial business dealings,
 - ii for indemnities to non-executive members against personal liability for advice given in good faith on Authority business;
 - d charge any asset or security.
- 3 The Chief Executive shall ensure that the Authority keeps a record of all losses and special payments, whether within delegated powers or not, and all losses sustained or special payments made shall be suitably recorded in the statement of accounts for each financial year. A record of gifts given and received should also be kept.
- 4 The Chief Executive shall ensure that the Authority does not undertake any insurance without prior approval of the Department of Health, other than third party insurance required by the Road Traffic Acts and any other insurance which is a statutory obligation.
- 5 The Chief Executive may give written authority for sub-delegation of the powers shown above to named staff of the Authority.

ANNEX D

Personnel Management Responsibilities Delegated to the Chief Executive

Under paragraph 7.2 of this Framework Document, the Chief Executive has delegated authority for:

- a. All aspects of the recruitment and reinstatement of staff;
- b. Decisions on starting pay, confirmation of appointment after probation, and termination of service during probation;
- c. Appointment of management consultants;
- d. All arrangements for loans and secondments between the Authority and other organisations;
- e. Approval of hours of attendance, within contracted or conditioned hours, and all overtime;
- f. Agreement to convert from full-time to part-time working and *vice versa*;
- g. Authorisation of all leave;
- h. Authorisation of overtime payments and all other special allowances;
- i. All aspects of disclosure and appraisal, including action on disagreed reports, for all staff;
- j. Authorisation of performance-related pay, merit awards and bonus payments, including any terminal bonus on fixed-term contracts for all staff excepting himself for whom the authority for such payments or awards will rest with the Chairman;
- k. Career development and succession planning for all staff;
- l. The implementation of all aspects of equal opportunities policies;
- m. Approval of substitution, temporary promotion and personal promotion;
- n. All disciplinary procedures;
- o. All matters relating to professional and administrative propriety;
- p. Industrial relations;
- q. Decisions on individual cases of retirement, including voluntary and compulsory premature retirement and the retention of staff over the age of 60;
- r. All decisions on individual cases of redundancy;
- s. Acceptance of resignations;

- t Action resulting from death in service;
- u Provision of references and testimonials;
- v Provision of appropriate health, safety and welfare services for all staff;
- w All decisions relating to the structure and complementing of the Authority, subject to prior Departmental approval for any overall increase not already agreed within the context of the Corporate or Business Plans;
- x Maintenance of all formal manpower and personnel records for staff.