
TRUST BOARD

Title:	Claims and Litigation Annual Report 2017/18
Action:	FOR DISCUSSION/NOTING
Meeting:	12 September 2018

Purpose:

To provide an update to the Board on Claims and Litigation involving the Trust in the period between 1 April 2017 to 31 March 2018. The report includes:

1. Claims
2. Inquests
3. Employment Tribunals

Please note that the report includes information on cases relating to services no longer operated by the Trust. Any claims brought before any services were transferred out will continue to be dealt with by the Trust even after the services have been transferred out.

Recommendation:

The Board is asked to note the update on Claims and Litigation and the improvement actions identified.

	Name	Title
Author:	Taff Gidi	Assistant Director of Corporate Governance
Executive sponsor:	Matthew Winn	Chief Executive

1. Claims

1.1 The Trust handled 28 claims between 1 April 2017 and 31 March 2018. The claims can be broken down as follows:

Claim Type	New Claims received between 01.04.17 – 31.03.18	Pre-Existing Claims Carried Forward	Total Claims Handled between 01.04.17 – 31.03.18
Clinical Negligence	5	12	17
Employer Liability	5	4	9
Public Liability	0	0	0
Small (Loss)	1	0	1
Property Expense Claims	1	0	1

1.2 There were 12 new claims reported between 1 April 2017 to 31 March 2018 comprising:

- Five clinical negligence claims
- Five employer liability claims
- One property expenses claim
- One small (loss) claim (not reportable to NHS Resolution).

1.3 Of the 17 clinical negligence claims handled by the Trust between 1 April 2017 to 31 March 2018, three (17.64%) relate to services still operated by the Trust.

1.4 The Trust is liable for 100% of all and any damages relating to all open claims.

1.5 Of the 28 claims handled by the Trust, four cases settled with damages agreed out of court. The Trust repudiated eight cases with no damages paid. In total, 11 cases were closed between 1 April 2017 to 31 March 2018.

1.6 The four claims with damages paid can be broken down as follows:

Claim Type	Total Claim	Damages	Claimant Costs	Defence Costs	Total Paid by the Trust
Clinical Negligence	£16,500.00	£1,500.00	£10,000.00	£5,000.00	£0
Clinical Negligence	£114,678.86	£60,000.00	£38,700.00	£15,978.86	£0
Employer Liability	£7,500.00	£2,000.00	£5,500.00	£0.00	£7,500
Small Claims	£300.00	£0.00	£0.00	£0.00	£300.00

1.7 Having reviewed all the open claims in the period between 1 April 2017 and 31 March 2018, there were no identifiable trends for services still run by Cambridgeshire Community Services NHS Trust.

- 1.8 It is important to note that the Trust remains liable for any claims relating to services that are no longer operated by the Trust, if the claim is against an incident that occurred when the services were still run by Cambridgeshire Community Services NHS Trust.

2. Inquests

- 2.1 The Trust is providing information to the Coroner in relation to services provided to three service users:

Service	Case Description
Luton District Nursing Service	<p>Two separate cases relating to the care and treatment provided for wound care management. Several organisations were involved in the wider care needs of both people.</p> <p>The Trust has provided Witness Statements and Management Overview Reports to the Coroner outlining the services provided in both cases and summarising the Trust's learning and ongoing programme of continuous improvement relating to wound care management.</p> <p>One of the Inquests concluded on 19 September 2017 with a full report provided to the Trust at the time. The conclusion in this case was one of Natural Causes.</p> <p>The second matter continues following a part-heard Inquest on 6 April 2017 in which relevant staff members were called to give live evidence. The Coroner has proposed to conclude the Inquest on 16 October.</p>
GP Out of Hours (<i>service no longer operated by the Trust</i>)	<p>This case involves the provision of 111 services and GP Out of Hours Services. The Trust has provided information and learning in relation to the GP Out of Hours element of the care provided.</p> <p>Despite a lengthy passing of time, the final Inquest has still not been listed. A suggested date was proposed for September 2018 but this has not been agreed by the family as at the date of the report.</p>

3.0 Legal Support Services Provided to Staff

- 3.1 The Assistant Director of Corporate Governance is responsible for oversight of legal services within the Trust.
- 3.2 The Claims & Litigation Team at Serco ASP support the Trust on all inquests and secure formal representation where required.
- 3.3 During the year, we identified a gap in the provision of legal support to staff following a significant increase in requests for Trust Staff to provide court statements and reports and requests to attend Court; which was not provided for in the Serco contract. A review had identified the following areas as needing further support:
- Family Court Matters
 - Serious Case Reviews/Safeguarding
 - Court Order support
 - Information Governance related cases

- Legal Advice in 'ad-hoc' cases including surrogacy cases, Mental Health Tribunals and staff approached to provide statements for professional body proceedings.

3.4 A significant portion of the increase in cases was related to requests for staff to provide reports for safeguarding processes in Norfolk. The Trust has now discussed with partner organisations and agreed to use existing reports (e.g. reports prepared for case conferences) instead of creating new reports. This has virtually eliminated all such requests.

3.5 The Trust is now considering how to provide legal support to staff for the remaining cases which were not previously covered. The Chief Nurse, Head of safeguarding and Assistant Director of Corporate Governance are reviewing options taking into account the ongoing procurement of shared services. In the interim, an agreement has been reached for the Claims & Litigation Team at Serco ASP to provide this support.

4. Employment Tribunals

4.1 In the period April 2017 to March 2018, the Trust had no cases that went to the Employment Appeal Tribunal. The Trust did not have cases in the 12 months prior to this period.

4.2 The Trust did not settle any employment cases out of court.

4.3 The Trust has historically had very few cases that go to employment tribunal. The Trust is committed to continuous improvement through trend analysis and learning lessons from all employment cases resolved. For example, previous tribunal cases have led to the review of relevant Trust policies.

5. Looking Forward

5.1 As highlighted, there are no identifiable trends for services still operated by the Trust. A majority of the claims dealt with cases relating to services that are no longer operated by the Trust.

5.2 Good record keeping continues to be an area that requires further improvement if the Trust is to successfully defend against future claims. This includes clinical notes, risk assessments, Datix reports and personnel records. A session was to be held at the Leadership Forum on 10 September 2018 to share learning with leaders from across the Trust about the importance of keeping good records.

5.3 As part of the review of provision of legal support to staff, the Claims & Litigation Manager attended the Executive Meeting in January 2018 to discuss ongoing cases and resourcing to provide support to staff going through legal proceedings related to their role in the organisation. As highlighted earlier in the report, the Trust are now considering options for ensuring long-term arrangements are in place to support staff.

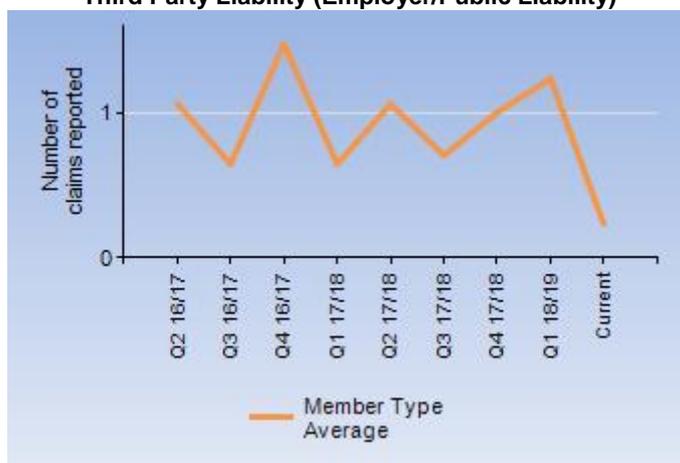
6 Benchmarking

6.1 NHS Resolution's Claims Management System has a facility for benchmarking data on claims against other peer organisations. However, because the number of claims raised by Trust in the last nine quarters is so few, the data is insufficient for comparison. The only benchmarking data available relates to number of claims as shown in Fig1 below:

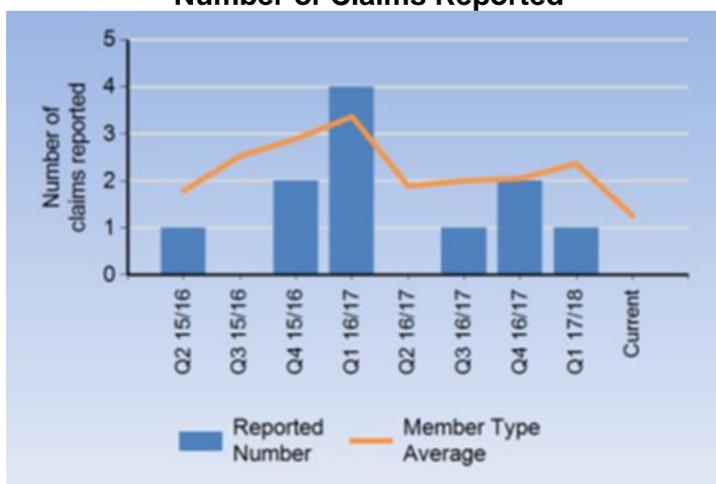
Clinical Negligence



Third Party Liability (Employer/Public Liability)



Number of Claims Reported



7 NHS Resolution

7.1 The Trust is a member of the following schemes provided by NHS Resolution (previously NHS Litigation Authority):

a) The Clinical Negligence Scheme for Trusts (CNST)

The scheme handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995. From 1st April 2013, cover under this scheme was extended to include the cost of representation

at inquests up to £5,000. There is no excess payable on all clinical negligence claims.

b) The Risk Pooling Schemes for Trusts

This covers non-clinical claims and includes two separate schemes i.e. the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES).

The Liabilities to Third Parties Scheme (LTPS) - typically covers employers' and public liability claims from NHS staff, patients and members of the public.

The Property Expenses Scheme (PES) - covers "first party" losses for material damage to buildings and contents from a variety of causes, including fire, theft and water damage. PES also offers business interruption expense cover arising from property damage.

Both LTPS and PES claims are subject to excesses, with the Trust responsible for paying all claims under the schemes below excess.

Scheme Cover	Excess payable for each case
Employers' Liability	£10,000
Public Liability	£3,000
Product Liability	£3,000
Professional Indemnity	£3,000
Property Expenses Scheme	£20,000

7.2 The costs of the scheme are met by membership contributions. Individual member contribution levels are calculated based on a range of factors, including:

- the type of Trust,
- the specialties it provides,
- the number of "whole time equivalent" clinical staff it employs, and
- the Trust's claims history.

7.3 NHS Resolution is changing its approach as shown in Fig2. The NHS Litigation Authority (NHS LA) changed its operating name to NHS Resolution from April 2017. NHS Resolution released its five-year plan outlining future changes. Its functions will combine the three operating arms of NHS Resolution, the National Clinical Assessment Service and the Family Health Services Appeal Unit to assist the providers to resolve litigation concerns fairly, as well as share lessons learnt to improve clinical practice and preserve resources for patient care.

8 Learning and Continuous Improvement

8.1 In the last year, the Claims & Litigation Manager attended the Executive Meeting in January 2018 to discuss ongoing cases and resourcing to provide support to staff going through legal proceedings related to their role in the organisation. In that meeting, the Executive Team reviewed data from Q1 – Q3 of 2017/18. The focus was on using data to understand trends and learn lessons. As a result of this discussion, the Trust has now revised its process and support system for staff called as witnesses in family court proceedings.

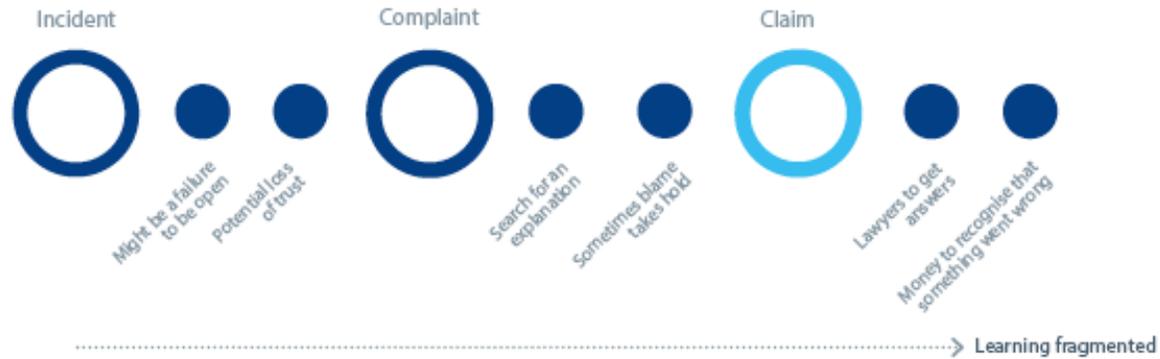
8.2 In line with the Trust's commitment to continuous improvement, the actions below have been identified:

- a) The Assistant Director of Corporate Governance and the Claims & Litigation Manager to deliver a case study based learning session at Leadership Forum in September 2018 focussing on importance of maintaining good records.

Fig2 - NHS Resolution's Changing Way of Working

Our role

Current (worst case scenario)



Future (best case scenario)

