Title: Claims and Litigation Annual Report
Action: FOR DISCUSSION/NOTING
Meeting: 13 September 2017

Purpose:

To provide an update to the Board on Claims and Litigation involving the Trust in the period between April 2016 to March 2017. The report includes:

1. Claims
2. Inquests
3. Employment Tribunals

The report includes information on cases relating to services no longer operated by the Trust. Any claims brought before any services are 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.

<table>
<thead>
<tr>
<th>Author:</th>
<th>Taff Gidi</th>
<th>Assistant Director of Corporate Governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive sponsor:</td>
<td>Matthew Winn</td>
<td>Chief Executive</td>
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## Trust Objectives

<table>
<thead>
<tr>
<th>Objective</th>
<th>How the report supports achievement of the Trust objectives:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide outstanding care</td>
<td>This paper includes an analysis of trends relating to clinical claims against the Trust.</td>
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<tr>
<td>Collaborate with other organisations</td>
<td>The paper references joint working with the Claims &amp; Litigation Manager service provided via Serco.</td>
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<tr>
<td>Be an excellent employer</td>
<td>This paper includes an update on employment law cases.</td>
</tr>
<tr>
<td>Be a sustainable organisation</td>
<td>The paper includes information on claims against the Trust and any damages paid.</td>
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### Trust risk register

All risks on the strategic risk register apply.

### Legal and Regulatory requirements:

N/A

### Equality and Diversity implications:

N/A

## Objective

<table>
<thead>
<tr>
<th>Objective</th>
<th>How the report supports achievement of objectives:</th>
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<tbody>
<tr>
<td>Achieve an improvement in the percentage of service users who report that they are able to access the Trust services that they require</td>
<td>Not relevant to this paper</td>
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<tr>
<td>Enhance our approach to involving and capturing the experience of hard to reach / seldom heard / varied community groups</td>
<td>Not relevant to this paper</td>
</tr>
<tr>
<td>Support staff to reduce the incidents of staff from minority groups experiencing abuse / aggression violence or discrimination from service users, carers, colleagues or managers.</td>
<td>Not relevant to this paper</td>
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<tr>
<td>Ensure that the Race Equality Standard is embedded and undertake proactive work around any areas of under-representation</td>
<td>Not relevant to this paper</td>
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</table>

### Are any of the following protected characteristics impacted by items covered in the paper

<table>
<thead>
<tr>
<th>Age</th>
<th>Disability</th>
<th>Gender Reassignment</th>
<th>Marriage and Civil Partnership</th>
<th>Pregnancy and Maternity</th>
<th>Race</th>
<th>Religion and Belief</th>
<th>Sex</th>
<th>Sexual Orientation</th>
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<tbody>
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</table>
1. **Claims**

1.1 24 claims were handled by the Trust between April 2016 and March 2017. The claims can be broken down as follows:

- There was 1 new claim was reported between April 2016 to March 2017.
- 23 claims with incident dates prior to 1st April 2016 were still open as at the beginning of the 2016/17 financial year.
- One claim was incorrectly reported against the Trust which should have been made against another provider. This claim has now been transferred to the correct defending party and removed from the Trust’s claims records.
- 12 out of 24 claims were still open as at 31st March 2017. Only 3 of the open claims relate to services still operated by the Trust.
- The Trust is liable for 100% of any damages relating to 11 of the open claims. The Trust is jointly liable for the remaining claim due to this claim being made against more than one party. Liability is split 50:50.
- 5 out of 24 cases were awaiting closure by NHS Resolution. Of these, damages had been agreed out of court for 4 of the cases. The Trust has denied liability on the other claim which relates to a staff member who fell in a public stairwell during a visit to a patient’s home.

The Board should note that the Trust recently agreed a settlement for one of the cases that was awaiting closure at year end. The claim was for injuries sustained by a former employee during her employment at one of the Trust’s former services. This case was settled out of court, in part, because poor records made it challenging for the Trust to defend against the claim. The claim settled on an 85:15 liability basis in favour of the Claimant. The Trust’s financial exposure was limited to a £10,000 excess under NHS Resolution’s LTPS Scheme.

- 7 out of 24 claims were closed between April 2016 and March 2017. No damages were paid on 3 out of the 7 claims which were closed during the year. 4 of the 7 cases were settled with damages. The Trust paid total excess of £13,000 on 2 of the 4 closed cases within this period. The other 2 cases did not attract any excess.

1.2 Having reviewed all the open claims in the period between April 2016 and March 2017, there were no identifiable trends for services still run by Cambridgeshire Community Services NHS Trust.

1.3 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:
<table>
<thead>
<tr>
<th>Service</th>
<th>Case Description</th>
</tr>
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<tbody>
<tr>
<td>Luton District Nursing</td>
<td>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. The Trust will be presenting 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.</td>
</tr>
<tr>
<td>GP Out of Hours <em>(service no longer operated by the Trust)</em></td>
<td>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.</td>
</tr>
</tbody>
</table>

2.2 The Claims & Litigation team at Serco support the Trust on all inquests and secure formal representation where required.

3. **Employment Tribunals**

3.1 In the period April 2016 to March 2017, the Trust had no cases that went to the Employment Appeal Tribunal.

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

3.3 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.

4. **Looking Forward**

4.1 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.

4.2 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.

4.3 The Claims & Litigation Manager will attend the Executive Meeting in November 2017.

5. **Benchmarking**

5.1 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:
6 NHS Resolution

6.1 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.

<table>
<thead>
<tr>
<th>Scheme Cover</th>
<th>Excess payable for each case</th>
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</thead>
<tbody>
<tr>
<td>Employers’ Liability</td>
<td>£10,000</td>
</tr>
<tr>
<td>Public Liability</td>
<td>£3,000</td>
</tr>
<tr>
<td>Product Liability</td>
<td>£3,000</td>
</tr>
<tr>
<td>Professional Indemnity</td>
<td>£3,000</td>
</tr>
<tr>
<td>Property Expenses Scheme</td>
<td>£20,000</td>
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</tbody>
</table>

6.2 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.
6.3 NHS Resolution is changing its approach as shown in Fig 2. The NHS Litigation Authority (NHSLA) 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.

7 Learning and Continuous Improvement

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

a) The Claims & Litigation Manager will attend the Executive Meeting in November 2017 to discuss Q1 and Q2 2017/18 data and learning.

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

c) To implement the change in approach by NHS Resolution into all Trust processes as shown in Fig 2 below.
Fig 2 - NHS Resolution’s Changing Way of Working

Our role

Current (worst case scenario)

Future (best case scenario)

Learning throughout