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**TRUST BOARD**

Title:	<b>Claims and Litigation Annual Report 2018/19</b>
Action:	<b>FOR DISCUSSION/NOTING</b>
Meeting:	<b>18 September 2019</b>

**Purpose:**

To provide an update to the Board on Claims and Litigation involving the Trust in the period between 1 April 2018 to 31 March 2019. 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
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Executive sponsor:	Mark Robbins	Finance Director



## 1. Claims

- 1.1 The Trust handled 22 claims between 1 April 2018 and 31 March 2019. The claims can be broken down as follows:

Claim Type	New Claims received between 01.04.18 – 31.03.19	Pre-Existing Claims Carried Forward	Total Claims Handled between 01.04.18 – 31.03.19
Clinical Negligence	3	8	11
Employer Liability	1	5	6
Public Liability	4	0	4
Small (Loss)	1	0	1
Property Expense Claims	0	0	0

- 1.2 There were 9 new claims reported between 1 April 2018 to 31 March 2019 comprising:
- Three clinical negligence claims
  - One employer liability claims
  - Four public liability claims
  - One small (loss) claim (not reportable to NHS Resolution).

- 1.3 Of the 11 clinical negligence claims handled by the Trust between 1 April 2018 to 31 March 2019, three (27%) involve services still operated by the Trust.

- 1.4 The Trust is liable for 100% of all and any damages relating to all open claims save for one relating the death of a service user who accessed the Peterborough GP OOH Service. The Trust is liable for damages on a 50:50 split with Herts Urgent Care.

- 1.5 Of the 22 claims handled by the Trust, six cases settled with damages agreed out of court. The Trust repudiated two cases with no damages paid. In total, eight cases were closed between 1 April 2018 to 31 March 2019.

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

Claim Type	Total Claim	Damages	Claimant Costs	Defence Costs	Total Paid by the Trust
LTPS	£24,532.00	£12,500.00	£9,840.00	£2,192.00	£10,000 excess
LTPS	£12,794.40	£5,000.00	£6,910.00	£884.40	£10,000 excess
CNST	£106,340.85	£40,615.00	£56,000.00	£9,725.85	Nil Excess
LTPS	£309,413.45	£165,736.95	£109,654.00	£34,022.50	£10,000 excess
CNST	£8,431.90	£4,800.00	£2,097.00	£1,534.90	Nil Excess
CNST	£27,050.00	£5,000.00	£15,000.00	£7,050.00	Nil Excess

- 1.7 Having reviewed all the open claims in the period between 1 April 2018 and 31 March 2019, 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>The Inquest relates to a patient (aged 87 years) who was not well known to the Trust's District Nursing Team ('DN Service') having been referred by her GP due to rapid deterioration in health. The Patient was immobile, doubly incontinent and had been bed bound for approximately four weeks prior to referral to the DN service. On admission to the DN Service's caseload, the Patient presented with a pressure ulcer to her sacrum, her BMI was within range and a MUST score of 0. In addition, and over a period of time, the Patient's daughter indicated that her Mother's appetite was poor - her daughter was feeding her a soft diet and normal fluids. The Patient was Hungarian - there was a language barrier and her daughter translated for her. She also had a history of osteoarthritis and Parkinson's Disease.</p> <p>The Patient was on caseload for a short time until she was admitted to Luton &amp; Dunstable Hospital on 23 March 2017 following a fall.</p> <p>The Medical Cause of Death given was:</p> <p>1a Streptococcal Septicaemia 1b Pressure Sores; 2 Frailty and Dependency in Old Age</p> <p>The Inquest closed in November 2018 with a conclusion of Natural Causes.</p>
GP Out of Hours ( <i>service no longer operated by the Trust</i> )	<p>The matter relates to calls to out of hours services and a failure to recommend that the child be seen by a GP or attend the hospital's A&amp;E Department after developing abdominal pain. Breach of duty has been admitted but causation has not as the Consultant Paediatric Surgeon advised that the Deceased had a very unusual genetically caused bowel condition and, even if she had gone to the hospital earlier, she may still have died. Final Inquest listed in July 2019 over three days.</p> <p>Post-Mortem findings were:</p> <p>1a Small Intestinal Infarction; 1b Small Intestinal Volvulus; and, 1c Congenital Intestinal Malrotation.</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 The Trust is now considering how to provide legal support to staff for the remaining cases which were not previously covered. The Director of Governance is 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.
- 3.5 In line with the Trust's commitment to continuous improvement, the Assistant Director of Corporate Governance delivered a case study based learning session at the Leadership Forum in September 2018 focussing on importance of maintaining good records.

#### **4. Employment Tribunals**

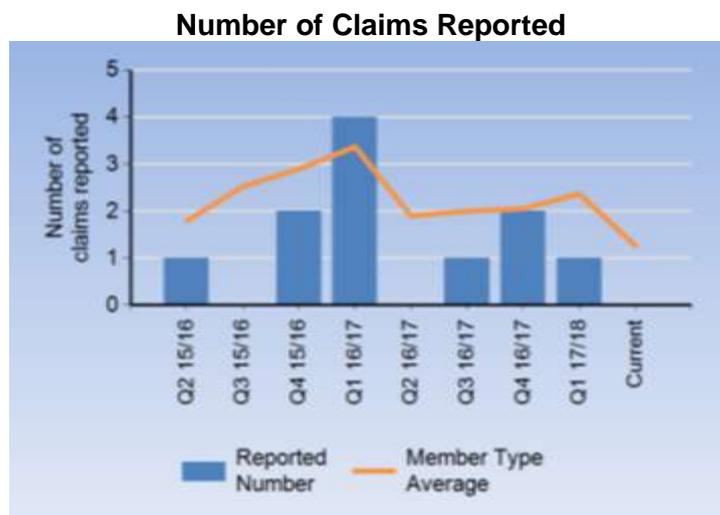
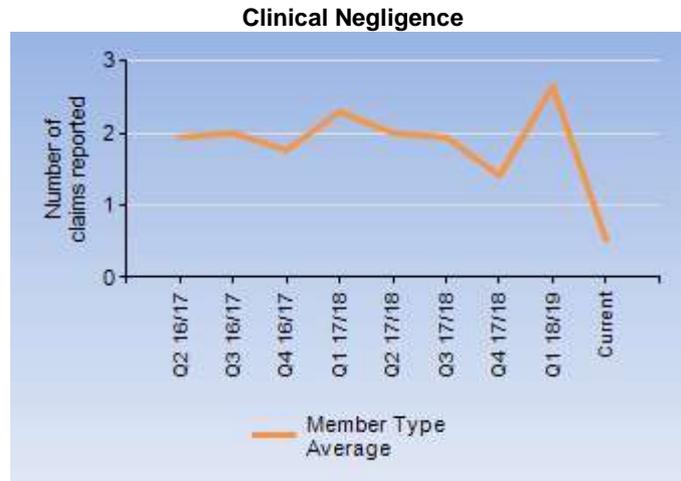
- 4.1 In the period April 2018 to March 2019, the Trust had no cases that went to the Employment Appeal Tribunal.
- 4.2 The Trust had one case out of court settlement.
- 4.3 The Trust is committed to continuous improvement through trend analysis and learning lessons from all employment cases resolved. 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 number of staff training sessions were held over the year and this continues into 2019.
- 5.3 A new Standard Operating Policy for Preparing Evidence in Legal Proceedings has been produced the aim of which is to provide support and information on preparing and giving evidence in legal proceedings. The SOP has been positively received by Trust Leads with the intention that it will be rolled out to run alongside the Supporting Staff Involved in an Incident, Complaint or Claim SOP, which came into effect in May 2016.
- 5.4 A new generic legal services email account is now in effect. Staff can correspond with the Trust's Legal Services Team directly at: [ccs.legal-services@nhs.net](mailto:ccs.legal-services@nhs.net)

## 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:



## 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.

<b>Scheme Cover</b>	<b>Excess payable for each case</b>
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 (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.

## **8 Learning and Continuous Improvement**

8.1 In the last year, the Claims & Litigation Manager & Director of Governance have held regular meetings to discuss ongoing cases and resourcing to provide support to staff going through legal proceedings related to their role in the organisation.

8.2 Good record keeping continues to be an area that requires further improvement if the Trust is to successfully defend against future claims. A number of staff training sessions were held over the year and this continues into 2019.