
TRUST BOARD

Title:	Claims and Litigation Annual Report 2018/19
Action:	FOR DISCUSSION/NOTING
Meeting:	16th September 2020

Purpose:

To provide an update to the Board on Claims and Litigation involving the Trust in the period between 1 April 2019 to 31 March 20 20. The report includes:

1. Claims
2. Inquests
3. Employment Tribunals

Recommendation:

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

	Name	Title
Author:	Mercy Kusotera	Assistant Director of Corporate Governance
Executive sponsor:	Rachel Hawkins	Director of Governance

1. Claims

1.1 The Trust handled 18 claims between 1 April 2019 and 31 March 2020. The claims can be broken down as follows:

- Eight Clinical Negligence
- Three Public Liability
- Seven Employer Liability
- Zero Property Expenses Scheme

1.2 The Trust had 2 active claims following a formal complaint between 1 April 2019 – 31 Mar 2020. These are historic complaints and are reported herein due the claim cases being current/active during the reporting period. The two claims are:

- (i) Complaint 11340 - CCS repudiated the allegations with a letter of response in February 2018. No challenges were made and NHSR closed the file in May 2018. However, the Claimant issued proceedings in December 2018 and the claim against the Trust has re-opened. Service involved - Doddington MIU. Complaint not upheld.
- (ii) Complaint 12787 - Still active claim - admissions have been made by the Trust in a Letter of Response sent December 2017. The claim continues to be negotiated with a damages reserve of £50,000. Service involved - Princess of Wales MIU. Complaint not upheld.

1.3 Thematic Data for Active Cases:

Claim Type	Status	Root Cause	Service / Locality
Public Liability	Settled - Damages Paid	Breach of GDPR/ DPA	Health Visiting - Cambs
Clinical Negligence	Open - settlement negotiations following Inquest	Failure to Diagnose and refer child to A&E	Peterborough GP OOH
Clinical Negligence	Authority To negotiate and/or Offer Made	Failure to Diagnose cauda equina syndrome	Peterborough GP OOH
Clinical Negligence	Settled - Damages Paid	Failure to X-Ray	MIU - Princess of Wales
Clinical Negligence	Settled - Damages Paid	Failure to X-Ray	MIU - Doddington
Clinical Negligence	Authority To negotiate and/or Offer Made	Failure to X-Ray	MIU Doddington
Employer Liability	Closed - Nil Damages	Fibromyalgia and Myalgic Encephalitis	Health Visiting - Norfolk
Public Liability	Letter of Response - Admission	Injury by falling fixture/fitting	Dental Access Centre, Peterborough
Clinical Negligence	Settled - Damages Paid	Never Event - Wrong Tooth Extraction	Dental Services
Clinical Negligence	Settled - Damages Paid	Pressure Sores	Podiatry Service
Employer Liability	Settled - Damages Paid	Respiratory	Brookfields Hospital Site
Public Liability	Closed - Nil Damages	Theft	iCaSH - Bedfordshire
Clinical Negligence	Letter Before Action and Defence Served	Tooth extraction without reasonable care & skill	Dental Services
Employer Liability	Authority To negotiate and/or Offer Made	Trip & Slip	Staff Room - Dental Services

Employer Liability	Authority To negotiate and/or Offer Made	Trip & Slip	Doorway - Nye Bevan
Employer Liability	Claim Discontinued by Claimant	Trip & Slip	Car Park - North Cambs Hospital
Employer Liability	Letter of Response - Challenged	Trip & Slip	Not Trust Property
Employer Liability	Letter of Response - Liability Not Admitted	Trip & Slip	Not Trust Property

1.4 There were 6 new claims reported between 1 April 2019 to 31 March 2020 comprising:

- One clinical negligence claims
- Three employer liability claims
- Two public liability claims
- Zero Property Expenses Scheme

SUMMARY OF NEW CLAIMS

<p>The Claimant alleges that she tripped over a box in a corridor at Downham Market Health Centre. A claim has also been made to Norfolk Community Health and Care NHS Trust on the basis that it was a member of their staff who placed the box in the corridor.</p> <p>Location: Downham Market Health Centre Date of Incident: 15.07.19 Datix ID: W46371 NHSR ref: M19LT674/001</p>	<p>Opened: 05.08.19 Present Position: Letter of Response denying liability Challenged by Claimant Solicitor - 21/01/2020 Case Remains open NHSR claim total reserve comprising as follows:</p> <table border="1" data-bbox="754 902 1369 1039"> <thead> <tr> <th>Total Claim</th> <th>Damages Reserve</th> <th>Claimant Costs Reserve</th> <th>Defence Costs Reserve</th> </tr> </thead> <tbody> <tr> <td>£20,700</td> <td>£10,200</td> <td>£10,000</td> <td>£500</td> </tr> </tbody> </table> <p>Estimated Settlement Date: 2020/21</p>	Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve	£20,700	£10,200	£10,000	£500
Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve						
£20,700	£10,200	£10,000	£500						
<p>A metal strip screwed into the wall suddenly came away and fell to the floor in the waiting room. It caught a child in a pushchair on the way down.</p> <p>Location: Dental Access Centre, Peterborough Date of Incident: 04.07.19 Datix ID: W56517 NHSR Ref: M19LT674/002</p>	<p>Opened: 06.08.19 Present Position: Letter of Response - Admission 06/11/2019 Open NHSR claim reserve total comprising as follows:</p> <table border="1" data-bbox="754 1279 1350 1384"> <thead> <tr> <th>Total Claim</th> <th>Damages Reserve</th> <th>Claimant Costs Reserve</th> <th>Defence Costs Reserve</th> </tr> </thead> <tbody> <tr> <td>£20,700</td> <td>£10,200</td> <td>£10,000</td> <td>£500</td> </tr> </tbody> </table> <p>Settlement Date: 19/20</p>	Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve	£20,700	£10,200	£10,000	£500
Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve						
£20,700	£10,200	£10,000	£500						
<p>Letter of claim received with numerous allegations including: failure to perform the tooth extraction with reasonable care and skill. In particular, the Defendant failed to adequately identify and protect the lingual nerve with a barrier instrument placed between the lingual nerve and the bone/and or tooth when using the bur; Failed to perform the tooth extraction to a reasonably competent standard in that the Defendant caused a direct physical injury to the lingual nerve known to be close proximity to the LL8.</p> <p>Location: Hinchingsbrooke – Dental Services Date of Incident: 10/09/2016 Datix ID: N/A NHSR Ref: M19CT674/001</p>	<p>Opened: 29/07/2019 Present Position: Expert evidence received and Defence served. Breach of duty is denied as is causation.</p> <p>NHSR claim reserve total comprising as follows:</p> <table border="1" data-bbox="754 1688 1350 1794"> <thead> <tr> <th>Total Claim</th> <th>Damages Reserve</th> <th>Claimant Costs Reserve</th> <th>Defence Costs Reserve</th> </tr> </thead> <tbody> <tr> <td>£55,500</td> <td>£22,500</td> <td>£30,000</td> <td>£3,000</td> </tr> </tbody> </table> <p>Settlement Date: 20/21</p>	Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve	£55,500	£22,500	£30,000	£3,000
Total Claim	Damages Reserve	Claimant Costs Reserve	Defence Costs Reserve						
£55,500	£22,500	£30,000	£3,000						

<p>The Claimant was exiting the Nye Bevin admin building when she tripped over a single step. The step is not highlighted and is the same colour as the floor besides it. Following the Claimant's accident, the step has been changed to a ramp.</p> <p>Location: Nye Bevan, Brookfields Hospital Date of Incident: 27/09/2017 Datix ID: W49931 NHSR Ref: M19LT674/003</p>	<p>Opened: 07/10/2019 Present Position: Letter of Response Served with full admission on 03/01/2020 – Claim remains open pending settlement on best terms. NHSR claim reserve total comprising as follows:</p> <table border="1" data-bbox="756 349 1350 456"> <thead> <tr> <th>Total Claim</th> <th>Damages</th> <th>Claimant Costs</th> <th>Defence Costs</th> </tr> </thead> <tbody> <tr> <td>£31,000</td> <td>£25,000</td> <td>£6,000</td> <td>£0</td> </tr> </tbody> </table> <p>Settlement Date: 20/21</p>	Total Claim	Damages	Claimant Costs	Defence Costs	£31,000	£25,000	£6,000	£0
Total Claim	Damages	Claimant Costs	Defence Costs						
£31,000	£25,000	£6,000	£0						
<p>The Claimant was walking out of the reception area when she slipped and fell on her right side and onto a wooden coat stand landing on the floor Location: Child Development Centre - Hill Rise - Kempston Date of Incident: 30/01/2020 Datix ID: W59050 NHSR Ref: M19LT674/004</p>	<p>20/02/2020 Present Position: Claim repudiated entirely – the Trust is not the correct Defendant – the Incident Locus is based in a building owned and maintained by Bedfordshire County Council. NHSR claim reserve total comprising as follows:</p> <table border="1" data-bbox="756 792 1350 900"> <thead> <tr> <th>Total Claim</th> <th>Damages</th> <th>Claimant Costs</th> <th>Defence Costs</th> </tr> </thead> <tbody> <tr> <td>£13,500</td> <td>£10,000</td> <td>£3,500</td> <td>£0</td> </tr> </tbody> </table> <p>Settlement Date: 20/21</p>	Total Claim	Damages	Claimant Costs	Defence Costs	£13,500	£10,000	£3,500	£0
Total Claim	Damages	Claimant Costs	Defence Costs						
£13,500	£10,000	£3,500	£0						
<p>The claim relates to a Data Protection breach when the Trust sent a confidential letter to an employee's former address. Location: Employee Home Date of Incident: 04/02/2019 NHSR Ref: M18LT674/004</p>	<p>Opened: 28/02/2019 Present Position: Settled - Damages paid - 01/07/2019 Closed NHSR final costs comprising as follows:</p> <table border="1" data-bbox="756 1099 1350 1207"> <thead> <tr> <th>Total Claim</th> <th>Damages</th> <th>Claimant Costs</th> <th>Defence Costs</th> </tr> </thead> <tbody> <tr> <td>£2,500</td> <td>£1,500</td> <td>£1,000</td> <td>£0</td> </tr> </tbody> </table> <p>Settlement Date: 19/20</p>	Total Claim	Damages	Claimant Costs	Defence Costs	£2,500	£1,500	£1,000	£0
Total Claim	Damages	Claimant Costs	Defence Costs						
£2,500	£1,500	£1,000	£0						

1.5 There were no claims re-opened between 1 April 2019 – 31 March 2020.

1.6 There were 8 cases closed between 1 April 2019 to 31 March 2020 comprising:

- Four Clinical Negligence
- Two Public Liability
- Two Employer Liability
- Zero Property Expenses Scheme

1.7 Thematic Data for Closed Cases are:

Claim Type	Closed Status	Root Cause	Service
Clinical Negligence	Settled - Damages Paid	Pressure Sores	Podiatry
Public Liability	Closed - Nil Damages	Theft	iCaSH
Public Liability	Settled - Damages Paid	Breach of GDPR/ DPA	Health Visiting - Cambs
Clinical Negligence	Settled - Damages Paid	Never Event – Wrong tooth extraction	Dentistry
Clinical	Settled - Damages	Failure to X-Ray	MIU - Princess of

Negligence	Paid		Wales
Employer Liability	Settled - Damages Paid	Respiratory	Respiratory
Employer Liability	Closed - Nil Damages	Fibromyalgia and Myalgic Encephalitis	Health Visiting - Norfolk
Clinical Negligence	Settled - Damages Paid	Failure to X-Ray	MIU - Doddington

1.8 During the reporting period, the two claims were settled without damages. These comprised:

- One Public Liability
- One Employer Liability
- Zero Property Expenses Scheme
- Zero Clinical Negligence

1.9 Of the 18 claims handled by the Trust between 1 April 2019 – 31 March 2020, 6 were settled with damages comprising:

- Four Clinical Negligence
- One Public Liability
- One Employer Liability
- Zero Property Expenses Scheme

1.10 Total damages paid between 1 April 2019 – 31 March 2020 are as follows:

Clinical Negligence

- Total Claim Costs paid by NHS Resolution - £84,908.70
- Cost to the Trust is £0 – nil excess per claim

LTPS Public Liability

- Total Claim Costs paid by NHS Resolution - £15,356.00
- Cost to Trust (excess is £3K per claim) = £5,500

LTPS Employer Liability

- Total Claim Costs paid by NHS Resolution - £40,302.20
- Cost to Trust (excess is £3K per claim) = £5,500

Property Expenses Scheme

- Total Claim Costs paid by NHS Resolution - £0
- Cost to the Trust is £0

2. Inquests Data Active Cases Between 1 April 2019 – 31 March 2020

Total active cases:	
Identification Details	Present position
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&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.	Date of Notification: September 2015 Present Position: On 15 July 2019, HM Assistant Coroner, returned a conclusion of natural causes with a rider of neglect. This means that while MD had suffered death as a result of natural causes; the care that had been provided was such that it amounted to a gross failure to provide basic care. The Coroner intends to write a Prevention of Future Deaths Report regarding what further steps may be taken in
Location of Incident: Peterborough GP OOH	

<p>Service Location of Death: Peterborough Hospital Datix: 355 DOD: 27.08.15 Linked Claim Ref: M15CT635/010</p>	<p>dealing with calls to NHS 111/ GP OOH relating to children and infants in particular the need to be addressed in terms of the knowledge and awareness of interpreting signs and symptoms of illness in sick children and the handling of complex calls and when the response should simply put be call an ambulance.</p>
<p>Male patient under the care of Luton District Nursing Services following a referral from his GP on 1 July 2019. The patient was a bilateral amputee, which had resulted from a long-term condition of diabetes and lived independently at Jill Jenkins Court, Luton, which is a supported living accommodation.</p> <p>The last visit by Trust staff was Friday 17 August 2019 following which, the patient was admitted to Luton & Dunstable Hospital at 11:08hrs on Saturday 18 August 2019 being generally unwell and unable to take his meds.</p> <p>The patient was confused and disoriented. Examination and investigations confirmed acute myocardial infarction, sepsis with diabetic ketoacidosis. He deteriorated quite rapidly requiring intensive care review. Despite IV fluids, antibiotics and DKA treatment, he did not respond and had a cardiac arrest at 17:37 hrs in HDU where sadly he passed away.</p> <p>The death was referred to the Coroner - reason for referral: death under 24hrs of hospital admission.</p> <p>The Trust was approached by the Coroner for patient records in September 2019 and then on 7 January 2020 for statements from the Tissue Viability Nurse and colleague who visited the patient on 7 and 14 August 2019.</p> <p>Location of Incident: Patient's Home Location of Death: Luton & Dunstable Hospital DOD: 18 August 2019</p>	<p>Date of Notification: September 2015</p> <p>Present Position: A Pre-Inquest Review Hearing was conducted on 4 February 2020 and statements have been provided by two Tissue Viability Nurses and an RGN. Due to the current pandemic, the inquest has now been adjourned to 03.09.20 at 10:00am.</p>

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 & 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&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 During the year, the Claims and Litigation team transferred from Serco to CPFT. The Trust continues to receive the support from the team through the agreement with CPFT

4. Employment Tribunals

4.1 In the period April 2019 to March 2020, the Trust had no cases that went to the Employment Appeal Tribunal.

4.2 The Trust had no 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 NHS Resolution

5.1 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. The costs of the scheme are met by membership contributions.

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).

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

d) 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.

5.2 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 Learning and Continuous Improvement

6.1 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.