

28 November 2022

Sent via email: Sandra.kendal@nhs.net8th Floor
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Dear Sandra,

Consultations for changes to the NHS provider licence

Please consider this as NHS Resolution's (NHSR) written submission to NHS England's consultation in relation to the proposed changes to the NHS provider licence to support effective system working and the delivery of high-quality sustainable care. This response only comments on the proposed changes to NHS2: Governance arrangements (amended and renamed condition FT4 – governance arrangements).

NHS Resolution is an Arm's Length Body of the Department of Health and Social Care. We have four key service areas:

- **Claims Management:** delivering expertise in handling both clinical and non-clinical claims to members of our Indemnity Schemes.
- **Practitioner Performance Advice:** providing advice, support and interventions in relation to concerns about the individual performance of Doctors, Dentists and Pharmacists.
- **Primary Care Appeals:** offering an impartial resolution service for the fair handling of Primary Care contracting services.
- **Safety and Learning:** supporting the NHS to better understand and learn from claims, concerns and disputes; to target safety activity while sharing learning across the NHS.

NHS Resolution operates seven clinical negligence schemes, the largest of which, is the Clinical Negligence Scheme for Trusts (CNST). This scheme handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995 (or when the body joined the scheme, if that is later). From 1st April 2013, independent sector providers of NHS care have been able to join CNST and cover under CNST was also extended to include the cost of representation at inquests.

Although membership of the schemes is voluntary, all trusts in England currently belong to CNST. The costs of the scheme are met by membership contributions. The projected claims costs are assessed in advance each year by professional actuaries. Contributions are then calculated to meet the total forecast

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our [privacy statement at resolution.nhs.uk/privacy-cookies/](https://resolution.nhs.uk/privacy-cookies/)



expenditure for that year. Individual member contribution levels are influenced by a range of factors, including the type of trust, the specialties it provides and the number of “whole time equivalent” clinical staff it employs. Claims history is also taken into account meaning that members with fewer, less costly claims pay less in contributions relative to others.

We also manage the Clinical Negligence Scheme for Coronavirus, the scheme was established in accordance with new powers from the Coronavirus Act 2020. It provides additional indemnity coverage for clinical negligence liabilities that may arise when healthcare workers and others are working as part of the coronavirus response, or undertaking NHS work to backfill others, in the event that existing arrangements through CNST or individual arrangements do not cover a particular activity. We also manage two non-clinical schemes, which all trusts in England are also members of, under the heading of the Risk Pooling Schemes for Trusts.

In 2021/22 contributions from CNST members (all NHS foundation trusts and NHS trusts) totaled £2,427 million. Of this, contributions for maternity services totaled £975 million.

In our new strategy, [‘Advise, Resolve and Learn: Our strategy to 2025’](#) we have committed to working with others to address the costs associated with compensation claims thereby releasing public funds for other priorities including healthcare. In addition, by keeping matters out of court wherever possible we are seeking to reduce the distress caused to both patients and healthcare staff involved when a claim or concern arises. Specifically, our third strategic priority, *Collaborate to improve maternity outcomes*, includes two maternity initiatives to reduce the human, workforce and financial costs of preventable harm thus contributing to the [National Maternity Safety Ambition](#) to halve maternal and neonatal deaths and reduce significant harm. These maternity initiatives relate to the identification and management of maternity claims and their costs, namely:

- **Maternity Incentive Scheme (MIS):** This initiative supports the delivery of safer maternity care through an incentive element to trust contributions to the CNST. The scheme rewards trusts that meet 10 safety actions designed to improve the delivery of best practice in maternity and neonatal services.
- **Early Notification (EN) Scheme:** This initiative proactively investigates specific brain injuries at birth for the purposes of determining if negligence has caused the harm. We do this by requiring our CNST members to notify us of maternity incidents which meet a certain clinical definition. The scheme allows NHR to investigate potential eligibility for compensation and take proactive action to reduce legal costs. It aims to improve the experience for the family and affected staff, meeting needs in real time where possible and trying to reduce the risk of claims increasing in value due to inflation or unmet needs (such as psychological support) translating into larger losses.

Given the relevance of learning from clinical negligence to safety and the associated costs of incidents which turn into claims for NHS trusts **we suggest that NHS2: governance arrangements, is amended to ensure that the licensee (that being the NHS trust) has regard to their claims experience and membership contributions to the NHS Resolution indemnity schemes, and patient safety initiatives associated with those schemes, to ensure that there is sufficient scrutiny and oversight of not only the cost of clinical negligence but the causes of incidents at each provider.**

We would be happy to be part of further discussions in relation to this suggestion, and work with you to progress further.

Yours sincerely



Helen Vernon
Chief Executive