



Department  
of Health &  
Social Care



**Resolution**

# **Framework Agreement between the Department of Health and Social Care and NHS Resolution**

Published January 2021

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# 1. Purpose of this document

- 1.1 This framework agreement has been drawn up by the Department of Health and Social Care ('the Department') in consultation with NHS Resolution. This document sets out the broad framework within which NHS Resolution will operate. The document does not convey any legal powers or responsibilities. It is signed and dated by the Department and NHS Resolution. Copies of the document and any subsequent amendments have been placed in the Libraries of both Houses of Parliament and made available to members of the public on NHS Resolution's website.
- 1.2 The purpose of this document is to define the critical elements of the relationship between the Department and NHS Resolution. The document is focused on:
- How the Department and NHS Resolution will work in partnership to serve patients, the public and the taxpayer; and
  - How both NHS Resolution and the Department discharge their accountability responsibilities effectively.

Signed



Date 14 December 2020

Lee McDonough, Director General

On behalf of the Department

Signed



Date 11 December 2020

Helen Vernon, Chief Executive

On behalf of NHS Resolution

## 2. Purpose of NHS Resolution

- 2.1 NHS Resolution is a Special Health Authority and is legally known as the NHS Litigation Authority. It was established in 1995 for the purposes of establishing and administering indemnity schemes for meeting the liabilities of health service bodies.
- 2.2 NHS Resolution's statutory functions (including functions set out in Directions) are to:
- Administer, on behalf of the Secretary of State, the NHS indemnity schemes established under regulations made under section 71 of the National Health Service Act 2006. A list of current schemes is attached at Appendix 1;
  - Provide a Primary Care Appeals Unit to assist in resolving disputes and appeals involving GPs, dentists, opticians and other health care professionals with a view to supporting effective primary care contracting, in accordance with the NHS Litigation Authority (Functions) (England) Directions 2005 and other associated Directions;
  - Administer, in accordance with the National Health Service (Performers Lists) (England) Regulations 2013, a list of healthcare performers who have had action taken against them by primary health commissioners;
  - Provide, in accordance with the NHS Litigation Authority Directions 2013, an Advice Service to help improve and promote patient safety by resolving concerns about the professional practice of doctors, dentists and pharmacists. The Advice Service provides expert advice, support, interventions, and training to the NHS, devolved administrations and other healthcare partners;
  - Issue Health Professional Alert Notices (HPANs) to NHS bodies and others about healthcare professionals whose performance gives rise to concerns in accordance with the NHS Litigation Authority (Amendment) Directions 2019;
  - Ensure that the lessons learned from claims and the other activities of NHS Resolution are appropriately shared in order to help reduce adverse incidents in the future, in accordance with the NHS Litigation Authority (Safety and Learning) Directions 2019.
- 2.3 NHS Resolution's strategic objective is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. It has four strategic aims:

- Resolve concerns and disputes fairly and effectively;
- Provide analysis and expert knowledge to the healthcare and civil justice systems, to drive improvement;
- Deliver in partnership, interventions and solutions that improve safety and save money;
- Be fit for purpose by offering best value and developing its people, relationships and infrastructure.

## **3. Governance**

- 3.1 NHS Resolution was established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995, S.I. 1995/2800 (as amended). The NHS Litigation Authority Regulations 1995, S.I. 1995/2801 (as amended) set out requirements relating to appointments of the Chair and members of NHS Resolution and procedures. The order was made under schedule 5 to the National Health Service Act 1977. Following the consolidation of the enabling authority, this order now has effect as if made under the National Health Service Act 2006, section 28 and the National Health Service (Wales) Act 2006, section 22.
- 3.2 NHS Resolution is led by a Board consisting of a Non-executive Chair, at least three but no more than five Non-executive members, one of whom chairs the Audit and Risk Committee, and at least three but no more than five Executive members, holding the offices of Chief Executive Officer, Chief Finance Officer, and such other executive appointments as decided by the NHS Resolution Board (pursuant to S.I. 1995/2800 as amended). Other, non-voting, associate board and non-board members may also attend the Board at the discretion of the Chair.
- 3.3 The Permanent Secretary appoints a Senior Departmental Sponsor (SDS) to act as NHS Resolution's designated, consistent point of contact within the Department. The SDS acts as the link at executive level between NHS Resolution and the senior officials of the Department, and also with ministers. Whilst the SDS role is facilitative and recognises the need for direct engagement between NHS Resolution and other parts of the Department and ministers, it also supports the Permanent Secretary in holding NHS Resolution to account and providing assurance on its performance. The SDS is currently the Director General for Acute Care and Workforce. The SDS is supported by a Departmental sponsor team, who are the principal day-to-day liaison between the Department and NHS Resolution.

### **Process for setting objectives**

- 3.4 The process for setting objectives for NHS Resolution is through the annual business planning process. NHS Resolution will produce a business plan each year demonstrating how it will meet its legal duties and deliver its objectives. The Department will provide guidance to support the business planning exercise which will include a process for the agreement of budgets covering administration, programme, revenue and capital funding for both member- and centrally funded schemes. Where schemes impact the wider NHS, NHS Resolution will be invited to participate in the relevant cross-ALB and DHSC exercises. NHS Resolution will reach agreement with the Department on its business plan. To facilitate comment

from the Department, including relevant ministers, the business plan will be shared and discussed in advance of formal approval by NHS Resolution's Board. NHS Resolution will be made aware of any concerns the Department may have.

- 3.5 NHS Resolution will also produce a corporate strategy at least every five years which sets out its strategic aims and objectives, consistent with its overall strategic direction and within the policy and resources framework set by the Secretary of State. NHS Resolution will reach agreement with the Department on its strategy and, where appropriate, with other relevant ALBs. To facilitate comment from the Department, including relevant ministers, the strategy will be shared and discussed in advance of formal approval by NHS Resolution's Board. The strategy will be subject to regular review to reflect any changes in its strategic direction, with a fundamental review every five years. Once agreed, the annual business plan and the corporate strategy will be published on NHS Resolution's website.

## **Discharge of statutory functions**

- 3.6 NHS Resolution will ensure that it has appropriate arrangements in place for the discharge of each of the statutory functions for which it is responsible and is clear about the legislative and other requirements associated with each of them, specifically any restrictions on the delegation of those functions. It will ensure that it has the necessary capacity and capability to undertake those functions, and will ensure that it has the statutory power to take on a statutory function on behalf of another person or body before it does so. NHS Resolution will also ensure that it has a governance framework in place, incorporating an appropriate programme of audit and assurance, to ensure that delivery of its statutory functions remains effective, efficient and legally compliant and this will be confirmed in the annual governance statement by the Accounting Officer.

## **Cross-government clearance**

- 3.7 In addition to internal governance, cross-government clearance is required for major new policy decisions of the type set out in the [Cabinet Office guidance](#). Although such cases are likely to be small in number, the Secretary of State will be responsible for obtaining clearance and NHS Resolution will adhere to any conditions applied through the clearance process. There will also be cases where the Secretary of State must consult Cabinet colleagues before giving the Government's view, even if collective agreement is not required. In such cases, NHS Resolution will supply the Secretary of State with any information he or she needs in a timely fashion.

## 4. Accountability

### Secretary of State

- 4.1 The Secretary of State is accountable to Parliament for the health system (as its “steward”), including NHS Resolution. The Department supports him or her in this role. This involves:
- setting national priorities and monitoring the whole system’s performance to ensure it delivers what patients, people who use services and the wider public need and value most;
  - setting budgets across the health system, including for NHS Resolution;
  - setting objectives for NHS Resolution;
  - supporting the integrity of the system by ensuring that funding, legislation and accountability arrangements protect the best interests of patients, the public and the taxpayer;
  - accounting to Parliament for NHS Resolution’s performance and the effectiveness of the health and care system overall.

### Sponsor department's accounting officer's specific accountabilities and responsibilities as Principal Accounting Officer (PAO)

- 4.2 The Department’s Permanent Secretary is the Principal Accounting Officer (PAO) and so is accountable in Parliament for the general performance of the health system in England including NHS Resolution. The PAO has designated the Chief Executive as NHS Resolution’s accounting officer. (The respective responsibilities of the PAO and accounting officers for ALBs are set out in Chapter 3 of [Managing Public Money](#), which is sent separately to the accounting officer on appointment.)
- 4.3 The PAO is accountable to Parliament for the issue of any grant-in-aid to NHS Resolution. The PAO is also responsible for advising the responsible minister:
- on an appropriate framework of objectives and targets for NHS Resolution in the light of the Department’s wider strategic aims and priorities;



- on an appropriate budget for NHS Resolution in the light of the Department's overall public expenditure priorities; and
- how well NHS Resolution is achieving its strategic objectives and whether it is delivering value for money.

4.4 The PAO is also responsible for ensuring arrangements are in place to:

- monitor NHS Resolution's activities;
- address any significant problems in NHS Resolution, making such interventions as are judged necessary;
- periodically carry out an assessment of the risks both to the Department and NHS Resolution's objectives and activities;
- inform NHS Resolution of relevant government policy in a timely manner; and
- bring concerns about the activities of NHS Resolution to the full NHS Resolution Board, and, as appropriate, to the Departmental Board requiring explanations and assurances that appropriate action has been taken.

4.5 The NHS Resolution sponsor team in the Department is the primary contact for NHS Resolution. They are the main source of advice to the responsible minister on the discharge of his or her responsibilities in respect of NHS Resolution. They also support the PAO on his or her responsibilities towards NHS Resolution.

## **Responsibilities of NHS Resolution's Chief Executive as Accounting Officer**

### **General**

4.6 The Chief Executive as Accounting Officer is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of NHS Resolution. In addition, he or she should ensure that NHS Resolution as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management that are set out in Box 3.1 of [Managing Public Money](#).

### **Responsibilities for accounting to Parliament**

4.7 The accountabilities include:

- signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with the Government's Finance Reporting Manual for the relevant year as confirmed for the health group via the DH Group Manual for Accounts;
- preparing and signing a Governance Statement covering corporate governance, risk management and oversight of any local responsibilities, for inclusion in the annual report and accounts;
- ensuring that effective procedures for handling complaints about NHS Resolution are established and made widely known within NHS Resolution;
- acting in accordance with the terms of this document, [Managing Public Money](#) and other instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office;
- giving evidence, normally with the PAO, when summoned before the Public Accounts Committee on NHS Resolution's stewardship of public funds.

## Reviewing performance

- 4.8 The PAO's oversight of NHS Resolution's performance relies upon the provision of information, and processes to enable both parties to review performance.
- 4.9 The information provided to the Department by NHS Resolution includes (not an exhaustive list):
- regular reports on performance against key performance indicators (KPIs) and business plan deliverables;
  - regular reports on financial performance against budgetary controls, including prompt notification if over or under spends are likely and what corrective action is being taken;
  - long-term projections for the cost of claims against the NHS, when those claims are likely to fall due for payment and any increases in clinical negligence provisions to be reported in the annual accounts;
  - reports on strategic risks and mitigation plans.
- 4.10 The processes in place to enable the Department and NHS Resolution to review performance include:

- Quarterly accountability reviews (QAR) chaired by the SDS, or a representative, and involving NHS Resolution's Chair, Chief Executive and Finance Director and other relevant staff, depending on the meeting content, to provide assurance that NHS Resolution is delivering against its objectives, managing its finances, identifying and managing risks and working well with partner organisations;
- An annual formal accountability review, to take the place of the final quarterly review of the year, to include a review of the past year's performance against objectives and look forward to the next year;
- As required, meetings between the Department and NHS Resolution's Chair, Chief Executive and other executive directors;
- A representative of the SDS is invited to attend all NHS Resolution Board and Audit and Risk Committee meetings;
- Submission and review of NHS Resolution's business plan and annual budget as part of the Department's annual planning process;
- Annual agreement of KPIs covering the main business areas of NHS Resolution.

4.11 NHS Resolution is responsible for the delivery of its objectives and the Department will limit the circumstances in which it intervenes in its activities. The following constraints do, however, apply:

- All funds allocated to NHS Resolution must be spent on the statutory functions of NHS Resolution. If any funds are spent outside the statutory functions of NHS Resolution, the Department could seek adjustments to the grant in aid for running costs (administration) to compensate;
- The Secretary of State may terminate the tenure of any Non-executive member from the Board in the circumstances set out in Statutory Instrument 1995 No. 2801, as amended.

4.12 In the event of unresolved concerns about how NHS Resolution is carrying out its functions, the Secretary of State is able to direct NHS Resolution. If NHS Resolution failed to comply with such Directions, the Secretary of State could either discharge relevant functions him or herself, or make arrangements for another body to do so on his or her behalf.

## 5. NHS Resolution's Board

- 5.1 NHS Resolution is governed by its Board. The role of the Board is to establish and take forward the strategic aims and objectives of NHS Resolution, consistent with its overall strategic direction and within the policy and resources framework determined by the Secretary of State. Its role is described in the [corporate governance code for central government departments](#) and includes holding its executive management team to account and ensuring the organisation is able to account to Parliament and the public for how it has discharged its functions.
- 5.2 The Board is led by a Non-executive Chair, who is responsible to the Secretary of State for ensuring that NHS Resolution's affairs are conducted with probity, and that NHS Resolution's policies and actions support it in the discharge of its functions and duties efficiently and effectively and meet NHS Resolution's objectives, including those set out in its business plan. The Senior Departmental Sponsor will ensure that there is an annual objective setting and review process in place for the Chair.
- 5.3 The Chair has the following leadership responsibilities:
- leading the process to formulate the Board's strategy;
  - developing and maintaining a high performing board and ensuring high standards of governance within the organisation;
  - ensuring that the Board, in reaching decisions, takes proper account of guidance provided by the responsible minister or the Department;
  - working with the Board to promote the efficient and effective use of staff and other resources, and ensure adherence to high standards of regularity and propriety; and
  - representing the views of the Board to the general public.
- 5.4 NHS Resolution's Chair and Non-executive Directors are appointed by the Secretary of State. Appointments will be transparent, will be made on merit, and are regulated by the Commissioner for Public Appointments. The Chair and Non-executive Directors are responsible for appointing the Chief Executive, and the Chair, Chief Executive and Non-executive Directors are responsible for appointing other Executive Directors.
- 5.5 Within the minimum and maximum size of the Board, the Chair will aim for the Board to consist of equal numbers of Non-executive and Executive members, not

including the Chair, and work in conjunction with the Chief Executive Officer and the Department to achieve this where practical. One of the Non-executive Directors will be appointed as the Senior Independent Director.

- 5.6 The responsibilities of the Board as a whole include supporting the Accounting Officer in ensuring that NHS Resolution exercises proper stewardship of public funds, including compliance with the principles laid out in [Managing Public Money](#); and ensuring that total capital and revenue resource use in a financial year does not exceed the amount specified by the Secretary of State.
- 5.7 The Board will ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The Board will establish an Audit and Risk Committee in accordance with the [Code of Good Practice for Corporate Governance](#) and the [Audit and Risk Assurance Committee Handbook](#) . The Committee will be chaired by a Non-executive Board member with significant experience of financial leadership at board level. Other members need not be main Board members but should be able to demonstrate relevant sectoral experience with an ability to operate at board level. The Committee should have at least four members, although this can be fewer if the Board feel that is justified, and at least half of these should be main Board members. The internal and external auditors must be invited to send a representative to all meetings and be allowed to see all the papers, except where there is a conflict of interest.

## 6. Partnership working

- 6.1 The Department and NHS Resolution will work together, and with the Department's other arm's length bodies, in the interests of patients, people who use services and the public to maximise the health and wellbeing gain for the population, working to the values set out in the NHS Constitution.
- 6.2 To support the development of this relationship, the Department and NHS Resolution have agreed to a set of shared principles:
- Working together for patients, people who use services and the public, demonstrating our commitment to the values of the NHS set out in its Constitution;
  - Respect for the importance of autonomy throughout the system, and the freedom of individual organisations to exercise their functions in the way they consider most appropriate;
  - Recognition that the Secretary of State is ultimately accountable to Parliament and the public for the system overall. NHS Resolution supports the Department in the discharge of its accountability duties, and the Department supports NHS Resolution in the same way;
  - Working together openly and positively. This includes working constructively and collaboratively with other organisations within and beyond the health and social care system.
- 6.3 To support this approach, NHS Resolution and the Department will follow an 'open book' approach. In the case of issues with an impact on the development or implementation of policy, the Department can expect to be kept informed by NHS Resolution. In the same way, the Department will seek to keep NHS Resolution apprised of developments in policy and Government. Where these developments require a response from NHS Resolution which requires consideration by the Board, the Department will endeavour to ensure that sufficient notice is given having regard to the availability of Board members and the frequency of Board meetings. There are likely to be some issues where the Department or NHS Resolution expects to be consulted by the other before the Department or NHS Resolution makes either a decision or a public statement on a matter. The Department and NHS Resolution will make clear which issues fall into this category in good time. The sponsor team is responsible for ensuring that this works effectively.

- 6.4 To support the Secretary of State and the PAO in their accountability functions, the Secretary of State has the power to direct NHS Resolution to disclose to him or her such information as he or she feels necessary to fulfil their duties with respect to the health system. It is therefore expected that the Department will, when required and in accordance with the law, have full access to NHS Resolution's files and information. If necessary, the sponsor team will be responsible for prioritising these requests for information.

## **Public and Parliamentary Accountability**

- 6.5 The Department and its ALBs share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and care sector. Accountability to Parliament is often demonstrated through parliamentary questions, MPs' letters and appearances before parliamentary committees. Accountability to the public may be through the publication of information on NHS Resolution's website, as well as through responses to letters from the public and responses to requests under the Freedom of Information Act.
- 6.6 The Department and its ministers remain responsible to Parliament for the system overall, so will often have to take the lead in demonstrating this accountability. Where this is the case, NHS Resolution will support the Department by, amongst other things, providing information for ministers to enable them to account to Parliament. In its turn, the Department will provide leadership to the system for corporate governance, including setting standards for performance in accountability.
- 6.7 NHS Resolution, however, has its own responsibilities in accounting to the public and to Parliament, and its way of handling these responsibilities will be agreed with the Department. In all matters of public and parliamentary accountability the Department and its ALBs will work together considerately, cooperatively and collaboratively, and any information provided by NHS Resolution will be timely, accurate and, where appropriate, consistent with information provided by the Department. To facilitate this, the Department and NHS Resolution have agreed a public and parliamentary accountability protocol that sets out how they will work together to secure the confidence of the public and Parliament, and to maintain the service levels that MPs and the public have come to expect.

## 7. Transparency

- 7.1 NHS Resolution is an open organisation that carries out its activities transparently, subject to any commercial considerations and the need to protect patient and personal sensitive information. It demonstrates this by proactively publishing on its website key information on areas including pay, diversity of the workforce, performance, the way it manages public money and the public benefits achieved through its activities, and by supporting those who wish to use the data by publishing the information within [guidelines set by the Cabinet Office](#). The publication of its Annual Report and Accounts also plays a role in this process. The annual report will include a governance statement, which is to be reviewed by the SDS.
- 7.2 To underpin the principles of good communication, ‘no surprises’ and transparency, NHS Resolution and the Department will put in place arrangements for managing communications. Further details are provided in Annex A.
- 7.3 NHS Resolution’s Executive and Non-executive Board members will operate within the general principles of the [corporate governance guidelines](#) set out by HM Treasury. They will also comply with the [Cabinet Office’s Code of Conduct for Board Members of Public Bodies](#) and NHS Resolution’s rules on disclosure of financial interests.
- 7.4 NHS Resolution will have a code of conduct for all staff which complies with the principles in the [Cabinet Office’s model code for staff of executive non-Departmental public bodies](#), which includes rules on conflicts of interest, political activity and restrictions on lobbying.
- 7.5 NHS Resolution will take all necessary measures to ensure that:
- patient, personal and/or sensitive information within its care and control is well managed and protected through all stages of its use, including through compliance with the Data Protection Act;
  - it provides public assurance in respect of its information governance practice by completing and publishing an annual information governance assessment using an agreed assessment mechanism;
  - it meets its legal obligations for records management, accountability and public information by compliance with relevant standards, including government and NHS codes of practice on confidentiality, security and records management.



- 7.6 NHS Resolution will appoint a Senior Information Risk Owner and a Caldicott Guardian who will work together to ensure that both patient and other personal information are handled in line with best practice in government and the wider public sector.

## Sustainability

- 7.7 As a major public sector body, NHS Resolution has a key role to play in driving forward the government's commitment to sustainability in the economy, society and the environment. As a minimum, NHS Resolution will comply with the [Greening Government Commitments](#) that apply to all government departments, executive agencies and non-departmental public bodies, set out in the action plan for driving sustainable operations and procurement across government. Reporting will be via the Department (including the consolidation of relevant information in the Department's annual resource account), and the Department will ensure that NHS Resolution is aware of the process for this.

## Raising concerns

- 7.8 NHS Resolution, as with the Department and all its ALBs, has put policies and procedures in place that comply with the Public Interest Disclosure Act 1998 and [best practice guidance](#) to enable the raising of concerns through Freedom to Speak Up guardians. The Act prohibits the use of confidentiality clauses that seek to prevent staff from speaking out on issues of public interest. NHS Resolution will take into account any [learning and guidance](#) disseminated by the National Guardian's office.

## 8. Audit

- 8.1 The Comptroller and Auditor General (C&AG) will audit NHS Resolution's annual accounts. Assuming a satisfactory audit, the C&AG will provide an audit certificate and audit report in time for NHS Resolution to arrange for the accounts to be laid before Parliament in accordance with published timetables.
- 8.2 The C&AG may also choose to conduct a value-for-money audit of any aspect of NHS Resolution's work. NHS Resolution will cooperate fully with the National Audit Office in pursuing such audits and give them full access to all relevant files and information.
- 8.3 NHS Resolution is responsible for establishing and maintaining internal audit arrangements in accordance with the Public Sector Internal Audit Standards. NHS Resolution's internal audit function will report to its Audit and Risk Committee and should consider risks relating to NHS Resolution's adherence to its business plan.
- 8.4 The Department's Audit and Risk Committee remit includes risk management, corporate governance and assurance arrangements in all its subsidiary bodies and so NHS Resolution's Audit and Risk Committee should work closely with the Departmental committee. In support of this, a representative of the Senior Departmental Sponsor will attend meetings of NHS Resolution's Audit and Risk Committee.

## 9. Delegations and financial management

- 9.1 Details of NHS Resolution's financial arrangements, including funding allocation, in-year reporting, preparation of accounts, and the accounting officer's responsibilities in relation to financial management and NHS Resolution's accounts, are provided in Annex B.
- 9.2 NHS Resolution's delegated authorities are issued to it by the Department, including those areas where NHS Resolution must obtain the Department's written approval before proceeding. NHS Resolution will adhere to these delegated authorities.
- 9.3 NHS Resolution must demonstrate that it is delivering its functions in the most efficient manner and must provide timely returns to the Department where these are required either by it or by other departments within central government.
- 9.4 NHS Resolution, as with all public bodies and government departments, must operate within any relevant set of efficiency controls. These controls may affect areas of spend such as information communications technology (ICT), marketing and advertising, procurement, consultancy, the public sector estate, recruitment, major projects or strategic supplier management. The Department will ensure that NHS Resolution is kept informed of any efficiency controls in operation.
- 9.5 A shared or standardised value for money approach will also apply to the use of estate. NHS Resolution will comply with guidance on property and asset management, as set out in Cabinet Office guidelines on use of the estate as set out under National Property Controls. The governance for this is applied through the Department's Property Asset Management Board.
- 9.6 The Practitioner Performance Advice division of NHS Resolution may make such charges and/or put in place such charging mechanisms (under the NHS Litigation Authority Directions 2013), in accordance with [Managing Public Money](#), as approved by the Department and the NHS Resolution Board, to generate income and/or self-funding to replace or partly replace Grant in Aid funding.

# 10. Risk management

- 10.1 NHS Resolution will ensure that the risks that it faces are dealt with in an appropriate manner, according to best practice in corporate governance. The Board will set the organisation's risk appetite and ensure that the framework of governance, risk management and control is in place to manage risk within this. NHS Resolution will develop a risk management strategy in accordance with the Treasury guidance [Management of Risk: Principles and Concepts](#) and it will adopt and implement policies and practices to safeguard itself against fraud and theft, in line with [Treasury guidance](#). It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract or to give grant or grant-in-aid. The Board is supported by the Audit and Risk Committee which is accountable to the Board and supports the Accounting Officer in ensuring that NHS Resolution's risk management process is fit for purpose, working effectively and managed in accordance with the Treasury guidance mentioned above.
- 10.2 NHS Resolution will put in place a reporting process to assure its Board of financial and operational performance against its business plan at its meetings (held every other month). This will include information on risks and how they are being managed and will be shared with the Department at the QAR meetings to enable the Department to assure itself on performance and risk management. NHS Resolution and the Department will agree a process and trigger points for the escalation of risks to the Department's Audit and Risk Committee, where those risks will have a potentially significant impact on NHS Resolution, the Department or the wider system, which requires a co-ordinated response.
- 10.3 Risks to the wider system that arise from NHS Resolution's operations, identified by NHS Resolution, the Department or another body, will be flagged in the QAR meetings chaired by the SDS. Such risks may also be flagged by NHS Resolution's Board and escalated to the Department's Audit and Risk Committee for consideration. It is the responsibility of NHS Resolution and its sponsor to keep each other informed of significant risks to, or arising from, the operations of NHS Resolution within the wider system, and ensure they are being effectively managed.
- 10.4 NHS Resolution will have effective and tested business continuity management (BCM) arrangements in place to be able to respond to disruption to business and to recover time-critical functions where necessary. In line with Cabinet Office guidelines, the BCM system should aim to comply with ISO 22301 Societal Security – Business Continuity Management Systems.

# 11. Human resources

- 11.1 NHS Resolution is responsible for recruiting staff but will comply with any departmental or government-wide recruitment controls. The Department will ensure that NHS Resolution is made aware of any such controls. Executive senior managers (ESMs) in NHS Resolution are subject to the Department's pay framework for ESMs in arm's length bodies and may be subject to additional governance as specified by the Department. The Department will ensure that NHS Resolution is aware of any such requirements or restrictions.
- 11.2 NHS Resolution must obtain the approval of the Secretary of State in respect of policies relating to remuneration, pensions, allowances or gratuities where these are separate from NHS terms and conditions and the ESM pay framework.
- 11.3 ESM remuneration is subject to the Government response to the recommendations of the Senior Salaries Review Body. In relation to the remuneration of the rest of its staff who are paid according to NHS terms and conditions, NHS Resolution is subject to the Government response to the recommendations of the NHS Pay Review Body.
- 11.4 In relation to pensions, the organisational pension scheme is the NHS Pensions scheme, which is administered by the NHS Business Services Authority and has rules set down in legislation.
- 11.5 Like all departments and arm's length bodies, NHS Resolution must follow any requirements for disclosure of pay or pay-related information.
- 11.6 Subject to its financial delegations, NHS Resolution is required to comply with the Department's and HM Treasury's approval processes in relation to contractual redundancy payments. All novel or contentious payments require the Department's and HM Treasury's approval. In certain circumstances, Ministerial and Cabinet Office approval may also be required and the Department will ensure that NHS Resolution is aware when such approval may be required. Special severance payments are always considered novel or contentious (this includes any proposal to make a payment as a result of judicial mediation).

## Equalities

- 11.7 The public sector equality duty requires NHS Resolution (as a public body) to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

11.8 The provisions of the Equality Act 2010 (Specific Duties) Regulations 2011 require NHS Resolution, as a public body, to:

- Annually, publish information to demonstrate compliance with the Public Sector Equality Duty. This information must include, in particular, information relating to persons who share a relevant protected characteristic who are its employees (provided the organisation has 150 or more employees) and other persons affected by its policies and procedures.
- Prepare and publish one or more objectives it thinks it should achieve to meet the Public Sector Equality Duty. (This was initially required by 6 April 2013, and is required every four years thereafter.)

## **12. Relations with the Department's other arm's length bodies**

- 12.1 NHS Resolution works in partnership with the Department and its other arm's length bodies, in the interests of patients, people who use services and the public, to maximise the health and wellbeing gain for the population, and working to the values set out in the NHS Constitution.
- 12.2 The Department and its arm's length bodies (ALBs) have complementary but distinct roles within the system to ensure that service users receive high quality services which deliver value for public money. NHS Resolution will work with other ALBs and key system partners to inform delivery of its strategy and, where necessary, the working arrangements will be suitably documented and agreed between the parties.

## 13. Review

- 13.1 The Department regularly reviews NHS Resolution's performance at formal accountability meetings. In addition, the Department aims to undertake an in-depth Tailored Review of each of its arm's length bodies once in each Parliament. The timing and areas of focus of the review will be determined by the Department in discussion with NHS Resolution and other relevant parties.
- 13.2 Any change to NHS Resolution's core functions or duties, including mergers, significant restructuring or abolition would require secondary legislation, directions by the Secretary of State or both. If this were to happen, the Department would then be responsible for putting in place arrangements to ensure a smooth and orderly transition, with the protection of patients and claimants being paramount. In particular, the Department is to ensure that, where necessary, procedures are in place in NHS Resolution, so the Department can obtain independent assurance on key transactions, financial commitments, cash flows, HR arrangements and other information needed to handle the transition effectively and to maintain the momentum of any ongoing and / or transferred work.
- 13.3 This agreement will be reviewed every three years, or sooner upon request of either party.



# Appendix 1 - list of current indemnity schemes

Indemnity schemes managed by NHS Resolution as at April 2020.

NHS Resolution manages five clinical negligence schemes:

- Clinical Negligence Scheme for Trusts (CNST), which covers clinical negligence claims for incidents occurring on or after 1 April 1995.
- Clinical Negligence Scheme for General Practice (CNSGP), which covers clinical negligence claims for incidents occurring in general practice on, or after, 1 April 2019.
- Existing Liabilities Scheme is centrally funded by the Department of Health and Social Care (DHSC), and covers clinical negligence claims against NHS organisations for incidents occurring before 1 April 1995.
- Ex-Regional Health Authority Scheme is a small scheme centrally funded by DHSC, covering clinical negligence claims against former Regional Health Authorities abolished in 1996.
- DHSC Clinical Scheme covers clinical negligence liabilities that have transferred to the Secretary of State for Health and Social Care following the abolition of any relevant health bodies.
- Clinical Negligence Scheme for Coronavirus (CNSC) is centrally funded by DHSC and covers clinical negligence claims arising from NHS activities provided as part of the Coronavirus response which are not covered by an existing indemnity/insurance arrangement.

NHS Resolution manages two non-clinical schemes under the heading of the Risk Pooling Schemes for Trusts (RPST):

- Liabilities to Third Parties Scheme (LTPS), which covers non-clinical claims such as public and employers' liability, for incidents on or after 1 April 1999.
- Property Expenses Schemes (PES), which covers 'first party' losses such as property damage and theft, for incidents on or after 1 April 1999.

It also manages one other non-clinical scheme:

- DHSC Non-Clinical Scheme, which covers non-clinical negligence liabilities that have transferred to the Secretary of State for Health and Social Care following the abolition of any relevant health bodies.

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NHS Quality, Safety & Investigations, Resolution and GPI Indemnity Branch.

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