THE NATIONAL HEALTH SERVICE LITIGATION AUTHORITY

Report and Accounts 2009

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Aims and objectives

When the NHS Litigation Authority was first created in 1995, our main functions were to administer schemes under which NHS bodies could pool their clinical negligence liabilities and to promote high standards of risk management in the NHS. Since then, our work has expanded to include schemes and risk management standards for non-clinical liabilities, the provision of an information service for the NHS on human rights case-law, dispute resolution between primary care practitioners and their local Primary Care Trusts, and advice and assistance to NHS bodies when handling equal pay and age discrimination claims.

Our aims and objectives are set out in our *Framework Document*:

- The Secretary of State's overall aims for the Authority in administering the schemes are to promote the highest possible standards of patient care and to minimise the suffering resulting from any adverse incidents which do nevertheless occur. In particular, the Authority will contribute to these aims by its efficient, effective and impartial administration of the schemes, and by advising the Secretary of State on any changes that may be needed in the light of experience in running the schemes and of changing circumstances.

In pursuit of this overriding aim, we seek to:

- "…maximise the resources available for patient care, by defending unjustified actions robustly, settling justified actions efficiently, and contributing to the incentives for reducing the number of negligent or preventable incidents…"
- "…ensure that, where liability has been established, patients have appropriate access to remedies including, where proper, financial compensation…"
- "…contribute to the improvement of the quality of patient care by providing incentives within the schemes for NHS bodies to improve cost effective clinical and non clinical risk management…"
- "…minimise the cost to the NHS of obtaining legal advice in relation to the *Human Rights Act 1998,* by providing NHS bodies with access to a centrally coordinated information service…"
- "…provide mechanisms for the proper, prompt and cost-effective resolution of disputes between NHS primary care organisations and the practitioners and organisations that provide or seek to provide services for patients…"
- "…advise and assist (NHS organisations in England) in connection with any matter arising out of or in connection with any equal pay litigation…"

Abbreviations used in this Report

CNST – Clinical Negligence Scheme for Trusts
ELS – Existing Liabilities Scheme
Ex-RHAS – Scheme covering liabilities against the former Regional Health Authorities
FHSA – Family Health Services Appeals
LTPS – Liabilities to Third Parties Scheme
PCTs – Primary Care Trusts
PES – Property Expenses Scheme
RPST – Risk Pooling Schemes for Trusts (collective term for LTPS and PES)

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Contents

Accounts

Chair's report

Professor Joan Higgins
Chair

I am pleased to introduce the Authority's Report and Accounts for 2009. My colleagues have worked hard during the year to meet the objectives which were set for the Authority, when it was first established in 1995. The key challenges which were identified at that time were to create incentives to reduce negligence in the NHS but to provide prompt and appropriate responses to claims when they did arise. The Authority was expected to defend claims robustly and to ensure good use of NHS resources. These priorities have not diminished in the last 14 years, although the NHS landscape has changed significantly. The English NHS has a fair and cost effective system of risk pooling and managing litigation of which it can be proud. However, there are always improvements which can be made.

We are conscious that there are many regulatory bodies which inspect NHS organisations, where roles and responsibilities may overlap. We have been working with colleagues in these other bodies to ensure that, where we can, we develop common (or complementary) standards and share data. We recognise that NHS Trusts need the Authority's support in focusing upon the factors which are critical in reducing harm to patients and staff and which may result in claims and litigation. There is more work to do, but there has been good progress during the year. We are pleased to have built upon good working relationships with the Healthcare Commission, the King's Fund and the Royal College of Obstetricians and Gynaecologists in particular.

One of the areas of highest risk – and the area of greatest cost – is maternity services. The Authority has received a great deal of support from NHS staff and from patients' groups in developing revised standards for maternity care. More than 1,500 comments were received about the proposed standards during the final consultation phase, with hundreds of people taking part in workshops and attending the launch seminars. This should ensure that the standards reflect the very latest thinking on good maternity care and contribute to reductions in harm. We have been very grateful to our partners in DNV who have developed the standards with us and to all the staff and patients who have shared their expertise.

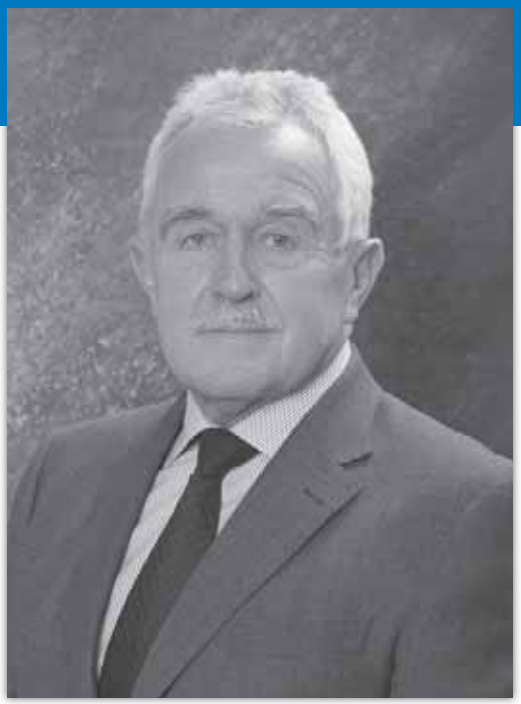
We are often asked whether the CNST and other NHSLA standards really contribute to improved care. This is a difficult question to answer, because of the time lag in receiving claims for compensation and the complex array of other factors which can have an impact upon standards of care. We were pleased, therefore, to see the work of Professor Paul Fenn, of Nottingham University Business School for the Economic and Social Research Council, which suggests that there is a correlation between NHS trusts achieving higher levels in our risk management standards and reductions in MRSA rates (esrcsocietytoday.ac.uk).

As we have said in previous years, one of the Authority's priorities has been to learn lessons from the claims data we collect so as to contribute to better preventive measures in the future. We have been pleased to collaborate with the Stillbirth and Neonatal Deaths Society (SANDS) on a project which we are undertaking, which examines the knowledge we have about stillbirths. We hope, from our different perspectives, to have a real impact upon reducing avoidable deaths and the tragedy to families.

I have mentioned a number of bodies with whom we have worked during the year but would not wish to conclude without thanking all the staff of the Authority for everything they have done to provide an efficient and sensitive service, during 2009.

Professor Dame Joan Higgins
Chair

Chief Executive's report



Stephen Walker
Chief Executive

The economic woes of 2008-09 have been well documented and will no doubt continue to be analysed for many years to come. Within that context, the fluctuating fortunes of CNST appear trivial, but we know that they impacted severely on members, particularly after 3 years of stability. We have endeavoured to explain what happened, particularly to directors of finance, but the key message is that the contributions increase is not an indication of deteriorating standards in the National Health Service. Contributions are entirely a function of payment patterns arising from events which occurred principally in previous financial years.

This year saw an increase in the number of claims settling in the £100-500k range, resolution of over 100 catastrophic injury cases held back pending final agreements on how to apply the Thompstone ruling to periodical payments, significant numbers of settlements involving CFAs (conditional fee arrangements) and, as ever, judicial inflation running at well in excess of RPI.

Further, in keeping with our imperative to free resources to members, we rebated £70m against our call for contributions for 2008-09, a decision entirely correct at the time, but optimistic with the benefit of hindsight.

Contributions for our non-clinical schemes were maintained at (or near) previous levels and we celebrated their tenth anniversary still able to claim that annual contributions were lower than members told us they were paying for insurance in 1998-99.

I mentioned last year that we had completed a tender exercise for our legal panel serving our clinical schemes. This year has seen a parallel exercise for non-clinical work. The new panel is listed on page 29. Whilst congratulating those who were successful, I should emphasise that none of those who have left our panel did so because of failure or criticism; competition was fierce and some good practices simply did not make the final list.

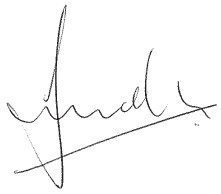
As always, given our functions, it is necessary to comment on developments in the law as it affects us. In Savage, described more fully on page 16, we saw an example of the Human Rights Act, 1998, being used to circumvent the absence of negligence or breach of duty and the absence of the defined relationships to attract compensation for the loss of life. In Peters, featured on page 17, the Court of Appeal determined that a tortfeasor must make financial provision for the future financial consequences of the tort even when other

bodies may have a statutory obligation to meet those losses or, in extremis, might actually be doing so. As with the indexation debate featured in last year's report, despite the impact on the NHS, both developments can be seen to be a route to appropriate remedies from the perspective of both patients and lay people. I mention them only to illustrate what appears to be an inexorable movement in favour of claimants, not to criticise it.

Despite that direction of travel, we enjoyed a very significant legal success for the NHS early in 2009/10 in Hartley under the Authority's equal pay mandate. A detailed summary is on page 18.

The principal risk management event for the Authority in year was the successful launch of our revised CNST Maternity Standards after extensive research and consultation with colleagues within & beyond the service over a two-year period; fuller details are on page 20.

I appreciate how much effort went into these standards and the associated launch events, and I know that they were well received because of the feedback we have had. I would therefore like to thank our contractors in this area, DNV, for their efforts in year. In addition, of course, I would like to thank our solicitors, our actuaries, 1 Crown Office Row for their assistance with our Human Rights Act Advisory Service and, finally, as always I would like to thank all of my colleagues for their sterling efforts throughout the year; anything we achieve is only because of their efforts.



Steve Walker
Chief Executive

Director of Finance's report

Tom Fothergill
Director of Finance

Reviewing the 2008/09 financial year appears to present a number of notable issues for the Authority with our own outturn position bucking the trend of general gloom created by the wider pressures on the economy.

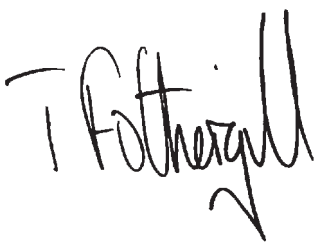
As mentioned elsewhere within this report, the financial pressures on the CNST scheme during 2008/09 left the Authority with little option other than to completely revise its expectations in year and consequently its forecasts for the future. During the year this essentially led to financial support being provided by the Department of Health, for which we are extremely grateful, and for the future this translated into significantly increased contributions for scheme members in 2009/10.

Increases in contributions for 2010/11 and beyond are expected to be more stable although the rebasing referred to has meant that income to the scheme has grown to near £700m per annum from the £470m in recent periods.

I am pleased to report that our final position as presented within the accounts is in line with the revised funding levels set within year. The cash position for CNST at 31st March is extremely close to break even and both positions could only have been achieved with the hard work and attention of our staff in both claims and finance for which I know the members of the Board are extremely grateful.

Our year closed with some more favourable developments than those we expected when our financial pressures began to loom in the summer. Apart from the positive outcome in the Hartley Equal Pay case, just after the end of March, we also received the approval from HM Treasury to maintain our London offices, a position long advocated by the Board of the Authority due to the unique nature of our main litigation business.

The coming financial year will present a different set of pressures in regard to securing a new Central London location but they are challenges we look forward to.



Tom Fothergill
Director of Finance

Claims

Scott Henning
Head of Clinical Claims

Steve Chahla
Head of Non-Clinical Claims

Our schemes

The Authority administers four schemes to handle liability claims against NHS organisations in England. Three cover clinical claims, while the fourth covers non-clinical incidents (typically, injury to visitors, patients and staff). A fifth scheme provides 'first party' insurance-type material damage cover for NHS organisations' property and associated expenses.

The **Clinical Negligence Scheme for Trusts** (CNST) is a voluntary membership scheme, to which all NHS trusts, Foundation trusts and Primary Care Trusts (PCTs) in England currently belong. It covers all clinical claims where the incident took place on or after 1 April 1995. The costs of meeting these claims are met through members' contributions on a 'pay-as-you-go' basis.

The **Existing Liabilities Scheme** (ELS) is centrally funded by the Department of Health and covers clinical claims against NHS organisations where the incident took place before 1 April 1995.

The **Ex-RHA Scheme** is a relatively small scheme covering clinical claims made against the former Regional Health Authorities, which were abolished in 1996. Like the ELS it is centrally funded by the Department of Health. It differs from our other schemes in that the Authority is the legal defendant in any action.

The **Liabilities to Third Parties Scheme** (LTPS) and the **Property Expenses Scheme** (PES), known collectively as the Risk Pooling Schemes for Trusts (RPST), are two voluntary membership schemes covering non-clinical claims where the incident occurred on or after 1 April 1999. Like CNST, costs are met through members' contributions on a 'pay-as-you-go' basis.

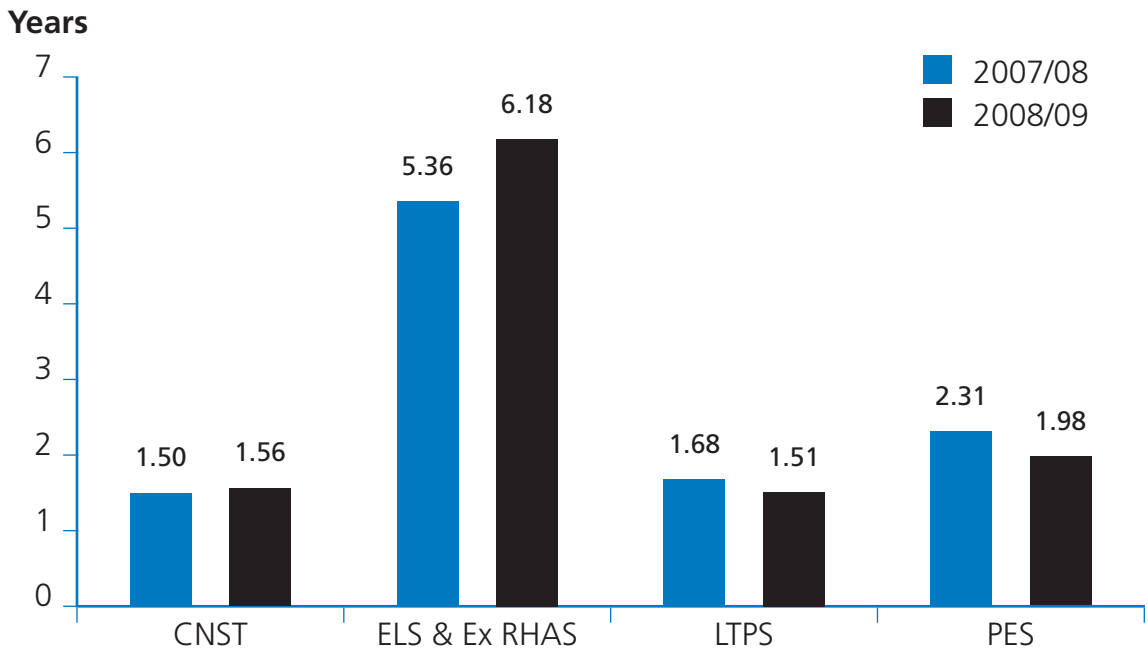
Avoiding litigation

Our remit when handling claims against the NHS, set out in our Framework Document, is to *"maximise the resources available for patient care…by defending unjustified actions robustly, settling justified actions efficiently, and contributing to…the number of… preventable incidents"*. We aim to settle claims as promptly as possible and we encourage NHS organisations to offer patients and staff explanations and apologies. We seek to avoid formal litigation as far as possible and our historical data shows that only about 4% of our cases go to court, including settlements made on behalf of minors that automatically require approval by a court.

Period between notification and resolution of claims

The chart below shows the average time we have taken, by scheme, to deal with the claims we handled in the past two years. We calculate this figure from the date when a claim is first notified to the NHS organisation concerned, for ELS claims, or to the Authority for our other schemes, until the date when damages are agreed or the claim is successfully defended or discontinued. There has been a small increase in the average time taken to resolve claims across all schemes of 3.5% compared with 2007/08. The complexity of typical ELS and Ex-RHAS claims means that their time to resolution is invariably longer than CNST claims.

Period between notification and resolution of claims



Outcome of claims

Whenever possible and appropriate, we attempt to settle claims without litigation. Of the 8,885 clinical and non-clinical claims where a formal letter of claim was received in 2008/09, typically less than 4% will go to Court. The historical figure of 4% does not include claims settled by individual NHS organisations within their excess and open incidents investigated but not yet proceeded with as a claim.

Volume of claims

2008/09 saw a significant increase in the number of claims received, compared with the same period last year. Clinical claims rose by more than 11% and non-clinical claims by over 10%. The preceding five years had seen a largely static intake of new claims and we have not been able to identify any single factor that might have precipitated the rise. The table below shows the numbers of claims received under each of our five schemes in each of the past three years.

Volumes of claims

Year end	Incidents under investigation	Claims where formal letter of claim has been received	Total
Clinical Negligence Scheme for Trusts			
31 March 2007	714	4,566	5,280
31 March 2008	842	4,512	5,354
31 March 2009	813	5,142	5,955
Existing Liabilities Scheme			
31 March 2007	38	108	146
31 March 2008	35	80	115
31 March 2009	30	101	131
Ex-Regional Health Authorities Scheme			
31 March 2007	0	0	0
31 March 2008	0	1	1
31 March 2009	0	2	2
Liability to Third Parties Scheme			
31 March 2007	82	3,138	3,220
31 March 2008	44	3,277	3,321
31 March 2009	19	3,640	3,659
Property Expenses Scheme			
31 March 2007	0	73	73
31 March 2008	0	59	59
31 March 2009	0	84	84

Claims outstanding at year end

The number of outstanding incidents and claims at the year end showed an increase for the first time in five years. The increase of 4.6% across all schemes was largely a consequence of the significant increase in new claims received, as highlighted above. The overall increase would have been higher but for a reduction in the number of outstanding non-clinical claims, which typically resolve much sooner than most clinical claims and thus lead to earlier closure. The table below shows the number of claims outstanding under each of the schemes at the end of the past three financial years.

Claims outstanding at year end

Year end	Incidents under investigation	Claims where formal letter of claim has been received	Total
Clinical Negligence Scheme for Trusts			
31 March 2007	1,087	9,333	10,420
31 March 2008	1,137	9,052	10,189
31 March 2009	1,096	10,339	11,435
Existing Liabilities Scheme			
31 March 2007	190	1,342	1,532
31 March 2008	118	1,121	1,239
31 March 2009	89	1,063	1,152
Ex-Regional Health Authorities Scheme			
31 March 2007	1	19	20
31 March 2008	1	17	18
31 March 2009	1	16	17
Liability to Third Parties Scheme			
31 March 2007	88	7,497	7,585
31 March 2008	46	6,655	6,701
31 March 2009	23	6,347	6,370
Property Expenses Scheme			
31 March 2007	0	170	170
31 March 2008	0	114	114
31 March 2009	0	134	134

Payments

The table below shows the Authority's expenditure on claims in each of the last three financial years.

Payments made	2006/07 £000	2007/08 £000	2008/09 £000
CNST	424,351	456,301	614,342
ELS	153,246	171,562	150,805
Ex-RHAS	1,794	5,462	4,078
Total	**579,391**	**633,325**	**769,225**
LTPS	29,697	24,986	33,976
PES	4,186	2,729	3,914
Total	**33,883**	**27,715**	**37,890**
Overall total	**£613,274**	**£661,040**	**£807,115**

The amounts shown include both damages paid to claimants (patients, staff and members of the public) and the legal costs incurred on both sides where these are met by the Authority, but exclude our reserves. The figures do not represent the value of claims made during the year, as many of the claims will not have been settled at year-end. The figures in this section relate to payments made in relation to claims made in several years. Total claims expenditure across all schemes in 2008/9 increased by over 22% compared with the same period last year.

Legal costs

The costs claimed by claimant lawyers continue to be significantly higher than those incurred on our behalf by our panel defence solicitors. This remains a very significant concern for us and attracted significant coverage in the press during the year. The availability of Conditional Fee Agreements (CFAs) and the increase in their use by claimants in clinical claims has meant that claimants' costs are often significantly disproportionate to the amount of damages paid, particularly in low-value claims. The table below shows the ratios between damages paid to claimants and legal costs paid to claimant and defence lawyers. Again, these figures cannot be equated with the figures for total claims expenditure in 2008/09 because they relate only to claims closed during the year. This is because it is only possible to provide meaningful data on the ratio between costs and damages when a claim has been closed and all the related payments have been made.

Legal costs in relation to damages						
No of claims	Damages £000	Defence legal costs £000	Claimant legal costs £000	Total costs £000	Defence costs as % of damages	Claimant costs as % of damages
Clinical Negligence Scheme for Trusts claims closed in 2008/09						
2,980	242,314	31,964	91,586	123,550	13.19%	37.80%
Existing Liabilities Scheme claims closed in 2008/09						
133	70,140	7,694	12,046	19,740	10.97%	17.17%
All clinical negligence claims closed in 2008/09						
3,113	312,454	39,658	103,632	143,290	12.69%	33.17%

Unlike in previous years, the above table does not include those claims where damages were not paid to the claimant, i.e. where no liability was established. In 2008/09, 2,522 clinical claims were closed without any damages being paid; the total costs incurred for these claims were £8.8 million.

Periodical payments

Periodical payments are damages settlements which include payments made on a regular basis, usually throughout the claimant's life, in place of the traditional single lump sum to cover all future needs. We continue to encourage their use when appropriate, as we consider them to be the fairest method, both for claimants and the NHS, of settling most, if not all, high value personal injury claims, where future costs are significant. At 31 March 2009, we were making periodical payments in 659 cases, compared with 548 at 31 March 2008 and 471 at 31 March 2007. The provisions for periodical payments as at 31 March 2009 total £1,372,764,048.

The adoption by the Court of Appeal in the Thompstone cases of the Annual Survey of Hours and Earnings (ASHE) in place of the Retail Price Index (RPI) as the appropriate index used to annually uplift future care costs had a significant impact of the cost of periodical payments. ASHE 6115, the measure associated with the earnings of care assistants and home carers, is now routinely used to uplift the cost of future care in catastrophic injury cases.

Overall 2008/09 was a challenging year for the Authority and its claims staff, whom we would like to single out for praise for their continuing commitment on behalf of the Authority and the NHS as a whole.

Important cases for the NHS in 2008/09

John Mead
Technical Claims Director

This was not a vintage year for corporate defendants generally, nor for the NHS in particular, in most areas of litigation managed by the Authority. Indeed, it is probable that increased numbers of claims against the NHS will be generated by two of the following decisions, whilst the third is likely to make high-value cases even more expensive in some instances.

Savage v South Essex Partnership NHS Foundation Trust

The House of Lords gave its ruling on 10 December 2008, and upheld the judgment of the Court of Appeal a year earlier. Mrs. Savage had been detained under section 3 of the Mental Health Act, 1983. She suffered from schizophrenia, but her condition was not such as to warrant her being held in a locked ward. On 5 July 2004 she walked out of hospital and jumped in front of a train, sustaining fatal injuries. Her daughter brought a claim under Article 2 of the European Convention on Human Rights (right to life). There was no claim in negligence. The House was asked to determine the proper test to establish a breach of Article 2.

It was held that the correct test was whether the hospital authorities knew, or ought to have known, that the deceased posed a real and immediate risk of suicide and, if so, whether they did all that could reasonably be expected of them to prevent that risk. Importantly, the trust was not held to have breached that requirement: this issue will have to proceed to trial separately, unless the parties can reach agreement in the interim. Moreover, one Law Lord questioned whether the daughter qualified as a "victim" for the purposes of Human Rights legislation.

This was a higher duty than we had argued for, although one of the judges stressed that in her opinion, the ruling should not persuade healthcare professionals to behave any more cautiously or defensively than they are already persuaded to do by the ordinary law of negligence. Time will tell whether or not that view is correct, and indeed whether this decision will result in a surge of Article 2 claims against the NHS, which is a possibility.

Yearworth and Others v North Bristol NHS Trust

As I reported last year, these claims were rejected by Exeter County Court. However, on 4 February 2009 the Court of Appeal, headed by the Lord Chief Justice, took a totally different approach and allowed the actions to proceed.

The six claimants were male cancer patients who had banked semen samples with the trust for possible future use. Through the trust's admitted negligence, the samples thawed and became unviable. Five claimants allegedly sustained psychiatric trauma as a result, believing that possibly their last chance to become a father had been lost. The sixth suffered mental distress. In fact, the fertility of three claimants subsequently returned.

The issues before the court were whether the six men had suffered personal injury or property damage, or any other form of loss recognised by the law. The Court of Appeal agreed with the trial judge that damage to sperm did not constitute personal injury, but held that the men retained ownership of the sperm. Further, it decided that an issue not argued at first instance, namely bailment, was germane. This legal term refers to a situation where one party holds, by agreement, property belonging to another. The court decided that the trust were bailees of the sperm, and that they had been in breach of their duties as bailees. The matter will now return to Exeter County Court for a ruling on the amount of damages payable.

This is a very novel ruling and has arguably increased NHS liabilities, although at present there are relatively few claims of this type on our books.

Chantelle Peters v East Midlands Strategic Health Authority and Others

The claimant suffered severe injuries as a result of admitted NHS negligence in the late 1980s in failing to arrange for her mother to be vaccinated against rubella. The SHA and the GP agreed to share liability on a 30/70% basis. Chantelle was born with congenital rubella syndrome. She requires significant ongoing care. Since February 2007, she has been placed at The Spinnies, a small private residential home, the cost of which – amounting to over £130,000 per annum – has been met jointly by the local authority and the PCT. All parties agreed that this was an ideal placement for Chantelle. However, the trial judge decided that future public funding was not guaranteed, and that the home might not be suitable for the whole of Chantelle's life. He therefore ordered the defendants to pay all future care and accommodation costs, despite the fact that Chantelle has an entitlement under statute to receive these free of charge.

Both the SHA and the GP appealed, on the basis that there was no evidence that The Spinnies would become unsuitable, and that the statutory entitlement could not be withdrawn, with the consequent possibility of double recovery. The Court of Appeal, however, rejected these arguments. It held that there was no reason in policy or principle to require the claimant to rely upon state funding. The negligent defendants should pay. There was a safeguard against the possibility of double recovery because Chantelle's Deputy had undertaken not to make any future application for public funding on her behalf without an order from the Court of Protection, and without the defendants being given the opportunity to make representations.

This ruling is likely to result in Deputies acting for other seriously injured claimants giving similar undertakings. That will in turn make reverse indemnities, under which the defendant pays 100% and then receives the benefit of any public funding secured on behalf of the claimant, more difficult for defendants to negotiate. The net effect will be to increase NHS outlay in some of the largest personal injury claims.

Equal pay

The Authority has continued to fulfil its remit from the Department of Health to manage equal pay claims on behalf of NHS organisations in England. Sign-up is now over 96%, which means that we can demonstrate that we represent the vast majority of English NHS bodies.

We have identified various test issues and used funding from the Department to meet defence legal costs in key cases. We have continued to participate in seminars for trust HR staff across England and have briefed SHA representatives on a frequent basis. Much information and guidance on equal pay is also available on our website. We continue to arrange quarterly seminars for defence solicitors, so as to ensure that information and ideas are shared, for the benefit of NHS organisations.

The key equal pay litigation in 2008/9 was undoubtedly *Hartley v Northumbria Healthcare NHST, Secretary of State for Health and Others.* This case was heard over many weeks by the Newcastle Employment Tribunal at the end of 2008. In brief, it was alleged on behalf of the claimants that Agenda for Change (AfC), the national job evaluation study implemented (following earlier trials) across the NHS in 2004, failed to comply fully with anti-discrimination legislation, and that it incorporated previous discriminatory practices.

In contrast with the disappointing rulings received in other areas of litigation managed by the Authority, mentioned earlier in this report, the Tribunal's decision in *Hartley,* which was received early in 2009/10, was extremely favourable. It was held amongst other things that the claimants had been unable to show systemic discrimination in NHS pay systems prior to AfC; that there had been no perpetuation of historic discrimination; that recruitment and retention premiums were not used inappropriately; and that AfC was a properly analytical job evaluation study. This was a comprehensive victory for the NHS and also for the co-signatories to AfC, namely the Secretary of State and the unions, all of which were sued. There may be an appeal on some or all of these issues, but this is a very encouraging result indeed for all those involved in planning and implementing AfC.

Other test issues in equal pay are moving through the tribunal system and, in a few instances, reaching the Court of Appeal. It is only when we have definitive rulings on these issues that the overall picture for the NHS can be assessed fully. Some cases are likely to reach the House of Lords (or Supreme Court, as it will be renamed in autumn 2009) in due course.

It must be stressed, however, that both the Authority and the Secretary of State for Health are fully committed to the concept of equal pay. It has been a legal right since the 1970s, and many might think it surprising that significant numbers of claims are still being brought. However, because there have been very few rulings of the higher courts on NHS equal pay issues in the past, the law in key areas remains unresolved. It is in the interests of all parties – claimants, unions, employers and the Authority – that the test issues are concluded quickly, thereby enabling the raft of following claims to be determined one way or the other. We are working hard towards that goal.

Risk management

Alison Bartholomew
Risk Management Director

The Authority has a remit to encourage NHS trusts and independent sector providers of NHS care to improve their clinical and non-clinical risk management practices on a cost effective basis. This responsibility, aimed at improving the safety of NHS patients and staff, is met mainly through the provision of risk management standards, based on identified causes of claims, against which organisations are assessed. In addition, the Authority provides ongoing support and training to organisations to assist them in achieving the standards.

Standards and assessments

There are separate risk management standards incorporating organisational, clinical and health and safety risks for NHS acute, mental health & learning disability, ambulance and primary care trusts and independent sector providers of NHS care. Each set of standards contains five individual standard areas: Governance; Competent & Capable Workforce; Safe Environment; Clinical Care; Learning from Experience. Within each standard, there are ten equally weighted criteria or risk areas. Each risk area is addressed through an ongoing programme of assessment at three distinct, progressive levels:

- Level 1 – documentation (policy)
- Level 2 – implementation (practice)
- Level 3 – monitoring and improvement (performance).

To achieve compliance, organisations must pass at least 40 out of the 50 criteria with no fewer than seven passes in any standard. NHS trusts receive increasing discounts, ranging from 10% – 30%, on their contributions to our risk pooling schemes as they progress from Level 1 to Level 3. The results of assessments are published on our website in Factsheet 4 on a monthly basis, as well as copies of assessment reports.

A range of tools are available including handbooks containing guidance and reference sources in the support of the standards, an electronic evidence template to enable organisations to conduct a self-assessment and to accompany evidence submitted for assessment, and template documents to assist organisations in drafting local policies to manage risks.

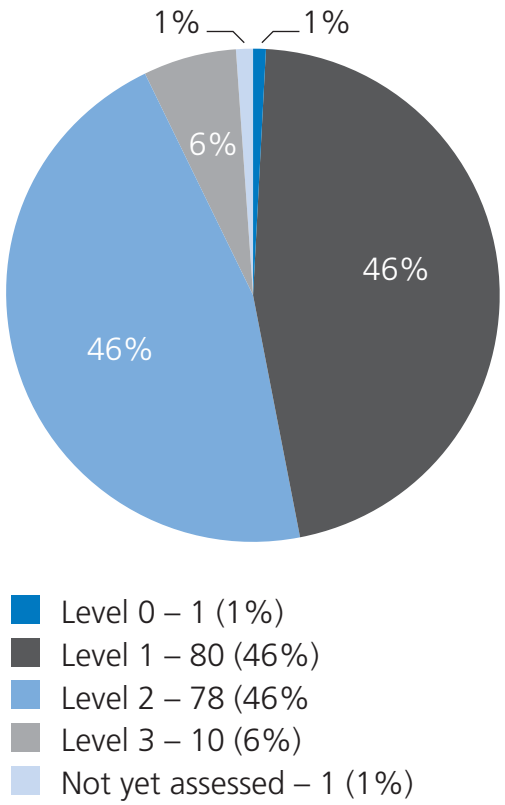
Our new Risk Management Standards for Acute Trusts were introduced in April 2007. All NHS acute trusts (other than one new organisation) have now been assessed against the

standards and by the end of March 2009, 52% had achieved the higher levels. The results of all assessments are shown in the chart below.

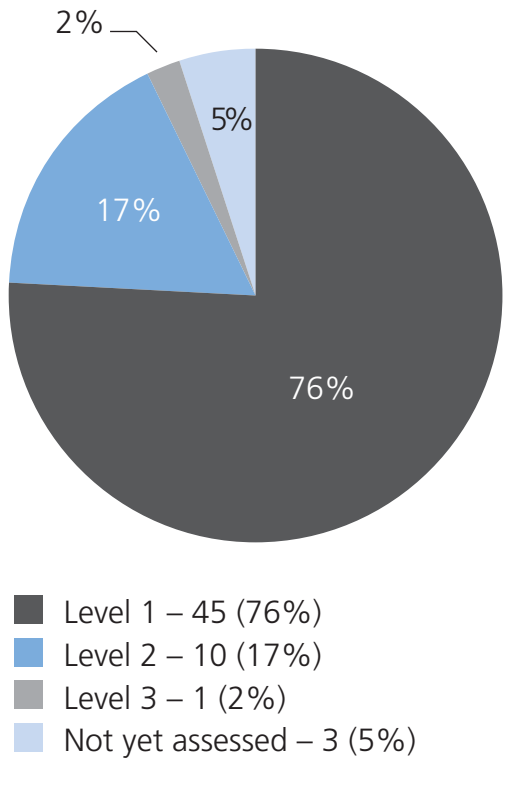
An electronic, post assessment questionnaire, designed to inform the future development of the processes behind the risk management programme was piloted with acute trusts assessed between October 2008 and March 2009. The response rate of 59% indicates that those subject to assessment are keen to influence future developments, with responses received being mainly positive, including some practical suggestions for further improvement. The questionnaire will be rolled out to all organisations undergoing assessment against all our standards in 2009/10.

The Risk Management Standards for Mental Health & Learning Disability Trusts were introduced in April 2008. By the end of March 2009, most NHS mental health & learning disability trusts had been assessed against the standards and the results are shown in the chart below.

Acute levels at 31 March 2009



Mental health and learning disability levels 31 March 2009



All NHS ambulance trusts have been assessed against our Risk Management Standards for Ambulance Trusts which were introduced in April 2008 and most had attained Level 1 by the end of March 2009.

During 2008/09, we sought the views of primary care trusts on proposals for their future assessment. More than 40% of organisations responded to the consultation, with a significant majority supporting the proposals. As a consequence, we suspended the mandatory assessment of primary care trusts in 2008/09, although organisations could

choose to proceed with a booked assessment or request an informal support visit. By the end of March 2009, 56% of primary care trusts had either undergone an assessment against our Risk Management Standards for Primary Care Trusts or requested an informal visit.

The Authority also took the decision to suspend mandatory assessments for independent sector providers of NHS care during 2008/09 because of duplication with assessments conducted by the Healthcare Commission. As a result, just three organisations have been assessed.

In response to the large number and cost of maternity claims, we introduced separate risk management standards for maternity services in 2003. These standards have recently undergone a fundamental review and the revised CNST Maternity Clinical Risk Management Standards were launched by the Authority in March 2009. The standards reflect two years of development work, including extensive consultation with stakeholders and over 40 pilot assessments. The standards contain 50 risk areas, assessed at all three levels, organised into five standards: Organisation; Clinical Care; High Risk Conditions; Communication; Postnatal and Newborn Care.

Education

To coincide with the publication of the CNST maternity standards manual, we held three launch seminars for a total of more than 300 delegates, mainly from maternity services but also other stakeholders, in March 2009.

A total of more than 30 practical workshops on the Authority's standards were held in 2008/09 for each type of NHS healthcare organisation, including maternity services and independent sector providers of NHS care. Delegates attended from 86% of organisations. An electronic, post event delegate evaluation tool was used to obtain feedback on the workshops which was largely positive.

A training needs analysis was conducted during the year, using the evaluation questionnaire sent to delegates attending the workshops and representatives of organisations that did not attend, to assist in the effective planning of future events and other learning opportunities. The overall response rate was 67%, indicating a high level of interest in our risk management education programme.

In addition to attendance at learning events, in the year(s) between assessments organisations are offered informal visits from their assessor to provide focused support and guidance in relation to our standards. In 2008/09, 69% of eligible organisations (excluding primary care trusts) took advantage of this opportunity.

Concordat

The *Concordat between bodies inspecting, regulating and auditing healthcare* is a voluntary agreement designed to support improvements in healthcare whilst minimising the disruption and duplication of inspection. As a full signatory, the Authority has continued to participate actively in all matters relating to the Concordat both via joint working and through the application of its principles to all aspects of our own

risk management activities. Some examples of the actions we have taken to reduce bureaucracy over the past year were highlighted in the Department of Health *Simplification Plan – Year Three* (December 2008).

During the year, the Authority collaborated with a number of other Concordat signatories including the Audit Commission, Post-graduate Medical Education and Training Board, Healthcare Commission, Health & Safety Executive, and NHS Security Management Service to share assessment and other information. We also made a significant contributor to the Risk Summits held within each Strategic Health Authority area to review local NHS providers, participating in all events and contributing to the development of the framework for the events.

We will be seeking ways to work with the new Care Quality Commission to continue to reduce unnecessary bureaucracy and regulation and contributed to several initiatives during the year aimed at informing how such reduction can be achieved.

Patient Safety

By sharing its unique experience and knowledge, we are able to make a positive contribution towards improving patient safety and continue to liaise and work closely with other bodies on this important issue. For example, we are supporting The King's Fund Safer Births initiative to improve the safety of NHS maternity services, work with the National Institute for Health and Clinical Excellence (NICE) has resulted in a standalone criterion on NICE best practice in our 2009/10 standards, and there has been liaison with the National Patient Safety Agency (NPSA) in relation to Being Open.

During the year, a project was undertaken to review the risk management activities of our clinical panel solicitors and to work with them to develop a framework within which activities are more cohesive and comprehensive, and to ensure alignment with our own risk management programme. Early changes include an increase in the number and range of electronic bulletins and other relevant documents produced by panel firms posted on our website, and seeking opportunities to speak at each others events. Other initiatives are now being explored.

One of our priorities is to facilitate the learning of lessons from claims and thereby contribute to better preventative measures in future. A joint project between our risk management and claims teams, in collaboration with the Stillbirth and Neonatal Deaths Society (SANDS), to examine the information we hold about stillbirths, has begun and will report in 2009/10.

Risk Management Services

In April 2007 the Authority entered into a five year contract with Det Norske Veritas Ltd (DNV) to develop and maintain the risk management standards, conduct assessments, and provide education services. DNV continued to provide a good service during the year, meeting or exceeding most of their agreed Key Performance Indicators.

Family Health Services appeals

Paul Burns
Chief Officer, Appeal Unit

The Secretary of State for Health in exercise of the powers conferred in relevant sections of the National Health Service Act 2006 gives Directions to the Authority to discharge certain "appellate and other functions" in connection with the decisions and functions of PCTs. These functions are performed by the Authority's Family Health Services Appeal Unit, which is based in Harrogate.

The total number of cases received and determined was marginally higher than the previous year. While the mix of case types varies from year to year, it was the significant increase in the number of pharmacy appeals that dominated this year with over 500 cases determined, the highest figure for nearly a decade. The paucity in some other work and the Unit's capacity to respond assisted in maintaining good performance figures in line with those of recent years. Additional statistics to the Unit's work are available on our website.

During the year, while continuing to provide the administration of the Family Health Services Appeal Authority (FHSAA) for England and Wales, the Authority assisted in the preparation for transfer of the FHSAA to the Tribunals Service, an executive agency of the Ministry of Justice, on 1 April 2009. This replaces the current arrangements with the Authority, although this change does not affect fitness to practise notifications and appeals to the Secretary of State under the jurisdiction of the Authority.

Dispute resolution

The dispute resolution procedures are those contained in regulations relating to primary care contracts. The relevant regulations are:

- The NHS (General Medical Services Contracts) Regulations 2004
- The NHS (Personal Medical Services Agreements) Regulations 2004
- The NHS (General Dental Services Contracts) Regulations 2005
- The NHS (Personal Dental Services Agreements) Regulations 2005
- The NHS (Local Pharmaceutical Services etc) Regulations 2006
- The General Ophthalmic Services Contracts Regulations 2008

The medical dispute resolution procedure again became the main source of disputes, with PMS superannuation and current market rent being the two main areas of dispute. Otherwise, both medical and dental disputes raised the usual mix of disputes from remuneration,

including claw-back of monies, to terminations of contract. The Authority determined 87 medical disputes and 18 dental disputes on the papers and one case for each profession required an oral hearing.

The GOS Contracts Regulations were introduced during the year, although no disputes that properly rest with the Authority were received. On occasion, for any of the primary care professions, the Authority receives an appeal or dispute resolution application that properly rests with the FHSAA, or the Strategic Health Authority in the case of certain medical disputes. A small number of GOS appeals were received relating to the refusal of a contract due to premises, which were forwarded to the FHSAA.

Of course, determinations of these disputes may be subject to legal challenge by way of judicial review. One medical claimant unsuccessfully challenged a previous decision of the Court not to grant permission to proceed. One medical contractor, with their landlords, sought to challenge the dispute resolution process and in particular the Authority's established procedure in appointing an adviser with regard to current market rent advice. While the claimant was unsuccessful in challenging the dispute resolution process contained in the regulations under Article 6 of the European Convention on Human Rights, the claim for relief succeeded on the 'apparent bias' ground argued under English law.

Prior to the current medical contract regulations coming into force in April 2004, the Authority's predecessor determined representations with regard to the provision of Information Management and Technology services. Those services are now part of the GP Systems of Choice (GPSoC) contract and the agreement between the PCT and practice contains a dispute resolution procedure, similar to the main regulations, for NHS Contracts only. From August 2008, this dispute resolution procedure has been undertaken by the Authority.

Appeals

Under the *NHS (Pharmaceutical Services) Regulations 2005*, the number of appeals determined increased by over 50% compared to last year. The peak of new appeals was during the summer months, with the majority relating to applications sent to the PCT shortly before the introduction of fees in April 2008. While the average times to determine appeals increased at this time, the majority of cases were determined within target to the credit of the panel members, who heard 112 cases, the committee and staff at the Appeal Unit.

A three year comparison of the numbers of appeals received and closed is shown below.

Year	2006/07	2007/08	2008/09
Appeals received	307	362	515
Appeals closed	295	337	512

Of course, determinations of these appeals may be subject to legal challenge by way of judicial review. Following the previous judgments of the High Court that considered two claims against the Authority's decisions under Regulation 12, one being successful, the Court of Appeal heard the claimants appeal and our counter appeal in respect of those

judgments. The main question of construction debated was what the decision-maker had to have regard to in relation to the 'reasonable choice' criteria, which was established as one factor. The judgments in both cases were in favour of our approach where the challenged reasoning could not be faulted and both decisions legally tenable.

The *NHS (Service Committee and Tribunal) Regulations 1992* remain in force for pharmacists and while disciplinary appeals are rare, two appeals were heard with the appellant being successful in both cases.

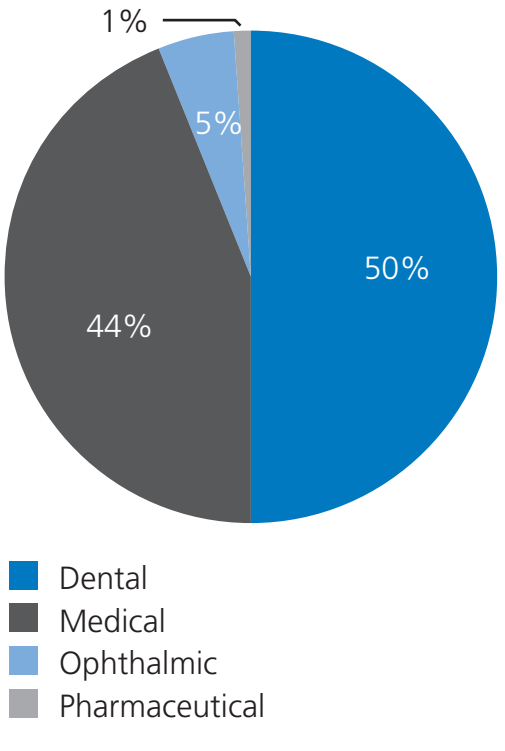
Fitness to practise: PCT notifications and checks

The National Health Service (Performers Lists) Regulations 2004 currently apply to the medical, dental and ophthalmic professions, with similar provision for pharmacists in separate regulations. The Authority received notification of 88 suspensions, with 76 remaining in force as at 31 March 2009, and 841 other local decisions in respect of performers under the fitness to practise procedures. The chart below breaks down the latter by profession.

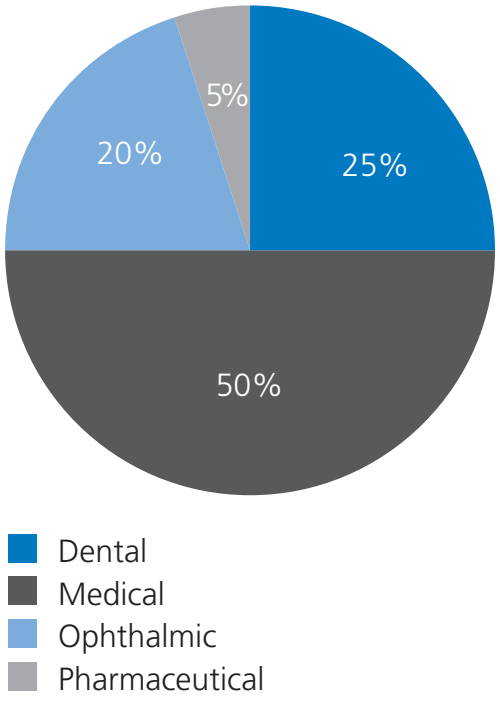
The Authority holds details of the notifications on a database for the purpose of responding to PCT requests for checks on performers and over 14,000 requests were processed during the year, with a secure on-line checking facility for PCTs being rolled out by the Authority from September. The number of requests is broken down by profession in the chart below.

Following decisions of the tribunal FHSAA, and its predecessor NHS Tribunal, there are currently 71 (58 medical, 10 dental, 3 ophthalmic) performers who have been nationally disqualified from practising in NHS primary care. A PCT is notified of such a disqualification when seeking fitness to practise information.

2008/09 Notifications by Profession (other than suspension)



Restriction Checks by Profession 2008/09



Our people

David Bell
Director of Human Resources

At the end of 2008/09 we employed 140 people (131 whole time equivalents). Of these 113 (105 wte) were directly involved in directly handling claims or appeals, with the remainder involved with risk management and our standards and in providing support services.

Our staff survey in 2008 saw many of the key indicators of employee engagement moving in the right direction and some very positive comparisons with similar NHS organisations, especially in relation to flexible working, work-life balance and employees actively seeking jobs elsewhere. However, there is still work to be done in several areas and this is a focus for our plans for 2009/10.

An important initiative in 2008/09 was the start of a quarterly forum for managers, providing a regular opportunity for discussion and updates on key employment issues, supported by an online virtual HR intranet channel.

Learning and development

Another very positive indicator from the staff survey was that 89% of employees reported having had an annual review meeting, using the NHS Knowledge and Skills Framework (KSF). This represents a great improvement on the 59% in the 2006 survey and is well above the average for comparable NHS organisations. Our internal auditors liked the way we have adopted the online e-KSF system and reported good overall reaction to using KSF from managers and staff, especially from those who had taken time to appreciate the full benefits, and their findings are being used to help spread the good practice.

There was a very full schedule of claims-related legal updates, thanks in part to our panel firms, all-employee briefings on data protection and freedom of information, a programme for managers specially commissioned from the King's Fund and further groups of employees achieving IT qualifications and NVQs with the support of the government's Train to Gain initiative, partly in response to our work to meet the Skills Pledge. A pre-assessment against the Investors in People standard in 2008/09 indicated that we would be ready to achieve accreditation in 2009/10.

Equality and diversity

During 2008/09 we reviewed our Equality Scheme and published a new version after a consultation exercise involving all our staff and other stake holders. The Scheme sets out our commitment to equality on the grounds of race, sex, disability, sexual orientation, religious or other belief and age, not only for employees but also across our services and interactions with external parties. Our good practice in this area was supported during the year by some hugely successful workshops involving all our Board members and managers from across the organisation. Plans are in place to abolish our default retirement age in 2009/10 for all employees. We had no active equal pay claims on 31 March 2009.

Good corporate citizen

Using the model developed by the Sustainable Development Commission for the NHS, the Authority is committed to embracing the principles of sustainable development in relation to:

- Employment and skills
- Transport
- Procurement
- Facilities management
- Community engagement
- New buildings

We continue to take our responsibilities as a corporate citizen seriously and during 2008/09 twice updated our action plan, which you can see on our website. The plan involves employees in making suggestions to support the long-term sustainability of our activities, whilst not compromising on their quality or the standard of their delivery. The New Economics Foundation (neweconomics.org), an independent think tank, used our approach and advice in their work with King's Health Partners, the new Academic Health Science Centre in south London. Our work in this area is led by Professor Rory Shaw, a non-executive director.

We are working to develop indicators to provide some objective measures of our successes in relation to reducing waste, increasing recycling, reducing use of cars for business purposes and reducing our use of energy, partly in response to the English NHS target to reduce carbon emissions by 10% by 2015. A key achievement has been the recycling of 75% of our waste and we are looking to improve that even further. The move from Napier House will set us challenging targets in terms of office space and our IT team is already working on innovative solutions to improve and expand the opportunities for remote working, with consequent reductions in the environmental impact of our activities and increased flexibility for our employees.

Human Rights Act Information Service

The Authority's quarterly Human Rights Act newsletter is now produced by 1 Crown Office Row, a set of barristers' chambers, on the Authority's behalf and is available on our website. Our database of human rights cases of particular interest to the NHS is available free of charge through our website.

Professional advisers

The Authority maintains two panels of solicitors, the first specialising in clinical claims and the second in non-clinical claims. Current membership is given below. The clinical panel was reviewed during 2007/08 and the non-clinical panel in 2008/09.

Clinical negligence claims: panel of solicitors

Barlow Lyde & Gilbert LLP
Beachcroft LLP
Bevan Brittan LLP
Browne Jacobson LLP
Capsticks LLP
Eversheds LLP (until 31 March 2009)
Hempsons
Hill Dickinson LLP
Kennedys
Ward Hadaway
Weightmans LLP

Non-clinical claims: panel of solicitors

Barlow Lyde & Gilbert LLP
Brachers LLP (until 31 March 2009)
Browne Jacobson LLP
Eversheds LLP (until 31 March 2009)
Hill Dickinson LLP
Kennedys (from 1 April 2009)
Veitch Penny
Ward Hadaway
Watmores (until 31 March 2009)
Weightmans LLP

Actuaries

Lane, Clark & Peacock

Advisory groups

Professional Advisory Panel and Policy Advisory Group

These advisory groups, which exist to provide clinical advice and support in relation to the Authority's risk management standards and claims schemes, did not meet during 2008/09. There are plans to develop our engagement with our stake holders following a review in 2008/09.

Board members

The Authority is led by a Board, made up of executive (full-time employees) and non-executive members, chaired since 1 April 2007 by Professor Dame Joan Higgins. The non-executive directors are appointed by the NHS Appointments Commission. All executive directors have been appointed through open competition and in accordance with the Authority's recruitment and selection policies and Department of Health guidance. All current executive director posts are permanent appointments. Full details of directors' remuneration are given in the remuneration report on page 38.

Board

Professor Dame Joan Higgins DBE
BA (Hons), Diploma in Social Administration, PhD
Chair

A social scientist by background; latterly Professor of Health Policy at the University of Manchester; a non-executive director of NHS organisations for over 26 years; formerly chair of Manchester Health Authority, Manchester FHSA and the Christie NHS Trust and Regional Chair of the NHS in the North West; also a member of the QC appointments panel and the House of Lords Appointments Commission and chair of the Patient Information Advisory Group in the Department of Health; awarded the DBE in 2007 for services to healthcare.

Stephen Walker CBE
MA, LLB (Hons), FCII, JP
Chief Executive

Formerly UK Claims Manager in the insurance industry; accredited mediator; member of the Chief Medical Officer's working parties which produced *Organisation with a Memory* and *Making Amends*; member of the Clinical Disputes Forum, the Clinical Negligence and Serious Injuries Committee of the Civil Justice Council, and the National Patient Safety Campaign.

Tom Fothergill
BA (Hons), CPFA
Director of Finance
A qualified accountant with previous NHS experience with a London based Mental Health & Community Services Trust and prior to that a wide range of financial experience gained whilst training and working in local government; having joined the Authority as Financial Controller in 1997, has overseen the development of that function and now additionally responsible for IT, Human Resources, our FHSAU function in Harrogate and the day to day management of the claims functions.

Brian Capstick
MA
Non-Executive Member

Founder and Senior Partner of a solicitors' firm until April 2007; founded a diploma in clinical risk management in 1993 and the Association of Litigation and Risk Managers (ALARM), in 1994; published extensively on patient safety topics; regular speaker at conferences; currently Director of the London office of the European Society for Quality in Healthcare, a charity.

Keith Ford OBE *(from 1 December 2008)*
CPFA
Non-Executive Member

A qualified accountant with extensive NHS experience as Director of Finance and also Chief Executive; chaired the Healthcare Financial Management Association and served on two Ministerial Advisory Committees; retired September 2006; now Treasurer to King's College Hospital Charity and an Associate Non-Executive Director of Tower Hamlets PCT; chairs the Authority's audit committee.

Professor Rory Shaw
BSc, MD, MBA, FRCP
Non-Executive Member

Chief Medical Officer and Joint Director of Clinical Standards at Royal Berkshire Hospital NHS Foundation Trust; previously, Medical Director and Clinical Director for Business Development at Hammersmith Hospitals NHS Trust; major interest in clinical quality and patient safety; the founding Chairman of the National Patient Safety Agency in 2001; clinical and academic area is respiratory medicine in which he has published extensively on tuberculosis, asthma and lung fibrosis.

Patricia A Steel OBE *(until 27 November 2008)*
BA, MIHT
Non-Executive Member

Formerly Secretary (Chief Executive) of the Institution of Highways and Transportation, Director of London Regional Transport and Vice Chairman of an integrated London NHS trust; currently a non-legal member of the Transport Tribunal.

Nina Wrightson OBE
Dip SH, LLB (Hons), CFIOSH
Non-Executive Member
Latterly Risk Management Director for Northern Foods plc; past President of the Institution of Occupational Safety and Health; currently Chairman of the British Safety Council, a non-executive Director of Yorkshire Ambulance Service NHS Trust, Chairman of Complywise Ltd and a Public Member of Network Rail.

There were six Board meetings in 2008/09; attendance was as follows:

Board member	Meetings attended
Joan Higgins	6
Steve Walker	6
Tom Fothergill	6
Brian Capstick	6
Keith Ford	2 out of 2
Rory Shaw	4
Patricia Steel	4 out of 4
Nina Wrightson	6

Management commentary

Statutory background

The NHS Litigation Authority is established under the *National Health Service Act 2006*.

These financial statements have been prepared according to an Accounts Direction issued by the Secretary of State with the approval of HM Treasury.

Main functions of the Authority

The Authority is a Special Health Authority and its primary function is to manage, on behalf of member trusts, claims arising from clinical negligence incidents post 1 April 1995 (the Clinical Negligence Scheme for Trusts or CNST). In addition, the Authority is responsible for managing clinical negligence claims against the NHS for incidents pre 1 April 1995 (the Existing Liabilities Scheme or ELS), clinical negligence claims against the former Regional Health Authorities (the ex-RHA Scheme) and the non clinical risks of member trusts with the exception of motor vehicle claims. The Authority is also responsible for promoting high standards of risk management throughout the NHS and certain appellate functions on behalf of the Department of Health.

Review of activities and performance against targets

During the year, the Authority's net Operating Costs amounted to £1.4 billion, which represents a decrease of £1.2 billion on the figure for the previous year which is simply because in 2007/08 the Authority had made provision for the impact of the revised approach to indexation as a result of the Court's decision in Thompstone.

The Authority's net Operating Costs are required to be managed within a Revenue Resource Limit (RRL) agreed with the Department of Health. For 2008/09 the agreed RRL was £1.4 billion and an under spend of £16.5 million was achieved.

The Authority is required to pay its creditors in accordance with the Better Payment Practice Code. The target is to pay creditors within 30 days of receipt of goods or a valid invoice (whichever is the later) unless other payment terms have been agreed with the supplier. Of relevant bills, 64.7%, representing 68.7% by value, were paid within the 30 day target.

The Authority is required to manage within its cash limits as agreed with the Department of Health. For 2008/09 the Authority had a revenue cash limit of £278 million which was utilised during the year thus reporting a break even position. Capital limits for the year were £280,000 with reported outturn at £274,000 showing an under spend of £6,000.

The balance sheet as at 31 March 2009 shows net liabilities of £13.5 billion. The global valuation recorded in the balance sheet recognises provisions that will crystallize in future years and will be funded by future contribution payments or departmental funding. This future income is calculated to fund annual outgoings, and in the case of the departmental funding is subject to parliamentary control. There is no reason to believe that this future funding, future parliamentary authority, and the contribution payments from members will not be forthcoming. It has therefore been considered appropriate to adopt a going concern basis for the preparation of these accounts. In addition, the *NHS (Residual Liabilities) Act 1996* requires the Secretary of State to exercise his statutory powers to deal with the reported liabilities of this Special Health Authority if it ceases to exist.

These provisions relate predominately to clinical negligence claims which have either already been made or which are considered to have been incurred via treatment delivered by the NHS but yet to be reported as claims. Inevitably these claims will take time to progress to settlement and so these provisions are recorded using Financial Reporting Standard 12 (FRS 12) to give readers a clear indication of the likely value of these claims were they all made and settled today.

These, often misreported, provisions are essentially a valuation as at 31 March 2009 of all of the clinical and non clinical liabilities of the NHS in England which are covered by the Schemes managed by the Authority should they all fall to be settled as at that point in time. i.e. If the Authority were to cease to exist this is the estimated value of the liabilities which would need to be met by the NHS relating to treatment delivered up to 31 March 2009.

The Operating Cost Statement quotes a value of £32 million for "unwinding of discounts". This sum relates to the maturing of provisions recorded in accordance with FRS 12. As the claims of the Authority near the expected date of settlement, the discounts previously applied to them to take account of the "time value of money" are slowly unwound and thus the provisions within the accounts are increased each year until maturity when the full value of the claim is recorded as a provision.

Another key balance sheet movement is the change in cash balances held at the year end (£29.6 million compared to £125 million in 2007/08). All of the contribution schemes managed by the Authority are on a 'pay as you go' basis thereby minimising the impact on cash available for patient care in any given financial period although, inevitably, managing such schemes requires the Authority to take into account possible variations to planned expenditure for example where a case is concluded earlier than originally forecast by collecting sufficient contributions to cover eventualities which have an adverse impact on cash flow. During 2008/09 the Authority has effectively utilised a large proportion of its opening cash balances since expenditure, particularly in the CNST scheme, was greater than the income derived from members. In addition to this utilisation of balances the Authority also secured additional short term funding from the Department of Health in 2008/09 to again support the expenditure requirements of the CNST Scheme.

Key Performance Indicators (KPIs)

In addition to the above statutory financial targets, the Authority has agreed KPIs with the Department of Health, which are used to measure performance against business objectives in year.

For the claims functions these include ratios of defence and claimant legal costs to damages paid: we attempt to settle claims with minimum payments to third parties. There are also targets in relation to the shelf life of claims, the period the matter is open and managed by the Authority. Performance in the year on all our KPIs was satisfactory. However, due to the adversarial nature of the claims against the NHS, the Authority does not publish the details as that might prevent the appropriate management of claims and allow opponents to use them as a bargaining tool in negotiations. There are other indicative statistics reported in the claims section of this Report and Accounts.

KPIs agreed with the Department of Health also exist in relation to the average time taken to settle family health services appeals from the date of notification to the date of settlement; performance during 2008/09 is shown below:

Regulations	Target time to settle (weeks)	% within target		Average time taken to settle (weeks)	
		2008/09	2007/08	2008/09	2007/08
Pharmacy regulations					
Summary	4	100%	17%	3	4
On the papers	15	95%	98%	13	11
Oral hearing	26	85%	96%	24	22
Performer lists regulations	15	100%	100%	7	5
Dispute resolution					
On the papers	15	93%	98%	12	10
Advice/hearing	26	15%	73%	40	21
GP registrars					
Assessments	4	100%	100%	2	1
Representations	15	100%	85%	9	12

Government Reviews

The Authority has again participated with all ongoing requirements of the Government's efficiency reviews. The Arm's Length Bodies (ALB) Review (streamlining services and maximising efficiency within ALBs) concluded its work during 2008/09 with the Authority delivering against all specific targets set during the three year lifespan.

During 2008/09 the Authority received approval from all relevant Government Departments for its main business activities to remain based in London recognising our heavy involvement with the legal environment which is predominately based around what is termed 'legal London'. Our commitment to the ongoing estates rationalisation programme across Government means that our London offices will, during 2010/11, be relocated to an office sited upon the 'Government estate' rather than via our current private sector landlord.

The coming year

During 2009/10 the Authority has committed to six major objectives in support of our principal functions:

- Continuing to use the principles of best value in our activities, to include maintaining financial balance during a challenging period
- Maintaining business continuity during a period when plans will be underway to move from Napier House, the base for most of our operations
- Continuing to deliver and develop quality services following our fitness for purpose review in 2008/09, including implementation of a major overhaul of our claims functions

- Working for a safer NHS using our experience and knowledge from litigation
- Working more closely with our partners as the new Care Quality Commission begins its work
- Delivering for the NHS as the Department of Health asks; 2009/10 will see the Authority begin co-ordination of claims of age discrimination against NHS organisations in England

Other statutory disclosures

A register of interests is maintained by the Authority which details company directorships and other significant interests held by Board members. There are no interests logged on the register which have any bearing on the activities of the Authority. Access to the register is available by contacting the Chief Executive's PA at Napier House.

Information governance and data security

During 2008/09 no significant breaches in data security, requiring notification to the Information Commissioner, were recorded by the Authority. A break-in at our London office resulted in the theft of a laptop computer although no data was put at risk as all hard drives are encrypted making them useless to anyone other than employees of the Authority. During 2009/10 the Authority hopes to receive ISO accreditation in regard to Information Security Management (ISO 27001) and is already involved in work to prepare for that assessment including a full review of all aspects of Information Governance arrangements.

Audit Committee

The Authority's Audit Committee ensures that an effective system of internal control covering all risks is maintained. The Committee's duties include consideration of any matters concerning the external auditors, together with the adequacy of the Authority's internal audit arrangements. The committee's non-executive members in 2008/09 were Patricia Steel (Chairman until 27 November), Keith Ford (Chairman from 1 December), Brian Capstick and Nina Wrightson. The committee met four times in 2008/09 and attendance was as follows:

Non-executive director	Meetings attended
Patricia Steel	2 out of 2
Keith Ford	2 out of 2
Brian Capstick	3
Nina Wrightson	4

Risk Management Committee

The Risk Management Committee reports directly to the Board and is responsible for ensuring that all areas of risk to the Authority are managed appropriately. All functions within the Authority are represented by the membership of the Committee. Throughout 2008/09, the Committee was chaired by the Risk Management Director, with Professor Rory Shaw, Non-Executive Director, as a member attending all three meetings.

Consultation with employees

The Authority consults with its employees on issues relating to information provision and consultation on health, safety and welfare at work by means of a Joint Negotiating Committee in partnership with Unison, which met nine times during 2008/09.

Equality and diversity

The Authority is committed to ensuring that all employees and job applicants are treated fairly and openly and are not subject to unfair or illegal discrimination or bias. The Authority has integrated equality and diversity into its employment policies and embeds these values into its work.

The Authority has an Equality Scheme.

Sickness absence

2.4% of working time was lost as a result of sickness in 2008/09 (4% 2007/08).

Comments and complaints

The Authority received 1 complaint in 2008/09 (2 in 2007/08), excluding correspondence about the management of particular claims files.

Freedom of information

The Authority handled 189 requests for information under the *Freedom of Information Act 2000* in 2008/09, of which 96.9% received substantive responses within the 20 days prescribed by the Act and 100% were dealt with within 30 days.

Pension liabilities

The Authority's employees are covered by the provisions of the NHS Pension Scheme, details of which are given in notes 1.7 of the accounts. Pension liabilities in respect of Board members are given in the Remuneration Report.

Audit services

The Comptroller and Auditor General has provided the Authority's audit services at a cost of £90,000 for the current year, including £5,000 for audit work for the implementation of International Financial Reporting Standards in 2008/09. No non-audit work was undertaken.

The Authority has confirmed that there is no relevant information of which the auditors are unaware. The Accounting Officer has taken all the steps he ought to take to ensure that they are aware of relevant audit information and the Accounting Officer has taken all the steps he ought to establish that the entity's auditors are aware of the information.

Remuneration report

The Authority has a Remuneration and Terms of Service Committee, made up of all the non-executive directors of the Authority, which considers pay and benefits for employees not covered by the national Agenda for Change arrangements, and makes recommendations to the Department of Health based on the Department's *Pay Framework for Very Senior Managers in Strategic and Special Health Authorities, Primary Care Trusts and Ambulance Trusts*.

The Committee met four times during the year. Attendance was as follows:

Non-executive director	Meetings attended
Joan Higgins	4
Brian Capstick	3
Keith Ford *(from 1 December 2008)*	2 out of 2
Rory Shaw	2
Patricia Steel *(until 27 November 2008)*	2 out of 2
Nina Wrightson	4

All senior managers have indefinite contracts; there are no fixed term or rolling contracts.

Below are the contractual, salary and pension details of those senior managers who had control over the major activities of the Authority during 2008/09. The information in these two tables has been audited.

Salaries and allowances

Name and title	2008-09 Salary £000	2008-09 Other Remuneration £000	2008-09 Benefits in kind £00	2007-08 Salary £000	2007-08 Other Remuneration £000	2007-08 Benefits in kind £00
Professor Dame Joan Higgins DBE *Chair*	35 – 40	N/A	N/A	35 – 40	N/A	N/A
Stephen Walker CBE *Chief Executive*	175 – 180	10 – 15	63*	165 – 170	15 – 20	60*
Tom Fothergill *Director of Finance*	145 – 150	5 – 10	37*	130 – 135	15 – 20	65*
Brian Capstick *Non-Executive Member*	5 – 10	N/A	N/A	5 – 10	N/A	N/A
Keith Ford OBE *Non-Executive Member Started 1 December 2008*	0 – 5	N/A	N/A	N/A	N/A	N/A
Professor Rory Shaw *Non-Executive Member*	5 – 10	N/A	N/A	5 – 10	N/A	N/A
Patricia A Steel OBE *Non-Executive Member Left 27 November 2008*	5 – 10	N/A	N/A	10 – 15	N/A	N/A
Nina Wrightson OBE *Non-Executive Member*	5 – 10	N/A	N/A	5 – 10	N/A	N/A

*Benefits in kind relate solely to lease cars

Pension Benefits

Name and title	Real increase in pension at age 60 £000	Real increase in pension lump sum at aged 60 £000	Total accrued pension at age 60 at 31 March 2009 £000	Lump sum at age 60 related to accrued pension at 31 March 2009 £000	Cash Equivalent Transfer Value at 31 March 2009 £000	Cash Equivalent Transfer Value at 31 March 2008 £000	Real increase in Cash Equivalent Transfer Value £000	Employer's contribution to stakeholder pension £00
Stephen Walker CBE *Chief Executive*	0 – 2.5	5 – 7.5	55 -60	170 – 175	0**	0**	N/A	249
Tom Fothergill *Director of Finance*	0 – 2.5	5 – 7.5	25 -30	75 -80	368	266	96	205

**When an employee reaches the eligible retirement age, the CETV becomes £0 since the pension benefits can no longer be transferred.

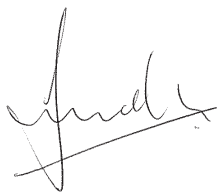
As non-executive members do not receive pensionable remuneration, there are no entries in respect of pensions for non-executive members.

Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capital value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies. The CETV figures and the other pension details include the value of any pension benefits in another scheme or arrangement which the individual has transferred to the NHS pension scheme. They also include any additional pension benefit accrued to the member as a result of their purchasing additional years of pension service in the scheme at their own cost. CETVs are calculated within the guidelines and framework prescribed by the Institute and Faculty of Actuaries.

Real Increase in CETV

This reflects the increase in CETV effectively funded by the employer. It takes account of the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another scheme or arrangement) and uses common market valuation factors for the start and end of the period.



Chief Executive and Accounting Officer
16 June 2009

Statement of Accounting Officer's responsibilities

Under the National Health Service Act 2006, the Secretary of State has directed the NHS Litigation Authority to prepare for each financial year a statement of accounts in the form and on the basis set out in the Accounts Direction. The accounts are prepared on an accruals basis and must give a true and fair view of the state of affairs of the Authority and of its net resource outturn, recognised gains and losses and cash flows for the financial year.

In preparing the accounts, the Accounting Officer is required to comply with the requirements of the Government Financial Reporting Manual and in particular to:

- observe the Accounts Direction issued by the Secretary of State, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards as set out in the Government Financial Reporting Manual have been followed, and disclose and explain any material departures in the accounts; and
- prepare the accounts on a going concern basis.

The Accounting Officer of the Department of Health has designated the Chief Executive as Accounting Officer of the Authority. The responsibilities of an Accounting Officer, including responsibility for the propriety and regularity of the public finances for which the Accounting Officer is answerable, for keeping proper records and for safeguarding the Authority's assets, are set out in the Accounting Officers' Memorandum issued by the Department of Health.

To the best of my knowledge and belief, I have properly discharged the responsibilities set out in my letter of appointment as Accounting Officer.

Statement on internal control

Scope of responsibility

The Secretary of State has appointed the Chief Executive as the Authority's Accounting Officer. As Accounting Officer, and Chief Executive of this Authority, I have responsibility for maintaining a sound system of internal control that supports the achievement of the Authority's policies, aims and objectives. I also have responsibility for safeguarding the public funds and the organisation's assets for which I am personally responsible as set out in the Accounting Officer Memorandum.

As Chief Executive, I have operational responsibility for the delivery of all aspects of governance and the provision, oversight and effective working of the systems of internal control, in particular the risk management process, the Authority's claims database and financial system. The Executive supported by the Audit and Risk Management Committees makes recommendations to the Board on matters related to governance. Operational responsibility for Authority's governance systems is delegated to the Director of Finance. The Risk Management Team is responsible for the co-ordination of risk management activity within the Authority. The lead responsibility within that Team is vested in the Risk Management Director.

'Governance and Assurance' including risk are fully integrated within our overall business-planning process. Planning and risk processes are co-ordinated through the Strategic Management Team, of which I am the Chair, and which reports to the Board. The Risk Management Team facilitates the spread of good practice through its knowledge and learning from experience via liaison with key managers and other staff within the Authority and regular reviews of risk policy. Close working and networking arrangements exist with Internal Auditors, Department of Health and other agencies to ensure that the Authority draws on experience in the wider NHS.

Corporate performance is reported to the Board on a regular basis. Variations from anticipated performance will usually be accompanied by reports from either the Audit or the Risk Management Committee giving the Board assurance on progress and relevant action to be taken.

The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to:

- identify and prioritise the risks to the achievement of the organisation's policies, aims and objectives,
- evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

The broad system of internal control has been in place in the NHS Litigation Authority for the year ended 31 March 2009 and up to the date of approval of the annual report and accounts. Internal audit were able to provide reasonable assurance that there is generally a sound system of internal control within the Authority.

Capacity to Handle Risk

The Authority's approach to risk is explained in the Risk Management Strategy. It identifies the risk roles and responsibilities of staff at all levels. Training is provided on an ongoing basis to equip staff to carry out their designated responsibilities. In addition the approach to Governance (including risk) is featured in the induction process for all new staff.

The Authority's Assurance Framework brings together governance and quality and in effect maps a path from strategic objectives, through the corporate risks and on to the constituent mitigating activities (which are also the activities to deliver that strategic objective). Its purpose is to ensure that systems and information are available to provide the appropriate assurance on the appropriate things (i.e. that risks are being controlled and objectives are being achieved), to the appropriate stakeholders.

The Board receives assurance from the Audit and Risk Management Committees on the achievement of corporate objectives and mitigation of corporate risk. The Board is accountable for demonstrating:

- That key controls are in place to assist in securing and delivering of objectives;
- That the controls systems, upon which reliance is placed, are effective;
- Any gaps in controls systems or assurances are addressed within an agreed corrective action plan.

The Risk and Control Framework

The risk process is effectively integrated into the planning process by which plans are made to deliver objectives through mitigating the risks to their achievement. Risks are identified and evaluated at appropriate levels within the organisation through a uniform system articulated in the Risk Management Strategy. The process is operated and reviewed by the Risk Management Committee, which is accountable to the Board.

It is the Authority's policy to involve stakeholders, as appropriate, in all areas of its activities, including informing and consulting on the management of any significant risks.

As an employer with staff entitled to membership of the NHS Pension Scheme control measures are in place to ensure all employer obligations contained within the Scheme regulations are complied with. This includes ensuring that deductions from salary, employer contributions and payments into the scheme are in accordance with the Scheme rules, and that member Pension Scheme records are accurately updated in accordance with the timescales detailed in regulations.

The Authority is responsible for holding and maintaining data regarding its staff and also claimants against the NHS and maintains policies and systems, which are subject to regular review, in order to minimise the risk of any breaches in data security.

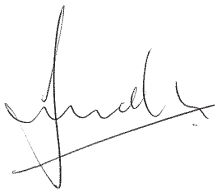
Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness of the system of internal control is informed in a number of ways. The head of internal audit provided reasonable assurance that there is generally a sound system of internal control, designed to meet the organisation's objectives, and that controls are generally being applied consistently. There were no 'limited assurance' opinions provided in year. Executive managers within the organisation who have responsibility for the development and maintenance of the system of internal control provide me with assurance. The Assurance Framework itself provides me with evidence that the effectiveness of controls that manage the risks to the organisation achieving its principal objectives have been reviewed.

My review is also informed by comments made by the external auditors in their management letters and other reports on aspects of the system of internal control. The final accounts process for 2008/09 incorporated actions identified during the previous audits to improve the presentation and clarity of the accounts.

The Audit Committee and Risk Management Committee both meet regularly and report to the Board. The Internal Auditors are present at the Audit Committee meetings and have also specifically reported on Corporate Governance during 2008/09.

These arrangements aim to help the Authority maximise its understanding and utilisation of all available information about the quality and effectiveness of our systems to help us improve services and satisfy the increasing need for assurance about the effectiveness of systems of internal control. Based on my review I am not aware of any significant control issues.



Chief Executive and Accounting Officer
16 June 2009

The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements of the NHS Litigation Authority for the year ended 31 March 2009 under the National Health Service Act 2006. These comprise the Operating Cost Statement, the Balance Sheet, the Cash Flow Statement and Statement of Recognised Gains and Losses and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

Respective responsibilities of the Accounting Officer and auditor

The Chief Executive as Accounting Officer is responsible for preparing the Annual Report, the Remuneration Report and the financial statements in accordance with the National Health Service Act 2006 and directions made thereunder by the Secretary of State with the approval of HM Treasury, and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's Responsibilities.

My responsibility is to audit the financial statements and the part of the Remuneration Report to be audited in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the National Health Service Act 2006 and directions made thereunder by the Secretary of State with the approval of HM Treasury. I report to you whether, in my opinion, the information, which comprises the management commentary, included in the Annual Report is consistent with the financial statements. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

In addition, I report to you if the NHS Litigation Authority has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by HM Treasury regarding remuneration and other transactions is not disclosed.

I review whether the Statement on Internal Control reflects the NHS Litigation Authority's compliance with HM Treasury's guidance, and I report if it does not. I am not required to consider whether this statement covers all risks and controls, or form an opinion on the effectiveness of the NHS Litigation Authority's corporate governance procedures or its risk and control procedures.

I read the other information contained in the Annual Report and consider whether it is consistent with the audited financial statements. This other information comprises the sections headed 'Chair's report', 'Chief Executive's report', 'Director of Finance's report', 'Claims' , 'Important cases for the NHS in 2008/09', 'Risk management', 'Family Health Services appeals', and 'Our people', and the unaudited part of the Remuneration Report. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

Basis of audit opinions

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the Remuneration Report to be audited. It also includes an assessment of the significant estimates and judgments made by the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the NHS Litigation Authority's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements and the part of the Remuneration Report to be audited are free from material misstatement, whether caused by fraud or error, and that in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements and the part of the Remuneration Report to be audited.

Opinions

In my opinion:

- the financial statements give a true and fair view, in accordance with the National Health Service Act 2006 and directions made thereunder by the Secretary of State with the approval of HM Treasury, of the state of the NHS Litigation Authority's affairs as at 31 March 2009 and of its net resource outturn, recognised gains and losses, and cash flows for the year then ended;
- the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with the National Health Service Act 2006 and directions made thereunder by the Secretary of State with the approval of HM Treasury; and
- information, which comprises the management commentary, included within the Annual Report, is consistent with the financial statements.

Opinion on Regularity

In my opinion, in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

Report

I have no observations to make on these financial statements.

Amyas C E Morse
Comptroller and Auditor General
National Audit Office
151 Buckingham Palace Road
Victoria
London SW1W 9SS

23 June 2009

Financial Statements

Operating Cost Statement 31 March 2009

	Notes	2008/09 £000	2007/08 £000
Programme costs			
Authority and claims administration	2.1	**13,086**	13,695
Unwinding of discounts	2.1	**32,024**	28,232
Other claims and associated costs	2.1	**2,228,837**	3,468,467
		2,260,861	3,496,699
Cost of capital	2.1	**(448,337)**	(373,458)
Total programme costs	2.1	**1,825,610**	3,136,936
Operating income	4	**(432,561)**	(494,573)
Net operating cost	11	**1,393,049**	2,642,363
Net resource outturn	3.1	**1,393,049**	2,642,363

All income and expenditure is derived from continuing operations

Statement of Recognised Gains and Losses 31 March 2009

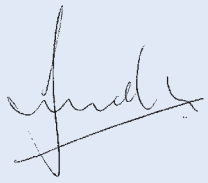
		2008/09 £000	2007/08 £000
Unrealised surplus/(deficit) on the indexation of fixed assets	5.2, 10.2	**0**	2
Recognised gains and (losses) for the financial year		**0**	2

The notes at pages 51 to 73 form part of these accounts.

Balance Sheet as at 31 March 2009

	Notes	31 March 2009 £000	31 March 2008 £000
Fixed assets:			
Intangible assets	5.1	**70**	44
Tangible assets	5.2	**742**	900
		812	944
Current assets:			
Debtors	6	**17,855**	12,393
Cash at bank and in hand	7	**29,595**	124,995
		47,450	137,388
Creditors: amounts falling due within one year	8	**(47,896)**	(28,350)
Net current assets/(liabilities)		**(446)**	109,038
Total assets less current liabilities		**366**	109,982
Provisions for liabilities and charges – known claims	9.1	**(5,565,863)**	(4,299,117)
Provisions for liabilities and charges – Incurred But Not Reported	9.1	**(7,948,000)**	(7,761,000)
Total net liabilities		**(13,513,497)**	(11,950,136)
Taxpayers' equity			
General Fund	10.1	**1,658**	1,383
Revaluation reserve	10.2	**55**	55
ELS Reserve	10.3	**(1,889,670)**	(1,910,639)
ExRHAS Reserve	10.4	**(42,127)**	(41,874)
CNST Reserve	10.5	**(11,463,442)**	(9,879,994)
PES Reserve	10.6	**(5,512)**	1,476
LTPS Reserve	10.7	**(114,459)**	(120,542)
Total taxpayers' equity		**(13,513,497)**	(11,950,136)

The financial statements on pages 48 to 73 were approved by the Board on 16 June 2009 and signed by Stephen Walker



Accounting Officer

Date: 16 June 2009

The notes at pages 51 to 73 form part of these accounts.

Cash Flow Statement 31 March 2009

	Notes	2008/09 £000	2007/08 £000
Net cash (outflow) from operating activities	11	**(373,149)**	(206,346)
Capital expenditure and financial investment:			
(Payments) to acquire intangible fixed assets	5.1	**(46)**	(15)
(Payments) to acquire tangible fixed assets	5.2	**(229)**	(256)
Net cash outflow from investing activities	3.2	**(275)**	(271)
Net cash (outflow) before financing		**(373,424)**	(206,617)
Financing			
Net Parliamentary funding	10.1, 10.3, 10.4	**278,024**	249,367
Increase/(decrease) in cash in the period	7	**(95,400)**	42,750

The notes at pages 51 to 73 form part of these accounts.

Notes to the Accounts

1 Accounting policies

The financial statements have been prepared in accordance with the Government Financial Reporting Manual issued by HM Treasury. The particular accounting policies adopted by the Authority are described below. They have been consistently applied in dealing with items considered material in relation to the accounts.

1.1 Accounting conventions

This account is prepared under the historical cost convention, modified to account for the revaluation of tangible fixed assets where material, at their value to the business by reference to current cost. This is in accordance with directions issued by the Secretary of State for Health and approved by HM Treasury.

Acquisitions and Discontinued Operations

Activities are considered to be 'acquired' only if they are acquired from outside the public sector. Activities are considered to be 'discontinued' only if they cease entirely. They are not considered to be 'discontinued' if they transfer from one NHS body to another.

1.2 Income

Income is accounted for applying the accruals convention. A major source of funding for the Special Health Authority is Parliamentary grant from the Department of Health from Request for Resources 1 within an approved cash limit, which funds the ELS and Ex-RHA clinical negligence schemes. Parliamentary funding is recognised in the financial period in which it is received.

Operating income is that which relates directly to the operating activities of the Authority. It principally comprises annual contributions charged to member NHS bodies for likely claims payments in year. Where income is received for a specific activity which is to be delivered in the following financial year, that income is deferred.

1.3 Taxation

The Authority is not liable to pay corporation tax. Expenditure is shown net of recoverable VAT. Irrecoverable VAT is charged to the most appropriate expenditure heading or capitalised if it relates to an asset.

1.4 Capital charges

The treatment of fixed assets in the account is in accordance with the principal capital charges objective to ensure that such charges are fully reflected in the cost of capital. The interest rate applied to capital charges in the financial year 2008-2009 was 3.5% (2007-08 3.5%) on all assets less liabilities, except for donated assets and cash balances with the Office of the Paymaster General, (OPG), where the charge is nil.

The nature of the NHSLA requires the full recognition of liabilities under the various schemes but does not recognise the relevant future income receivable for these liabilities. Thus the NHSLA carries a substantial liability in the accounts. The application of the principles of capital charging as set out in the Government Financial Reporting Manual produces a negative capital charge which is represented as a large credit to expenditure in note 2.1.

1.5 Fixed assets

a Capitalisation

All assets falling into the following categories are capitalised:

i Intangible assets where they are capable of being used for more than one year and have a cost, individually or as a group, equal to or greater than £5,000.

ii Purchased computer software licences are capitalised as intangible fixed assets where expenditure of at least £5,000 is incurred.

iii Tangible assets which are capable of being used for more than one year, and they:

- individually have a cost equal to or greater than £5,000;
- collectively have a cost of at least £5,000 and an individual cost of more than £250, where the assets are functionally interdependent, they had broadly simultaneous purchase dates, are anticipated to have simultaneous disposal dates and are under single managerial control; or
- form part of the initial equipping and setting-up cost of a new building irrespective of their individual or collective cost.

b Valuation

Intangible fixed assets

Intangible fixed assets held for operational use are valued at historical cost. Surplus intangible assets are valued at the net recoverable amount.

The carrying value of intangible assets is reviewed for impairment at the end of the first full year following acquisition and in other periods if events or changes in circumstances indicate the carrying value may not be recoverable

Tangible fixed assets

Tangible fixed assets are stated at the lower of replacement cost and recoverable amount. On initial recognition they are measured at cost (for leased assets, fair value) including any costs such as installation directly attributable to bringing them into working condition. They are restated to current value each year. The carrying values of tangible fixed assets are reviewed for impairment in periods if events or changes in circumstances indicate the carrying value may not be recoverable.

i Operational equipment, other than IT equipment which is considered to have nil inflation, is valued at net current replacement cost through annual uplift by the change in the value of the GDP deflator. Equipment surplus to requirements is valued at net recoverable amount.

ii All adjustments arising from indexation and five-yearly revaluations are taken to the Revaluation Reserve. All impairments resulting from price changes are charged to the Statement of Recognised Gains and Losses. Falls in value when newly constructed assets are brought into use are also charged there. These falls in value result from the adoption of ideal conditions as the basis for depreciated replacement cost valuations.

c Depreciation and amortisation

Depreciation is charged on each individual fixed asset as follows:

i Purchased computer software licences are amortised over the shorter of the term of the licence and their useful economic lives.

ii Each equipment asset is depreciated evenly over the expected useful life:

	Years
Furniture and fittings	10
Information technology	5

1.6 Losses and special payments

Losses and special payments are items that Parliament would not have contemplated when it agreed funds for the health service or passed legislation. By their nature they are items that ideally should not arise. They are therefore subject to special control procedures compared with the generality of payments. They are divided into different categories, which govern the way each individual case is handled.

Losses and special payments are charged to the relevant functional headings in the operating cost statement on an accruals basis, including losses which would have been made good through insurance cover had the Authority not been bearing their own risks (with insurance premiums then being included as normal revenue expenditure). However, note 13 is compiled directly from the losses and compensations register which is prepared on a cash basis.

1.7 Pension costs

Past and present employees are covered by the provisions of the NHS Pensions Scheme. Details of the benefits payable under these provisions can be found on the NHS Pensions website at www.pensions.nhsbsa.nhs.uk. The Scheme is an unfunded, defined benefit scheme that covers NHS employers, General Practices and other bodies, allowed under the direction of the Secretary of State, in England and Wales. The Scheme is not designed to be run in a way that would enable NHS bodies to identify their share of the underlying

Scheme assets and liabilities. Therefore, the Scheme is accounted for as if it were a defined contribution scheme: the cost to the NHS Body of participating in the Scheme is taken as equal to the contributions payable to the Scheme for the accounting period.

The Scheme is subject to a full actuarial valuation every four years (until 2004, based on a five year valuation cycle), and an FRS17 accounting valuation every year. An outline of these follows:

a Full actuarial (funding) valuation

The purpose of this valuation is to assess the level of liability in respect of the benefits due under the scheme (taking into account its recent demographic experience), and to recommend the contribution rates to be paid by employers and scheme members. The last such valuation, which determined current contribution rates was undertaken as at 31 March 2004 and covered the period from 1 April 1999 to that date.

The conclusion from the 2004 valuation was that the Scheme had accumulated a notional deficit of £3.3 billion against the notional assets as at 31 March 2004. However, after taking into account the changes in the benefit and contribution structure effective from 1 April 2008, the Scheme actuary reported that employer contributions could continue at the existing rate of 14% of pensionable pay. On advice from the Scheme actuary, scheme contributions may be varied from time to time to reflect changes in the scheme's liabilities. Up to 31 March 2008, the vast majority of employees paid contributions at the rate of 6% of pensionable pay. From 1 April 2008, employees contributions are on a tiered scale from 5% up to 8.5% of their pensionable pay depending on total earnings.

b FRS17 Accounting valuation

In accordance with FRS17, a valuation of the Scheme liability is carried out annually by the Scheme Actuary as at the balance sheet date by updating the results of the full actuarial valuation.

Between the full actuarial valuations at a two-year midpoint, a full and detailed member dataset is provided to the Scheme Actuary. At this point the assumptions regarding the composition of the Scheme membership are updated to allow the Scheme liability to be valued.

The valuation of the Scheme liability as at 31 March 2008, is based on detailed membership data as at 31 March 2006 (the latest midpoint) updated to 31 March 2008 with summary global member and accounting data.

The latest assessment of the liabilities of the Scheme is contained in the Scheme Actuary report, which forms part of the annual NHS Pension Scheme (England and Wales) Resource Account, published annually. These accounts can be viewed on the NHS Pensions website. Copies can also be obtained from The Stationery Office.

Scheme provisions as at 31 March 2009

The Scheme is a 'final salary' scheme. Annual pensions are normally based on 1/80th of the best of the last 3 years pensionable pay for each year of service. A lump sum normally equivalent to 3 years pension is payable on retirement. Annual increases are applied to pension payments at rates defined by the Pensions (Increase) Act 1971, and are based on changes in retail prices in the twelve months ending 30 September in the previous calendar year. On death, a pension of 50% of the member's pension is normally payable to the surviving spouse.

Early payment of a pension, with enhancement, is available to members of the Scheme who are permanently incapable of fulfilling their duties effectively through illness or infirmity. A death gratuity of twice final year's pensionable pay for death in service, and five times their annual pension for death after retirement, less pension already paid, subject to a maximum amount equal to twice the member's final year's pensionable pay less their retirement lump sum for those who die after retirement, is payable.

For early retirements other than those due to ill health the additional pension liabilities are not funded by the scheme. The full amount of the liability for the additional costs is charged to the income and expenditure account at the time the Authority commits itself to the retirement, regardless of the method of payment.

The Scheme provides the opportunity to members to increase their benefits through money purchase Additional Voluntary Contributions (AVCs) provided by an approved panel of life companies. Under the arrangement the employee/member can make contributions to enhance an employee's pension benefits. The benefits payable relate directly to the value of the investments made.

Scheme provisions from 1 April 2008

From 1 April 2008 changes have been made to the NHS Pension Scheme contribution rates and benefits. Further details of these changes can be found on the NHS Pensions website www.pensions.nhsbsa.nhs.uk

1.8 Leases

Assets held under finance leases and hire purchase contracts are capitalised in the balance sheet and are depreciated over their useful lives or primary lease term. Rentals under operating leases are charged on a straight line basis over the terms of the lease.

1.9 Provisions

The Authority provides for legal or constructive obligations that are of uncertain timing or amount at the balance sheet date on the basis of the best estimate of the expenditure required to settle the obligation. Where the effect of the time value of money is significant, the estimated risk-adjusted cash flows are discounted using the Treasury's discount rate of 2.2% in real terms.

The ELS and Ex-RHAS schemes are funded by the Department of Health, CNST, LTPS and PES from Trust contributions, and the accounts for the schemes are prepared in accordance with FRS 12. A provision for these schemes is calculated in accordance with FRS 12 by discounting the gross value of all claims received: this is disclosed in note 9.1.

The calculation is made using:

i probability factors. The probability of each claim having to be settled is assessed between 10% and 94%. This probability is applied to the gross value to give the probable cost of each claim; and

ii a discount factor calculated using the real discount rate of 2.2%, RPI of 3% and claims inflation (varying between schemes) of between 5% and 10%, is applied to the probable cost to take into account the likely time to settlement.

the difference between the gross value of claims and the probable cost of each claim as calculated above is also discounted, taking into account the likely time to settlement, and is included in contingent liabilities as set out in note 9.3.

1.10 Financial Assets and Liabilities

i Initial Recognition and Measurement

The Authority recognise financial assets and liabilities on its balance sheet when, and only when, it becomes a party to the contractual provisions of the instrument. On initial recognition FRS 26 requires the Authority to recognise all financial assets and liabilities at fair value. The fair value of a financial asset on initial recognition is normally represented by the transaction price.

The transaction price for financial assets other than those classified at fair value through profit and loss includes the transaction costs that are directly attributable to the acquisition or issue of the financial asset. Transaction costs incurred on the acquisition or issue of financial assets classified at fair value through profit are expensed immediately.

The Authority recognises financial assets using settlement date accounting. The settlement date is the date that an asset is delivered to or by an entity. Settlement date accounting refers to the recognition of an asset on the day it is received by the entity, and the derecognition of an asset and recognition of any gain or loss on disposal on the day that it is delivered by the entity.

ii Subsequent Measurement

Subsequent measurement of financial assets depends on their classification on initial recognition under FRS 26. The categories relevant to the Authority are as follows:

Loans and Receivables: loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Assets that the Authority intends to sell immediately or in the near term cannot be classified in this category. These assets are carried at amortised cost using the effective interest method

minus any reduction for impairment or uncollectibility. Interest income is recognised by applying the effective interest rate method, except on short term receivables when the recognition of interest would be immaterial. Impairment charges are provided only when there is objective evidence that an impairment loss has been incurred. If that is the case, the carrying amount of the asset is reduced through use of an allowance account. The amount of the loss is recognised in the operating cost statement.

Typically trade and other receivables are classified in this category.

iii Fair value determination

Whenever available, the fair value of a financial instrument is derived from an active market. The appropriate quoted market price for an asset held or liability to be issued is usually the current bid price and, for an asset to be acquired or liability held, the asking price. If there is no market, or the markets available are not active, the Authority establishes fair value by using a valuation technique. Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of similar instruments and incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments. As far as unquoted equity instruments are concerned, in cases where it is not possible to reliably measure the fair value, such instruments are carried at cost.

iv Derecognition of financial assets

Irrespective of the legal form of the transactions, financial assets are derecognised when they pass the 'substance over form' based derecognition test prescribed. That test comprises two different types of evaluations which are applied strictly in sequence:

- Evaluation of the transfer of risks and rewards of ownership
- Evaluation of the transfer of control

Whether the assets is recognised / derecognised in full or recognised to the extent of Authority's continuing involvement depends on accurate analysis which is performed on a specific transaction basis.

v Cash and Cash Equivalents

Cash and Cash Equivalents comprise cash in hand, on demand deposits and other short term highly liquid investments that are readily convertible to a known amount of cash and are subject to insignificant risk of changes in value.

vi Financial liabilities

Financial liabilities are classified according to the substance of the contractual arrangements entered into. The Authority has the following class of financial liabilities:

Other financial liabilities: all liabilities, which have not been classified at fair value through profit or loss. These liabilities are carried at amortised cost using the effective interest method. Typically, trade and other payables and borrowings are classified in this category.

vii Derecognition of financial liabilities

The Authority derecognises financial liabilities when, and only when, the Authority's obligations are discharged, cancelled or they expire.

viii Embedded derivatives

Derivatives embedded in other financial instruments or other host contracts are treated as separate derivatives when their risks and characteristics are not closely related to those of the host contracts and the host contract is not measured at fair value with changes in fair value recognised in profit or loss.

2.1 Authority programme expenditure

		2008/09		2007/08
	Notes	£000	£000	£000
Non-executive members' remuneration	2.2	**79**		76
Other salaries and wages	2.2	**7,099**		7,148
Redundancy Costs	2.2	**20**		25
Supplies and services – general		**8**		7
Establishment expenses		**1,152**		827
Hire and operating Lease Rental				
Land & Buildings		**732**		736
Lease cars		**24**		26
Photocopiers		**80**		89
Transport and moveable plant		**10**		8
Premises and fixed plant		**987**		913
External contractors				
Actuary's advice		**375**		262
Risk Management		**1,522**		2,512
Other		**436**		547
Auditor's remuneration: audit fees*		**85**		85
Internal audit fees		**43**		41
Auditor's remuneration: IFRS preparation audit fees		**5**		
Miscellaneous		**22**		16
			12,679	
Depreciation	5.2	**386**		357
Amortisation	5.1	**20**		20
(Profit)/loss on disposal	5.3	1		0
			407	
			13,086	13,695
Capital charges interest			**(448,337)**	(373,458)
Other finance costs – unwinding of discount	9		**32,024**	28,232
Increase in provision for known claims (excl. unwinding of discounts)	9	**2,041,837**		1,638,467
Increase in the provision for IBNR	9	**187,000**		1,830,000
			2,228,837	3,468,467
			1,825,610	3,136,936

* The Authority did not make any payments to Auditors for non audit work

2.2 Staff numbers and related costs

	2008/09 Total	Permanently employed staff	Other	2007/08
	£000	**£000**	**£000**	£000
Salaries and wages	**5,977**	5,671	306	6,051
Social security costs	**504**	504	0	489
Employer contributions to NHS Pensions	**717**	717	0	709
	7,198	**6,892**	**306**	7,249

The average number of employees during the year was:

	Total	Permanently employed staff	Other	2007/08
	Number	**Number**	**Number**	Number
Total	**147**	138	9	151

Redundancy Costs
The cost to the NHSLA of redundancies in 2008/09 was £20,432 (2007/08: £25,000)

Expenditure on staff benefits
The amount spent on staff benefits during the year mainly on lease cars totalled £35,853 (2007/08: £38,428).

Retirements due to ill-health
During 2008/09 there was 0 (2007/08:1) early retirement from the NHS Litigation Authority on the grounds of ill-health, at an additional cost of £0 (2007/08: £123,152). This information has been supplied by NHS Pensions.

2.3 Better Payment Practice Code – measure of compliance

	2008/09	
	Number	**£000**
Total non NHS bills paid	**8,223**	**134,267**
Total non NHS bills paid within target	**5,319**	**92,304**
Percentage of non NHS bills paid within target	**64.7%**	**68.7%**

	Number	**£000**
Total NHS bills paid	**11**	**128**
Total NHS bills paid within target	**6**	**4**
Percentage of NHS bills paid within target	**54.5%**	**3.1%**

The Better Payment Practice Code requires the NHSLA to aim to pay all valid invoices by the due date or within 30 days of receipt of goods or a valid invoice, whichever is later.

The Late Payment of Commercial Debts (Interest) Act 1998
No interest was paid under the legislation

3.1 Reconciliation of net operating cost to net resource outturn

	2008/09	2007/08
	£000	£000
Net operating cost	**1,393,049**	2,642,363
Net resource outturn	**1,393,049**	2,642,363
Revenue resource limit	**1,409,502**	2,645,489
Under spend against revenue resource limit	**16,453**	3,126

3.2 Reconciliation of gross capital expenditure to capital resource limit

	Notes	**2008/09**	2007/08
		£000	£000
Gross capital expenditure		**275**	271
NBV of assets disposed	5.3	**(1)**	0
Net capital resource outturn		**274**	271
Capital resource limit		**280**	280
Under spend against limit		**6**	9

4 Operating income

Operating income, analysed by classification and activity, is as follows:

	Appropriated in aid	2007/08
	£000	£000
Programme income:		
CNST contributions	392,943	447,263
PES contributions	2,546	2,584
LTPS contributions	37,072	44,726
Total	**432,561**	494,573

5.1 Intangible fixed assets

	Software licences
	£000
Gross cost at 1 April 2008	487
Additions – purchased	46
Gross cost at 31 March 2009	**533**
Accumulated amortisation at 1 April 2008	443
Charged during the year	20
Accumulated amortisation at 31 March 2009	**463**
Net Book Value at 1 April 2008	44
Net Book Value 31 March 2009	**70**

5.2 Tangible fixed assets

	Information technology	Furniture & fittings	Total
	£000	£000	£000
Valuation at 1 April 2008	2,181	219	2,400
Additions – purchased	229	0	229
Disposals	(284)	0	(284)
Valuation at 31 March 2009	**2,126**	**219**	**2,345**
Accumulated depreciation at 1 April 2008	1,350	150	1,500
Charged during the year	375	11	386
Disposals	(283)	0	(283)
Accumulated depreciation at 31 March 2009	**1,442**	**161**	**1,603**
Net Book Value at 1 April 2008	831	69	900
Net Book Value at 31 March 2009	**684**	**58**	**742**

No assets are held under finance leases or hire purchase contracts and the NHSLA does not own any land or buildings.

Capital commitments: The NHSLA has no capital commitments at 31 March 2009 (2007/08: nil).

5.3 Profit/(loss) on disposal of fixed assets

	2008/09	2007/08
	£000	£000
(Loss) on disposal of plant and equipment	**(1)**	0
	(1)	0

6 Debtors

Amounts falling due within one year	Ex RHAS £000	ELS £000	CNST £000	PES £000	LTPS £000	Admin £000	Total 31 March 2009 £000	Total 31 March 2008 £000
NHS debtors	0	0	10,939	84	2,735	0	**13,758**	7,505
Accrued income	0	0	0	0	0	0	**0**	2,480
Prepayments	29	1,194	160	0	0	598	**1,981**	1,920
Other debtors	4	218	1,319	4	299	272	**2,116**	488
	33	**1,412**	**12,418**	**88**	**3,034**	**870**	**17,855**	12,393
Intra-government balances								
Balances with other central government bodies	4	220	1,315	4	295	209	**2,047**	411
Balances with NHS Trusts	0	0	7,516	67	2,279	0	**9,862**	5,652
Balances with public corporations and trading funds	0	0	3,423	17	456	0	**3,896**	1,853
Subtotal of intra-government balances	**4**	**220**	**12,254**	**88**	**3,030**	**209**	**15,805**	7,916
Balances with bodies external to government	29	1,192	164	0	4	661	**2,050**	4,477
	33	**1,412**	**12,418**	**88**	**3,034**	**870**	**17,855**	12,393

There are no debtors falling due after more than one year.

7 Analysis of changes in cash

	Ex RHAS £000	ELS £000	CNST £000	PES £000	LTPS £000	Admin £000	Total 31 March 2009 £000
At 1 April 2008	60	169	91,707	6,270	26,775	14	124,995
Change During the year	**279**	**(1,005)**	**(88,496)**	**(2,427)**	**(3,745)**	**(6)**	**(95,400)**
At 31 March 2009	**339**	**(836)**	**3,211**	**3,843**	**23,030**	**8**	**29,595**

8 Creditors

Amounts falling due within one year	Ex RHAS £000	ELS £000	CNST £000	PES £000	LTPS £000	Admin £000	Total 31 March 2009 £000	Total 31 March 2008 £000
NHS creditors	0	0	0	0	22	0	**22**	1,083
Tax and social security	0	0	0	0	0	0	**0**	0
Accruals	0	1,737	43,472	0	501	269	**45,979**	20,426
Other creditors	0	361	1,381	0	152	1	**1,895**	6,841
	0	**2,098**	**44,853**	**0**	**675**	**270**	**47,896**	28,350
Intra-government balances								
Balances with other central government bodies	0	0	0	0	1	5	**6**	0
Balances with NHS Trusts	0	0	0	0	11	0	**11**	824
Balances with public corporations and trading funds	0	0	0	0	10	0	**10**	259
Subtotal of intra-government balances	**0**	**0**	**0**	**0**	**22**	**5**	**27**	1,083
Balances with bodies external to government	0	2,098	44,853	0	653	265	**47,869**	27,267
	0	**2,098**	**44,853**	**0**	**675**	**270**	**47,896**	28,350

There are no creditors falling due after more than one year.

9.1 Provisions for liabilities and charges

	Ex RHAS	ELS	CNST	PES	LTPS	Total
	£000	£000	£000	£000	£000	£000
Opening Provision for Known Claims	(27,204)	(1,335,245)	(2,857,374)	(7,247)	(72,047)	**(4,299,117)**
Opening Provisions for IBNR	(15,000)	(590,000)	(7,086,000)	(1,000)	(69,000)	**(7,761,000)**
Total Provisions as at 1 April 2008	**(42,204)**	**(1,925,245)**	**(9,943,374)**	**(8,247)**	**(141,047)**	**(12,060,117)**
Discounting	9,389	758,864	1,387,569	2	(40)	**2,155,784**
Arising during the year	(19,456)	(1,176,581)	(3,405,398)	(12,282)	(58,221)	**(4,671,938)**
Reversed unused	4,485	118,971	325,567	2,917	22,377	**474,317**
Unwinding of discount	(749)	(26,270)	(5,054)	0	49	**(32,024)**
Utilised during the year	4,078	150,805	614,342	3,914	33,976	**807,115**
	(2,253)	(174,211)	(1,082,974)	(5,449)	(1,859)	**(1,266,746)**
Movement in Net IBNR	2,000	75,000	(272,000)	0	8,000	**(187,000)**
Closing Provision for Known Claims	(29,457)	(1,509,456)	(3,940,348)	(12,696)	(73,906)	**(5,565,863)**
Closing Provisions for IBNR	(13,000)	(515,000)	(7,358,000)	(1,000)	(61,000)	**(7,948,000)**
At 31 March 2009	**(42,457)**	**(2,024,456)**	**(11,298,348)**	**(13,696)**	**(134,906)**	**(13,513,863)**
Expected timing of cash flows:						
Within 1 year	(241)	(288,317)	(1,099,623)	(13,070)	(68,351)	**(1,469,602)**
1-5 years	(8,336)	(510,707)	(3,343,136)	(626)	(53,555)	**(3,916,360)**
Over 5 years	(33,880)	(1,225,432)	(6,855,589)	0	(13,000)	**(8,127,901)**
	(42,457)	**(2,024,456)**	**(11,298,348)**	**(13,696)**	**(134,906)**	**(13,513,863)**

9.2 Allocation of Income and Expenditure to the schemes

	Ex-RHAS	ELS	CNST	PES	LTPS	Equal Pay	FHSA	Total	2007/08 Total
	£000	£000	£000	£000	£000	£000	£000	£000	£000
Expenditure									
Authority and claims administration	24	734	7,075	171	3,154	349	1,579	**13,086**	13,695
Claims and associated costs									
Increase in provision for known claims	6,331	325,016	1,697,316	9,363	35,835	0	0	**2,073,861**	1,666,699
Increase/ (decrease) in the Provision for IBNR	(2,000)	(75,000)	272,000	0	(8,000)	0	0	**187,000**	1,830,000
	4,331	250,016	1,969,316	9,363	27,835	0	0	**2,260,861**	3,496,699
Cost of capital	(1,407)	(67,162)	(374,808)	(454)	(4,506)	0	0	**(448,337)**	(373,458)
	2,948	**183,588**	**1,601,583**	**9,080**	**26,483**	**349**	**1,579**	**1,825,610**	3,136,936
Income									
Scheme income	0	0	(392,943)	(2,546)	(37,072)	0	0	**(432,561)**	(494,573)
Net Operating Cost – (surplus)/ deficit	**2,948**	**183,588**	**1,208,640**	**6,534**	**(10,589)**	**349**	**1,579**	**1,393,049**	2,642,363

9.3 Contingent liabilities

	Ex-RHAS £000	ELS £000	CNST £000	PES £000	LTPS £000	Total £000
Contingent liability for claims 2008/09	**14,106**	**731,670**	**5,716,646**	**4,719**	**70,187**	**6,537,328**
Contingent liability for claims 2007/08	14,971	755,357	5,134,946	2,784	73,311	5,981,369

The Authority makes a provision in its accounts for the likely value of future claims payments, and records contingent liabilities that represent possible additional claims payments to those already provided for. These amounts are not included in the accounts but shown shown as a note to the financial statements because a transfer of economic benefit is not deemed likely.

Existing Liabilities Scheme (ELS) and Ex-Regional Health Authorities Scheme (Ex-RHAS)
Claims are included in the ELS provision on the basis that the incident ocurred on or before 31 March 1995. Qualifying claims under the Ex-RHA scheme are claims brought against the former Regional Health Authorities whose clinical negligence liabilities passed to the Authority with effect from 1 April 1996.

Clinical Negligence Scheme for Trusts (CNST)
A provision for this scheme is calculated in accordance with FRS12 by discounting the gross value of all claims received relating to incidents which occurred on or before 31 March 2009 and on or after 1 April 1995. Claims are included in the provision on the basis that the CNST members have assessed:

a. the probable cost and time to settlement in accordance with scheme guidelines;

b. that they are qualifying incidents; and

c. that the Trust remains a member of the scheme.

As at 31 March 2002 all outstanding claims for incidents post 1 April 1995 became the direct responsibility of the NHSLA. This 'call in' of CNST claims effectively means that member trusts are no longer reponsible for accounting for claims made against them although they do remain the legal defendant.

Property Expenses Scheme (PES) and Liability to Third Parties Scheme (LTPS)
In April 1999 the Authority introduced the PES and LTPS following the Secretary of State's decision that NHS Trusts should not insure with commercial companies for non clinical risks, other than motor vehicles and other defined areas (eg. PFI schemes).

The schemes are managed and funded via the same mechanisms as the CNST except that specific excesses exist for some types of claims. Thus the provision recorded in these accounts relates only to the NHSLA proportion of each claim. The accounts for these schemes have been prepared in accordance with FRS 12.

Assumption of Liabilities upon Cessation
The *NHS (Residual Liabilities) Act 1996* requires the Secretary of State to exercise his statutory powers to deal with the liabilities of a Special Health Authority, if it ceases to exist. This would include the liabilities assumed by the Litigation Authority in respect of the ELS, ex-RHAS and CNST schemes.

Incidents Incurred but not reported (IBNR)
FRS 12 requires the inclusion of liabilities in respect of incidents which have been incurred but not reported to the NHS Litigation Authority as at 31 March 2009 where the following can be reasonably forecast:

a. that an adverse incident has occurred; and

b. that a transfer of economic benefit will occur; and

c. that a reasonable estimate of the likely value can be made.

The NHSLA uses its actuaries, Lane, Clark & Peacock, to assess the potential value of IBNRs against each of the schemes it operates. The actuaries review existing claims records, and using an appropriate model, calculate values in respect of IBNRs for all schemes. The provisions and contingent liabilities arising are shown above. The sums concerned are accounting estimates, and although determined on the basis of information currently available, the ultimate liabilities may vary as a result of subsequent developments.

10 Movements on reserves

10.1 General Fund

	2008/09
	£000
Balance at 1 April 2008	**1,383**
Net operating costs for the year	(1,928)
Net Parliamentary funding	2,203
Balance at 31 March 2009	**1,658**

10.2 Revaluation reserve

	2008/09
	£000
Balance at 1 April 2008	**55**
Indexation of fixed assets	0
Balance at 31 March 2009	**55**

10.3 The movement on the ELS Reserve in the year comprised:

	2008/09
	£000
Balance at 1 April 2008	**(1,910,639)**
Transfer from Operating Cost Statement	(183,588)
Capital charge interest	(67,162)
Net Parliamentary funding	271,719
Balance at 31 March 2009	**(1,889,670)**

10.4 The movement on the ExRHAS Reserve in the year comprised:

	2008/09
	£000
Balance at 1 April 2008	**(41,874)**
Transfer from Operating Cost Statement	(2,948)
Capital charge interest	(1,407)
Net Parliamentary funding	4,102
Balance at 31 March 2009	**(42,127)**

10.5 The movement on the CNST Reserve in the year comprised:

	2008/09
	£000
Balance at 1 April 2008	**(9,879,994)**
Transfer from Operating Cost Statement	(1,208,640)
Capital charge interest	(374,808)
Balance at 31 March 2009	**(11,463,442)**

10.6 The movement on the PES Reserve in the year comprised:

	2008/09
	£000
Balance at 1 April 2008	**1,476**
Transfer from Operating Cost Statement	(6,534)
Capital charge interest	(454)
Balance at 31 March 2009	**(5,512)**

10.6 The movement on the LTPS Reserve in the year comprised:

	2008/09
	£000
Balance at 1 April 2008	**(120,542)**
Transfer from Operating Cost Statement	10,589
Capital charge interest	(4,506)
Balance at 31 March 2009	**(114,459)**

11 Reconciliation of operating costs to operating cash flows

	Notes		2008/09 £000	2007/08 £000
Net operating cost			**(1,393,049)**	(2,642,363)
Adjustments for non-cash transactions				
Depreciation	2.1	**386**		357
Amortisation	2.1	**20**		20
Capital charges interest	2.1	**(448,337)**		(373,458)
(Profit)/loss on disposal	2.1	**1**		0
			(447,930)	(373,081)
Adjustments for movements in working capital other than cash				
(Increase)/decrease in debtors	6	**(5,462)**		15,324
Increase/(decrease) in creditors	8	**19,546**		(41,884)
Increase in provisions	9	**1,453,746**		2,835,658
			1,467,830	2,809,098
Net cash outflow from operating activities			**(373,149)**	(206,346)

12 Commitments under operating leases

Commitments under non-cancellable operating leases:

Commitments under operating leases to pay rentals during the year following the year of these accounts are given in the table below, analysed according to the period in which the lease expires.

		2008/09	2007/08
Land and buildings		**£000**	£000
Operating leases which expire:	within 1 year	**0**	0
	between 1 and 5 years	**83**	0
	after 5 years	**649**	736
		732	736
Other leases			
Operating leases which expire:	within 1 year	**24**	2
	between 1 and 5 years	**80**	113
	after 5 years	**0**	0
		104	115

13 Losses and special payments

There were 2 cases of losses and special payment (prior year: 1 case) totalling £11,053 (prior year £10,000) approved during 2008/09

14 Related parties

The Authority is a body corporate established by order of the Secretary of State for Health.

The Department of Health is regarded as a controlling related party. During the year the Authority has had a significant number of material transactions with the Department, and with other entities, to whom the Authority provides clinical and non clinical risk pooling services, for which the Department is regarded as the parent Department, i.e.:

	Charge to the Operating Cost Statement		
NHS Body	**Income**	**Expenditure**	**Provision**
	£000	**£000**	**£000**
All English Strategic Health Authorities	236	0	1,150,073
All English NHS Trusts and PCTs	252,117	6,108	2,487,064
All English NHS Foundation Trusts	183,376	5,456	1,871,747
NHS Blood and Transplant	184	56	472
The National Patient Safety Agency	10	0	39
NHS Business Services Authority	222	15	694
NHS Institute for Innovation and Improvement	21	0	0
Health Protection Agency	147	8	1,083
NHS Direct	203	14	492
NHS Professionals	731	0	47

The Authority also charged to the Operating Cost Statement a provision for those incidents that have been incurred but not yet reported in the sum of £187m (2007/08 £1.83bn).

In addition Professor R Shaw and Ms N Wrightson, non-executive directors of the Authority, are also employed by Royal Berkshire Hospital NHS Foundation Trust as the Chief Medical Officer and Joint Director of Clinical Standards, and as a non-executive Director of Yorkshire Ambulance Service NHS Trust, respectively.

15 Financial instruments

FRS 29 Financial Instruments: Disclosures requires disclosure of the role that financial instruments have had during the period in creating or changing the risks an entity faces in undertaking its activities. Because of the way Special Health Authorities are financed, the NHS Litigation Authority is not exposed to the degree of financial risk faced by business entities. Also financial instruments play a much more limited role in creating or changing risk than would be typical of the listed companies to which FRS 29 mainly applies. The NHS Litigation Authority has limited powers to borrow or invest surplus funds, and financial assets and liabilities are generated by day-to-day operational activities rather than being held to change the risks facing the NHS Litigation Authority in undertaking its activities.

The NHS Litigation Authority holds financial assets in the form of NHS and other debtors, and cash, as set out in Notes 6 and 7 respectively, and financial liabilities in the form of NHS and other creditors, as set out in Note 8. As these debtors and creditors are due to mature or become payable within 12 months from the balance sheet date, the Authority considers that the carrying value is a reasonable approximation to fair value for these financial instruments.

Liquidity risk
The NHS Litigation Authority's net operating costs are financed from resources voted annually by Parliament and scheme contributions from member NHS Trusts. The NHS Litigation Authority finances its capital expenditure from funds made available from Government under an agreed capital resource limit. The NHS Litigation Authority is, therefore, not exposed to significant liquidity risks.

Market risk (including foreign currency and interest rate risk)
None of the Authority's financial assets and liabilities carry rates of interest. The Authority has negligible foreign currency income and expenditure. The NHS Litigation Authority is, therefore, not exposed to significant interest rate or foreign currency risk.

Credit Risk
As noted, the Authority receives its income from member NHS Trusts. As a consequence, its NHS and other debtors are not impaired, and there are no significant debtor balances with bodies external to government. The NHS Litigation Authority is, therefore, not exposed to significant credit risk.

16 Post Balance Sheet Events

These financial statements were authorised for issue on 23 June 2009 by the Accounting Officer.

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