# THE NATIONAL HEALTH SERVICE LITIGATION AUTHORITY

Report and Accounts 2010–2011

# The National Health Service Litigation Authority

## Report and Accounts 2010–2011

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## Accounts

## 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 organisations 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 and age discrimination 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

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)

*Professor Dame Joan Higgins Chair*

# Chair's report

In this report my colleagues have emphasised the rapidly changing environment in which we work. They refer to changes in the law and the insurance market, changes in the NHS and the fast pace of change within the Litigation Authority itself over the last year. Some of the internal developments have been a response to factors beyond our control, such as the rapid growth in claims numbers, but others have been designed to offer a better service to the NHS and to make more effective use of shrinking resources.

However, some things have not changed. The NHS Litigation Authority was established in 1995 to defend actions against the NHS 'robustly' but, where negligence was proven, to settle actions 'efficiently'. It has continued to balance these two competing pressures with a high degree of skill and integrity. It has also managed a 'risk pool' on behalf of the NHS to minimise the impact of large claims on individual organisations and to spread the cost of claims over time. Despite the turbulence all around it, the Authority has remained focused upon its key tasks. It has been able to do so because it has retained staff who have a unique set of skills in the NHS and who have built up knowledge and experience over 15 years. This breadth of knowledge is reflected in the pages which follow.

Since the early days of the Authority my colleagues have also taken on new responsibilities in, for example, risk management, primary care and the provision of advice on equal pay claims to the Department of Health. In the last year there have been a number of examples of good practice which demonstrate the value to the NHS and its patients of the Authority's work. A particular emphasis has been upon learning lessons about adverse incidents in the NHS, which can damage patients and lead to claims. Our role has always been to support NHS organisations to improve their practice and to reduce the number of incidents. This responsibility remains.

The changes which the NHS and Social Care Bill 2011 have set in train, especially in a diversifying provider market, require the NHS Litigation Authority to be even more responsive than it has been in the past. It has shown, in the last year that it can lead change but also provide stability in an increasingly complex world.

The Board and I would like to thank our colleagues in Leeds and London for their hard work, commitment and innovative thinking over the last year.

Professor Dame Joan Higgins
Chair

*Steve Walker*
*Chief Executive*

# Chief Executive's report

I began my note to last year's accounts and report by saying that there are no quiet years in the life of the NHS or the world of litigation. I should have added that there are none in the life of this Authority.

At that time we were awaiting the outcome of the widely reported ALB Review being conducted by the Department of Health. That concluded in July 2010 with a proposal that we should be subject to an "industry" review and, at the time of writing, we await the outcome of that.

In the meantime, we have moved from Holborn to Victoria and from Harrogate to Leeds, both projects undertaken by, and largely carried out by, my colleagues at each location. Thanks to their superlative efforts, both moves were achieved with minimal disruption to output. We have also moved to having a significant volume of our work carried out by colleagues working at home, as well as further developing our "paper-lite" strategy. Compliments are especially due to colleagues in IT who have made these possibilities come true.

We are delighted that the Ministry of Justice is taking forward the recommendations made by Lord Justice Jackson regarding the costs of civil litigation. We believe very strongly that a regime which allows success fees and the recoverability of After the Event (ATE) insurance premiums makes litigation so profitable that solicitors and so-called "claims farmers" are drawn into the market thereby fuelling the rise in claims volumes we have experienced.

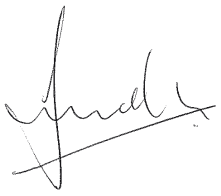
After large increases in previous years we saw new claims volumes for newly reported clinical claims rise by around 30% in 2010-11 and by around 6% for non-clinical. Multiply those increases by the significantly above inflation rise in cost per claim and you will appreciate why we are very pleased to have been able to hold the increase in contributions for 2011-12 to the forecast figure of 10%. In a period of zero recruitment I believe that my colleagues who have absorbed those increases, against the wider background I have described deserve considerable thanks and appreciation.

Jackson, LJ also proposed resurrection of the NHS Redress scheme ideas, but that was overtaken by Lord Young's proposal in November that we might have a small claims scheme based on that used for motor claims. In response, we are currently talking to interested parties about such a possibility for the Authority and possibly beyond. As always, the devil will be in the detail and the details will include the appropriate upper value, costs per stage, timetabling and so on.

We are also talking to colleagues at DH and scheme members about the future of CNST after the Health Bill. Topics include legacy liabilities after existing bodies cease to exist, direct access for the private sector and continuity of funding in the proposed new environment. We imagine that many of our members will have strong views on many of these issues and look forward to continued debate.

My final comment about the current environment relates to the discount rate used to calculate future loss claims, eg for wage loss or the cost of care. The Association of Personal Injury Lawyers (APIL) has just issued Judicial Review proceedings questioning the alleged failure of the Lord Chancellor to review the discount rate. Should he do so, they anticipate a reduction, and a reduction of 1% could lead to our needing £200 million a year more in contributions from NHS organisations, whilst adding a similar sum to our provisions.

Despite the gloom of that prediction and the burgeoning claims volumes, albeit offset slightly by the proposed post-Jackson changes, I remain confident that my colleagues, in London and in Leeds, in claims, risk management, IT, administration, appeals and finance, will continue to deliver, as they have done in this testing and trying year just concluded. My thanks, and those of the Board, go to all of them.



Steve Walker
Chief Executive

*Tom Fothergill*
*Director of Finance*

# Director of Finance's report

In my report last year I referred to the challenges facing the wider economy and the likely impacts on the public sector. The Comprehensive Spending Review (CSR) means that the elements of the funding of the Authority which are supplied directly by the Department of Health as 'Grant in Aid' finance will be reduced by some 30% from 2010/11 budgets to the end of the CSR period in 2014/15. This target is being absorbed into the plans of the Authority and means that we are striving hard to find ways to improve our operational efficiency in the future whilst, as reported elsewhere, we are continuing to see annual growth in volumes of claims reported across our main schemes.

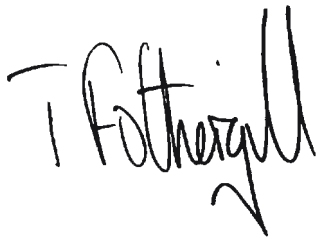
Our analysis of claims reported suggests that the patterns are changing and that many claims, particularly in the CNST scheme, are being reported to us much faster than in previous years. This activity helps us to address claims faster, which consequently places us in a better position to control the level of claimant and our own legal costs incurred. However, the negative impact of these changes is the unpredictability of work volumes, the levels of annual expenditure we can expect to incur and the subsequent pressures this places on the Authority and more particularly its staff.

I am pleased to note that, despite the pressures mentioned above, our staff and panel solicitors continue to reduce the shelf life of our claims across all schemes as shown in the chart on page 11 of this report. My thanks as ever go to all of our staff and contractors for their efforts across the year, which have assisted in producing such a positive set of statistics.

Our office relocations have allowed us to reduce our overheads and introduce more flexible working arrangements for staff and appear to be one of the reasons that we have managed to absorb much of the increased volumes, with an average headcount which is 7.5% lower than in 2009/10.

The changing NHS landscape and review of the Authority following the July 2010 Arm's Length Body Review present an opportunity for the Authority to further develop our services to better suit the needs of the new NHS and thus be better able to respond to the challenges being faced by our most important stakeholders, the members of our schemes.

Changes within the claims environment appear to be on the horizon. We await the impacts, positive and negative, on the finances of the Authority and scheme members as well as the workloads of our staff.



Tom Fothergill
Director of Finance

*Scott Henning*
*Head of*
*Clinical Claims*

*Steve Chahla*
*Head of Non-*
*Clinical Claims*

# 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 property and associated expenses.

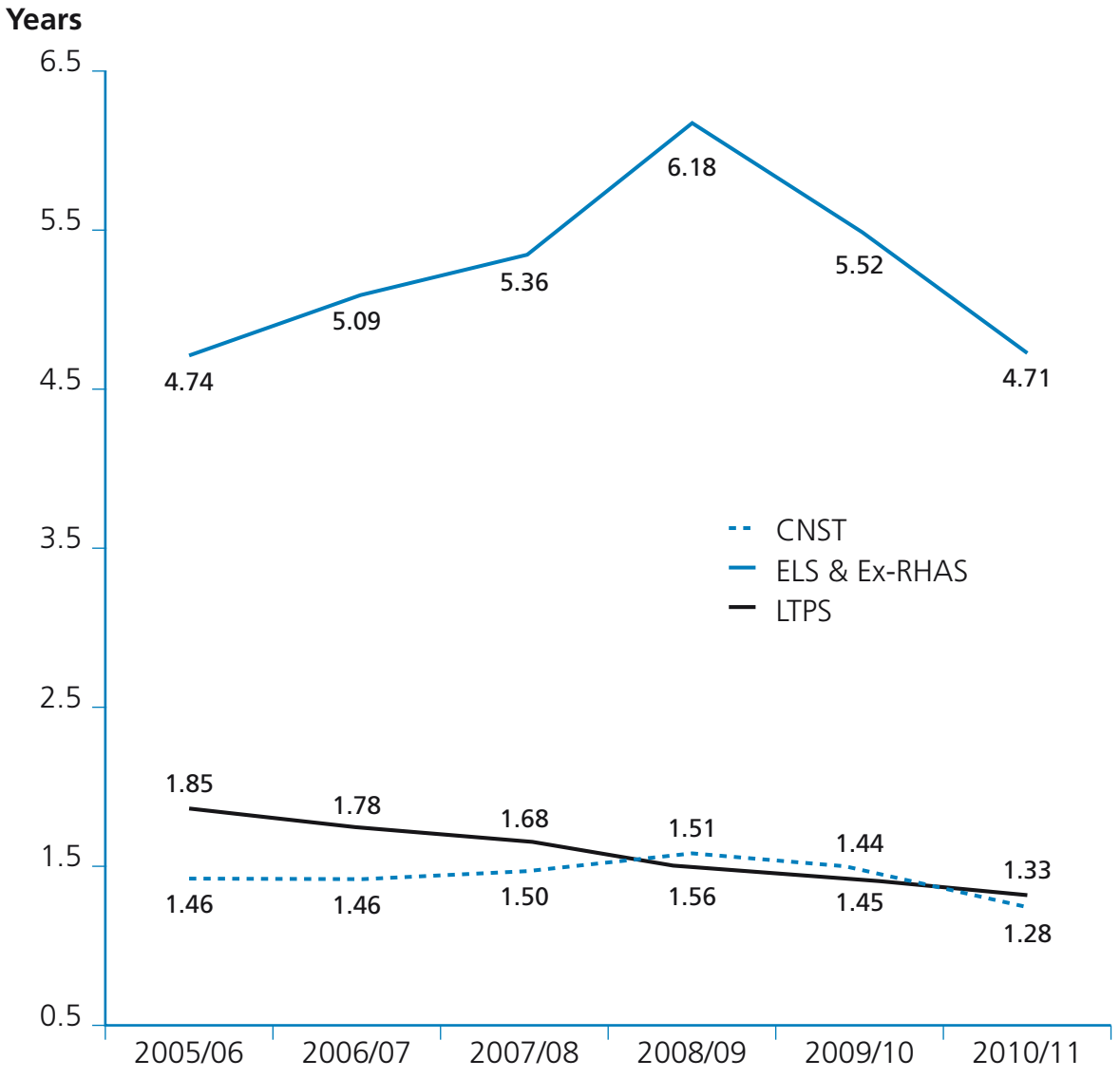
The **Clinical Negligence Scheme for Trusts** (CNST) is a voluntary membership scheme, to which all NHS trusts, Foundation trusts and Primary Care Trusts (PCTs) in England currently belong. It covers all clinical claims where the incident took place on or after 1 April 1995. The costs of meeting these 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** (Ex-RHAS) 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.

**Period between notification and resolution of claims**




## 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…reducing 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. We recorded 12,142 clinical and non-clinical liability matters in 2010/11 where a formal letter of claim was issued and our historical data show that only about 4% of those cases will go to court (that figure includes settlements made on behalf of minors and other persons lacking legal capacity that automatically require approval by a court).

The graph below shows the average time taken, by scheme, to resolve claims handled in the past six financial years. The time is calculated from the date a claim is notified to the NHS organisation

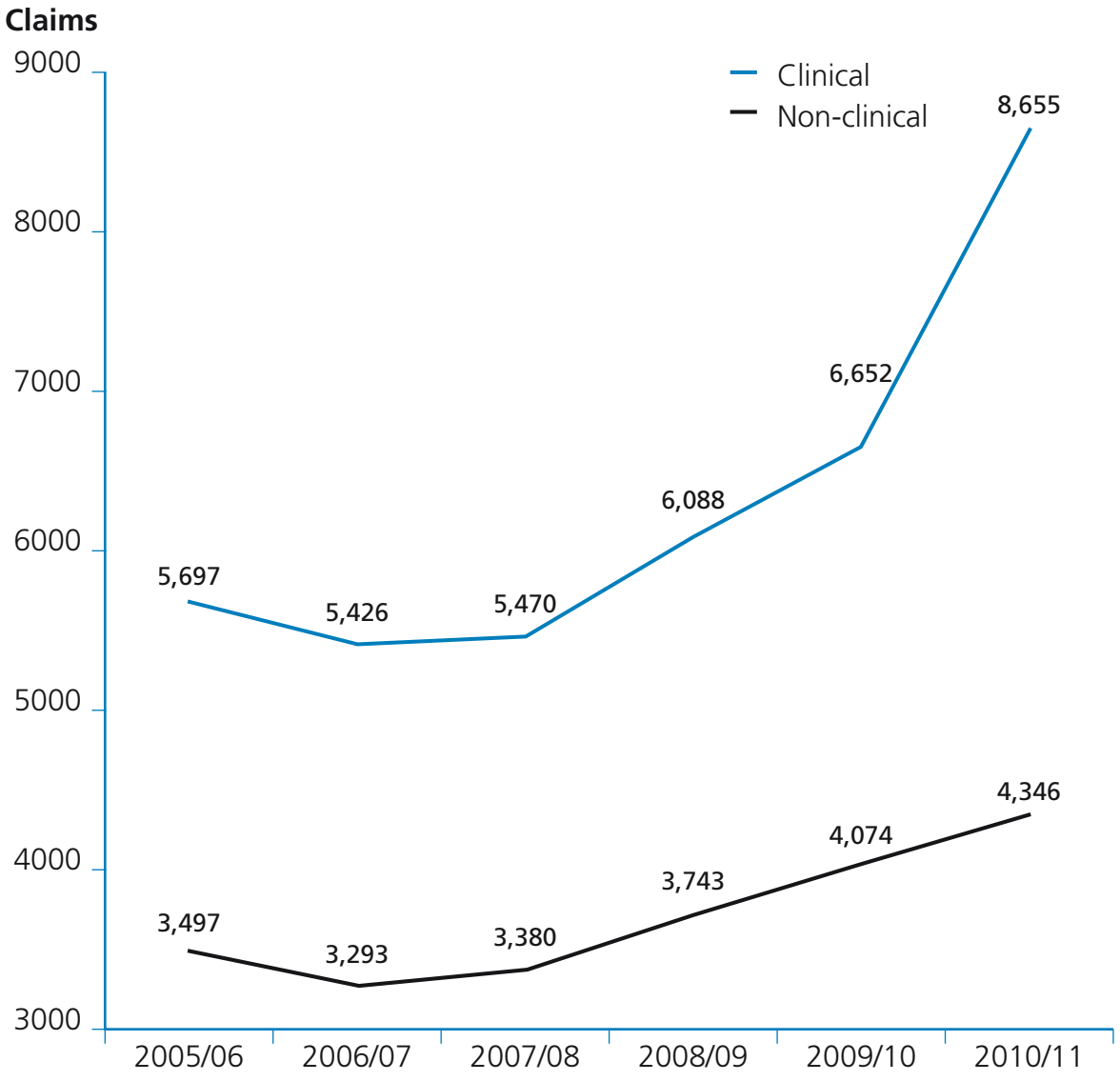
concerned, for ELS claims, or to the Authority for our other schemes, until the date damages are agreed or the claim is successfully defended or discontinued.

Speedier resolution equates to earlier settlements for patients, staff and visitors who suffer negligent harm and delivers savings in legal costs incurred by the NHS in defending unmeritorious claims. In 2010/11 there has been a reduction in the time to resolution across all of our liability schemes, compared with 2009/10. The complexity of typical ELS and Ex-RHAS claims means that their time to resolution is invariably longer than CNST claims.

## Claims Received

The number of claims recorded under our principal liability schemes, CNST and LTPS, continues to rise. Formal clinical claims received under CNST saw an increase of 31.6% on 2009/10 and non-clinical claims under LTPS rose by 7.8%. Part of the significant increase in claims under CNST may be explained to some extent by the requirement for claimants to now send us a copy of the Letter of Claim at the same time as it is sent to the defendant NHS body, at which point we now record the claim, but we are analysing patterns and

**Number of claims recorded**



trends to obtain a better understanding of the reasons behind the increase.

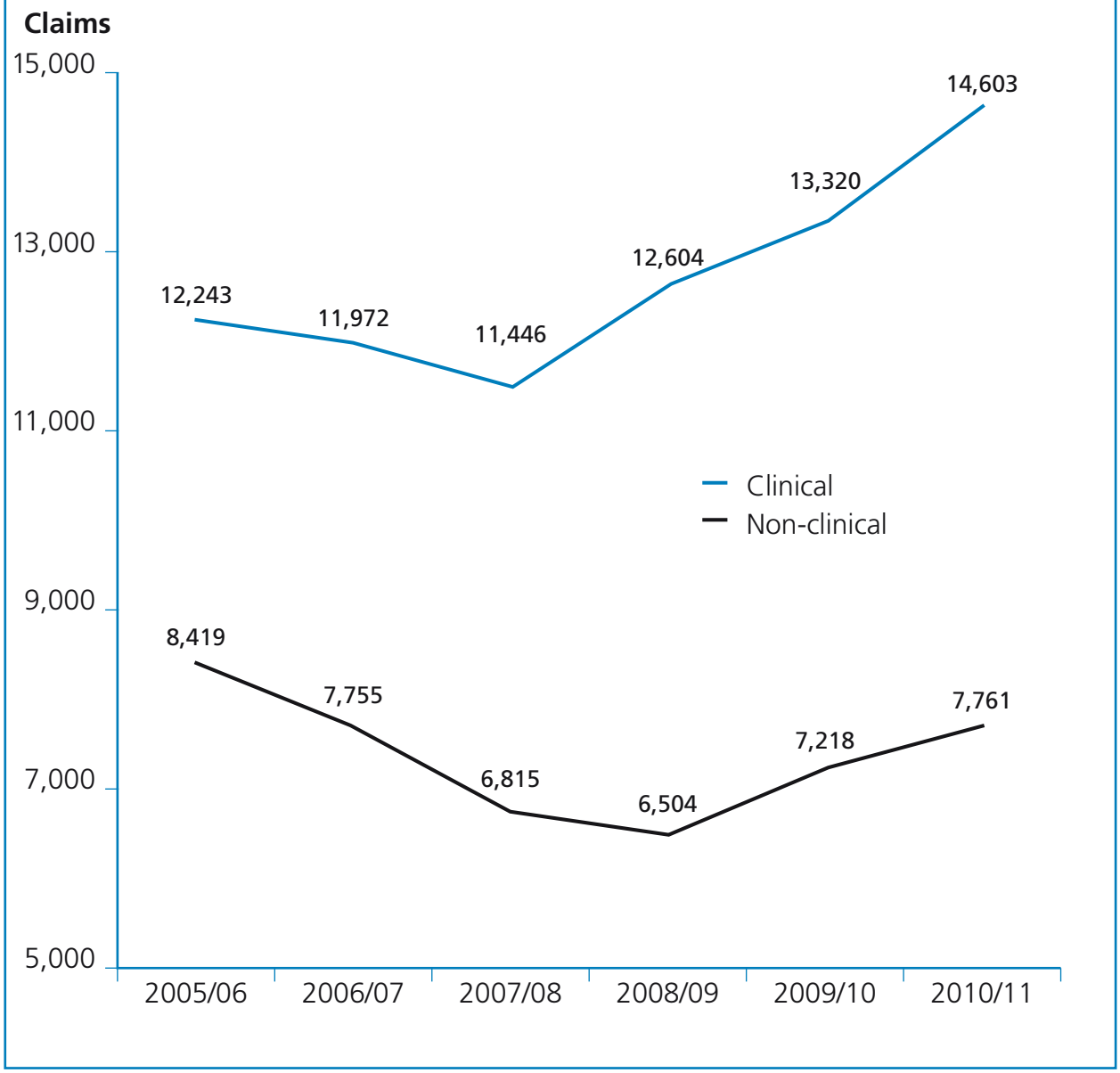
The graph on the previous page shows the total number of clinical and non-clinical claims recorded in each of the past six financial years.

## Claims open at year end

The number of outstanding incidents and claims across all of our schemes at year end increased by almost 9% on 2009/10.

The graph below shows the number of claims open at the end of the past six financial years.

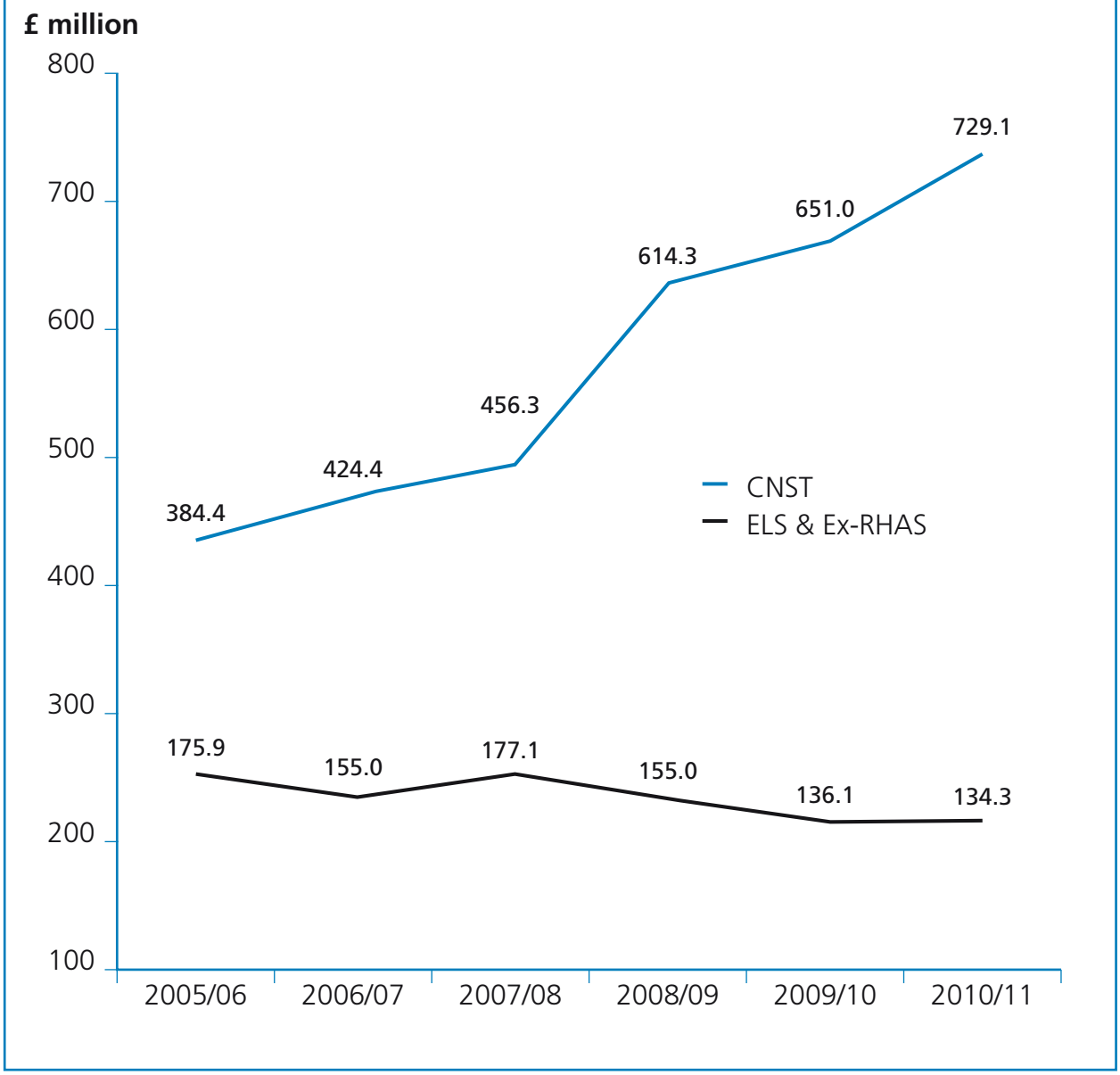
**Claims open at year end**



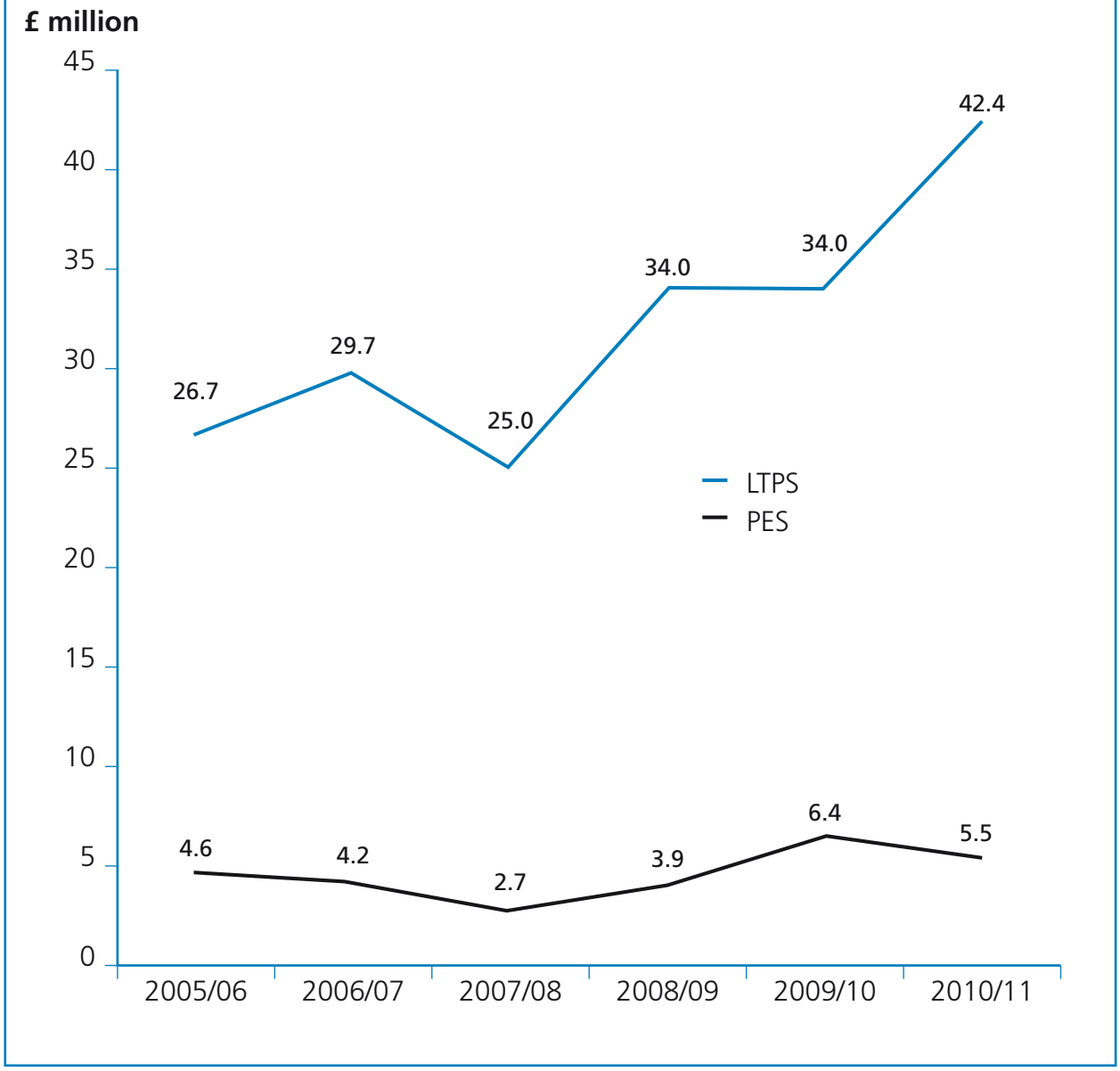
## Payments

The two graphs below show the Authority's expenditure on claims in each of the past six financial years.

### Clinical claims payments



## Non-clinical claims payments




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 recorded over several years.

## 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 continues to be a major concern. The availability of Conditional Fee Agreements (CFAs) and the continued increase in their use by claimants in clinical negligence claims has also meant that claimants' costs are almost invariably disproportionate, often significantly, to the amount of damages paid, particularly in low-value claims. In the 5,398 clinical negligence claims closed by us with a damages payment in 2010/11, we paid over £257m in total legal costs, of which almost £200m (76% of the total costs expenditure) was paid to claimant lawyers. Lord Justice Jackson, in his review of civil litigation costs published in January 2010, said that CFAs "…have been the major contributor to disproportionate costs in civil litigation in England…" and recommended that claimant lawyers' success fees and after-the-event insurance premiums in matters funded under CFAs should cease to be recoverable from the defendant. Eighteen months later that recommendation is no nearer being implemented.

These figures cannot be equated with the figures for total claims expenditure in 2010/11 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. The figures do not include claims where damages were not paid to the claimant, i.e. where no liability was established.

## Periodical payments

Periodical payments are damages settlements which include payments made on a regular basis, usually annually throughout the claimant's life, to cover the cost of 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 the cost of future needs is significant. At 31 March 2011, we were making periodical payments in 930 cases, compared with 805 at 31 March 2010 and 659 at 31 March 2009. The provisions for periodical payments as at 31 March 2011 totalled £2,409 million.

Mental health cases feature strongly in this year's report, a reflection in part of an increasing trend for claimants' lawyers to add Human Rights allegations to such claims.

### Rabone v Pennine Care NHS Trust

This tragic case was discussed in the 2009/10 annual report and is highlighted once more because of the ruling of the Court of Appeal on 21 June 2010.

Melanie Rabone was an informal adult psychiatric patient who, whilst on home leave, committed suicide by hanging herself from a tree in a public park. The trust accepted that it had been negligent to grant such leave, as a consequence of which the estate's claim was settled.

However, Melanie's parents also brought in a claim in their own right under Article 2 of the European Convention on Human Rights (ECHR) – right to life. This was rejected by Mr Justice Simon on 23 July 2009.

Lord Justice Jackson, giving the leading judgment in the Court of Appeal, held that the positive obligation on public bodies to protect life does not generally arise in the hospital context, where the usual remedy is a claim for negligence. Further, there was a crucial distinction in law between detained and voluntary patients. Hospital trusts did not owe an Article 2 operational obligation to voluntary psychiatric patients even where there was a real and immediate risk of death, whereas the opposite was true for detained patients.

*John Mead*
*Technical Claims Director*

## Important cases for the NHS in 2010/11

Had there been an Article 2 duty in this case, Jackson LJ held that there was a "real and immediate risk" of suicide on the facts. He also concluded that the parents were entitled to bring a claim as "victims" under the ECHR. However, the trust had settled the estate's claim and had sent a formal letter of apology. The parents had not suffered any pecuniary loss and therefore for all these reasons in law they were not victims.

This is a very significant ruling for the NHS. The distinction between detained and voluntary patients has once again been held to be crucial in the context of Article 2 claims. In brief, the Court of Appeal decided that the line of recoverability should be drawn at this point, otherwise

NHS bodies would be laid open to considerable additional liabilities. However, the parents are appealing further, and at the time of writing the case was due to be heard by the Supreme Court in early November 2011.

### TTM v London Borough of Hackney, East London NHS Foundation Trust and Secretary of State for Health

After obtaining a writ of habeas corpus in the High Court on 11 February 2009, the patient sought a judicial review of his detention, damages for unlawful detention and, if unsuccessful in the latter, a declaration that English law was incompatible with Article 5 of the ECHR – right to liberty and security of the person.

M had been detained by the trust following an application by an Approved Mental Health Professional (AMHP) employed by the local authority. During the habeas corpus proceedings the judge ruled that although the AMHP was a convincing and impressive witness, she had failed to realise that M's brother had not withdrawn his objection to M's detention. At a separate hearing, Collins J had held that the detention was lawful because the trust was entitled to rely upon the AMHP's application.

The Court of Appeal ruled on 14 January 2011 that the detention had in fact been unlawful, because of the AMHP's misinterpretation of the wishes of the brother. However, the trust was not liable for false imprisonment because of s.6 (3) of the Mental Health Act, 1983.

M's rights under Article 5 had been infringed by the local authority, but not by the trust. He was therefore entitled to compensation from the council.

This is another important ruling for the NHS. Unlawful imprisonment is virtually a strict liability tort, for understandable reasons of public policy. M's detention was unlawful, but the NHS had a defence by virtue of the 1983 Act.

### Selwood v Durham County Council, Tees Esk and Wear Valley NHS Foundation Trust and Northumberland Tyne and Wear NHS Foundation Trust

This was another very sad case. The claimant was a social worker, employed by Durham County Council, who was seriously injured when she was stabbed repeatedly by GB, a father whose family she was trying to help. GB was a voluntary psychiatric patient.

It was alleged that the health trusts had been aware that GB posed a significant and immediate risk of harm to the claimant yet failed to take any, or any effective, action notwithstanding that there was considerable joint working between the bodies concerned.

In a detailed ruling in February 2011 at Newcastle upon Tyne County Court, Judge Walton struck out the claim against the trusts. He held that in the absence of any assumption of responsibility, X is not normally liable in law to Y for harm caused by the criminal acts of Z. There was no such assumption of responsibility in this case. The House of Lords had recently rejected two claims against the police where the facts were much more extreme. If there was no duty on the police to take action when very grave threats came to their attention, it would not be fair, just and reasonable for NHS trusts to have such a duty. Article 2 (right to life) did not assist the claimant as GB was not detained at the time of the assault.

Whilst a first instance decision, this is an important ruling for the NHS. For mental health trusts to be liable in these circumstances would massively increase their potential liabilities. The claimant has not been seriously disadvantaged because she still has possible remedies, namely a call upon the Criminal Injuries Compensation Authority fund and the claim for damages against her employers, which was not struck out.

## Equal Pay and age discrimination

More test issues involving the NHS were heard in 2010/11, amongst the most important of which were:

### Fox v North Cumbria University Hospitals NHS Trust

On 30th June 2010, the Court of Appeal ruled that the transition from Whitley pay and conditions to Agenda for Change (AfC) did not, all other things being equal, disrupt the stable employment relationship of most NHS employees. Consequently, the relevant limitation period was six years (assuming continued employment) and not six months from the transition to AfC.

### Forward v East Sussex Hospitals NHS Trust

The Newcastle Employment Tribunal, on 12 November 2010, laid down rules for challenging independent experts. The effect is that such challenges are significantly circumscribed, which should mean that cases will progress through the tribunal system more quickly than previously.

A major test case, concerning whether or not Whitley Council decisions prior to implementation of AfC constitute a "Genuine Material Factor" defence for NHS bodies, where gender-based differences of pay occurred in the pre-AfC period, is scheduled to be heard by the Newcastle Tribunal in May/June 2011. The outcome will affect nearly all the outstanding equal pay claims against the NHS.

*Alison Bartholomew Risk Management Director*

# Risk management

One of the roles of the Authority is to encourage NHS trusts and independent sector providers of NHS care to improve their clinical and non-clinical risk management practices. This responsibility, which is aimed at improving the safety of NHS patients and staff, is met through the provision of risk management standards based on identified causes of claims, against which organisations are assessed, and by providing opportunities for learning and support to assist organisations in achieving the standards. The Authority also facilitates the use of claims data for safety purposes in other ways and has begun an initiative to ensure that organisations are learning from their own claims and that this knowledge is shared within the NHS.

## Standards and assessments

There are separate risk management standards incorporating organisational, clinical and health and safety risks for each type of NHS trust and independent sector providers of NHS care. Each set of standards contains five individual standards: Governance; Competent and Capable Workforce; Safe Environment; Clinical Care; Learning from Experience. In addition, there are separate clinical risk management standards for organisations providing maternity services, also with five standard areas: Organisation; Clinical Care; High Risk Conditions; Communication; Postnatal and Newborn Care.

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 one standard. As they progress from Level 1 to Level 3, NHS trusts receive increasing discounts, ranging from 10% – 30%, on their contributions to our risk pooling schemes. The results of assessments are published on our website in Factsheet 4, together with copies of assessment reports.

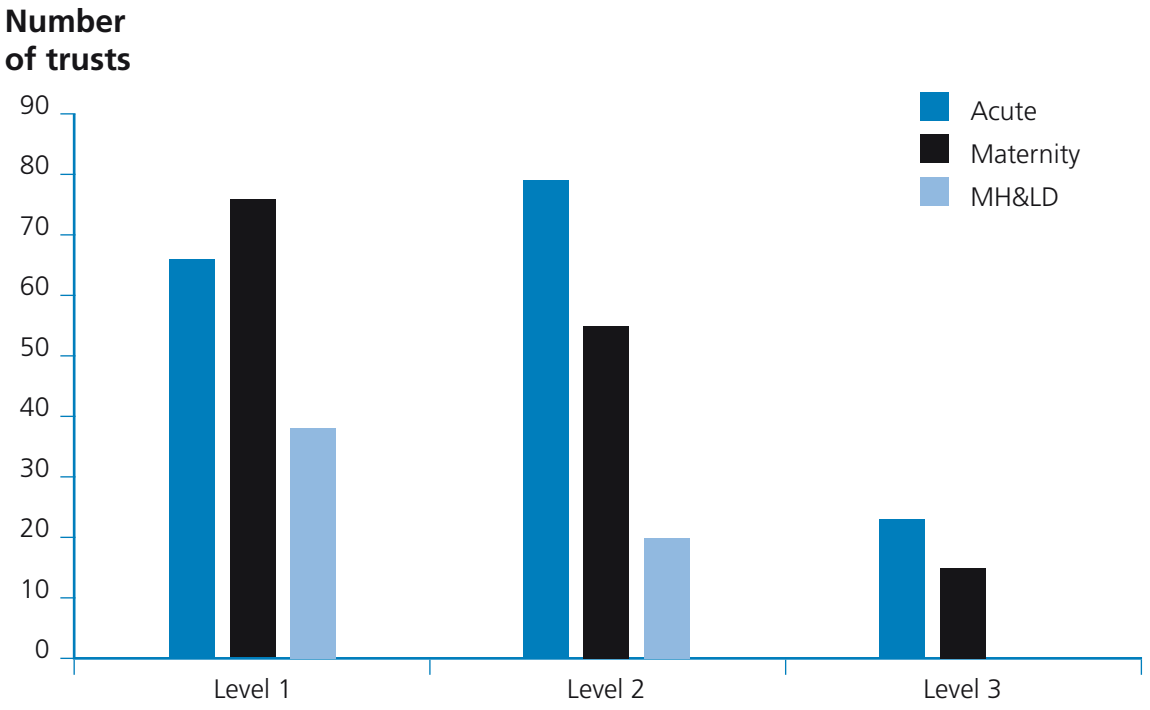
During 2010/11, a total of 180 assessments were carried out: 114 (63%) at Level 1, 41 (23%) at Level 2 and 25 (14%) at Level 3. At the end of the year, 60% (2009/10, 60%) of acute trusts, 34% (2009/10, 31%) of mental health and

learning disability trusts and 48% (2009/10, 70%) of maternity services had achieved Level 2 or 3, as illustrated in the chart below. The reduction in the number of maternity services at the higher levels is due to organisations choosing to be assessed at a lower level.

All ambulance trusts are currently at Level 1 in the standards. During 2010/11, PCTs had the option of choosing whether or not their provider services should be assessed and only a small number requested an assessment, due mainly to the organisational changes taking place as part of the transforming community services programme. At the end of the year, 52 PCTs had a current assessment level, all at Level 1. Similarly, the assessment of independent sector providers of NHS care is voluntary and five had a Level of either 1 or 2 at the year end.

All the Authority's standards are subject to ongoing review and an annual update to ensure that they remain relevant and robust. All the standards manuals for 2011/12 were published in January 2011. In addition to the manuals, a range of tools is provided to assist organisations in achieving compliance with the standards. These include a handbook containing guidance and reference sources in support of the standards, an electronic evidence template to enable organisations to conduct a self-assessment and to accompany evidence submitted for assessment, frequently asked questions and answers, and template documents to assist organisations in drafting local policies to manage risks.

**Acute, mental health and learning disability and maternity services levels 31 March 2011**



A post assessment questionnaire, designed to inform the future development of the processes behind the risk management programme was sent to all organisations assessed during the year. The responses received, which will be published in a summary report on our website, have indicated a high level of satisfaction with the Authority's risk management programme and included some practical suggestions for further improvement.

During the year the Board considered proposals for the future development of the Authority's risk management standards and assessments. These included the introduction of more specialty specific standards and a Level 4, more frequent assessments at the higher levels, changes to the length of assessments to make them more proportional to the size of the organisation being assessed, and amendments to the discounts given to trusts for achieving the standards. Although the proposals were accepted in principle, it was decided to defer any changes until after the outcome of the industry review of our organisation was known.

## Education

Ten workshops were held for maternity services during May to June 2010, and were attended by representatives from 130 (89%) eligible organisations. The delegate evaluation of these events was overwhelmingly positive, with 179 of the 189 attendees who responded (95%) indicating that they were 'likely' or 'highly likely' to use the information/knowledge gained, and 181 (96%) responding that they were 'likely' or 'highly likely' to recommend a similar event to others.

A bespoke workshop was held for ambulance services in April 2010 and was attended by representatives from 10 (91%) eligible organisations. All attendees responded to an evaluation request with 100% indicating that they were 'likely' or 'highly likely' to use the information/ knowledge gained at the event.

Members of the Authority's staff and our risk management services providers presented at 38 events organised by others during the year to give advice and guidance on managing risks and otherwise promote our risk management programme to improve the safety of NHS patient and staff.

The Authority continues to offer organisations an informal visit by their assessor each year to provide focused support and guidance in relation to our standards. In 2010/11, 354 (89%) eligible organisations took advantage of this opportunity.

## Learning lessons from claims

In addition to informing the risk areas addressed in its standards, the Authority enables the use of claims data for safety purposes in other ways. For example, with the aim of facilitating learning to improve the safety of women and their babies, the Authority has undertaken an analysis during 2010/11 of more than 5,000 maternity claims using the descriptive information on our claims database. A report of the findings will be published in 2011. Four categories of maternity claims were selected for further study using information contained in claim files and the findings of these studies will also be published in 2011.

In response to the increase in claim numbers and payments, and with the objective of reducing the number and severity of incidents giving rise to claims, the Authority introduced a new risk management initiative in February 2010. This aims to ensure that organisations are learning from their own claims through robust internal quality and safety systems and, where appropriate, the knowledge gained is shared with the wider NHS. Our clinical panel solicitors now prepare a separate risk management report on all new CNST claims where they are instructed, which is shared with the relevant NHS organisation for action and will be used by the Authority to ensure that lessons are learned. By the end of March 2011 reports had been prepared on almost 2,000 claims. A Steering Group, whose members comprise representatives from healthcare organisations, our panel solicitors and risk management services provider, as well as our own claims and risk management staff, has been established to ensure that the reports are used to best achieve the initiative's objectives.

## Partnership working

A new Risk Management Forum comprising senior representatives from acute trusts was established during 2010/11 to provide the Authority with advice on the strategic direction of its risk management programme. There are plans to establish a parallel forum for members from mental health and learning disability and community trusts in 2011/12.

The Authority launched an E-newsletter called *Risk E-News* during the year in support of its risk management programme.

By sharing our unique claims experience and knowledge and assessment data with other bodies, we are able to make a positive contribution towards improving patient safety and the safety of NHS staff. We continue to liaise and work closely with other bodies on these important issues, including the National Institute for Health and Clinical Excellence (NICE), the National Patient Safety Agency (NPSA), various professional bodies such as the Royal College of Obstetricians and Gynaecology (RCOG), and the NHS Security Management Service (NHS SMS). The Care Quality Commission (CQC) uses our assessment data to inform its Quality and Risk Profiles for NHS healthcare providers and the scope for possible additional joint working between the two organisations is continuing to be explored.

## Risk management services

The Authority has a 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 an excellent service during the year, meeting or exceeding most of their agreed Key Performance Indicators. A report on activities and findings in respect to their work for the Authority during 2010/11 will be produced by DNV and published on our website.

*Lisa Hughes*
*Appeals Manager*

# Family Health Services appeals

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 Leeds.

The total number of cases received and determined was marginally lower than the same period last year, but was still higher than historical levels. The mix of case types varies from year to year; the number of pharmacy appeals received remained the highest work stream. Additional statistics about the Unit's work are available on our website.

## KPI Review

During this financial year the Authority reviewed its Key Performance Indicators (KPIs) to take account of factors that can cause delays in determining cases. Our new KPIs can be found on page 34, together with our performance against them for the year.

## 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

Those disputes arising under the General Medical Services and Personal Medical Services Regulations once again became the main source of applications for dispute resolution. During this period we have received fewer Current Market Rent disputes than in the same period last year, which may be as a result of the Best Practice Protocol we issued previously to assist Primary Care Trusts with disputes at local level. Numbers received in this financial year are 27% down on the same period last year. It has also been encouraging to note that for those applications for dispute where PCTs have engaged with our Best

Practice Protocol at local level, it has had the benefit of ensuring that more information has been available to our expert advisors, which has reduced the burden upon them when providing advice to the Authority, and has therefore resulted in a reduction in the time being taken to determine some Current Market Rent applications.

Otherwise both medical and dental disputes raised the usual mix of disputes from remuneration, including claw-back of monies, payment of Quality Outcomes Framework monies, to termination of contract. However, we did determine a significant number of applications for dispute resolution following termination of contract by PCTs, which made up 21% of dispute resolution determinations. No disputes relating to the General Ophthalmic Services Contracts Regulations were properly lodged with this Authority.

As always determination of these disputes may be subject to legal challenge by way of Judicial Review. One dental claimant successfully Judicially Reviewed a determination by the Authority made in 2008. It was found by the Court that the Authority had erred in law and the decision was therefore set aside. By the end of this year there had been three separate applications to the court by medical contractors seeking permission to Judicially Review the Authority following determinations made. Cases were still to be heard by the end of the year, although two had been refused on the papers but were seeking permission via oral representations.

## Appeals

Appeals received in this period were similar to those received for the same period last year, and this is still slightly higher than historical levels. Again this year we received a significant number of appeals from pharmacists seeking to change their "core" opening hours during the Christmas period.

A three year comparison of the number of appeals received and determined is shown below.

| Year | 2008/ 2009 | 2009/ 2010 | 2010/ 2011 |
|---|---|---|---|
| **Appeals received** | 515 | 405 | 395 |
| **Appeals determined** | 512 | 442 | 387 |

Following a high determination rate in the previous financial year, the number of appeals determined this financial year fell back to more normal levels.

Of those pharmacy appeals that resulted in a substantive determination (e.g. were not withdrawn or summarily dismissed) 24% were allowed.

Determination of pharmaceutical appeals may be subject to legal challenge by way of judicial review; however no applications for Judicial Review were made to the Court in this regard this year.

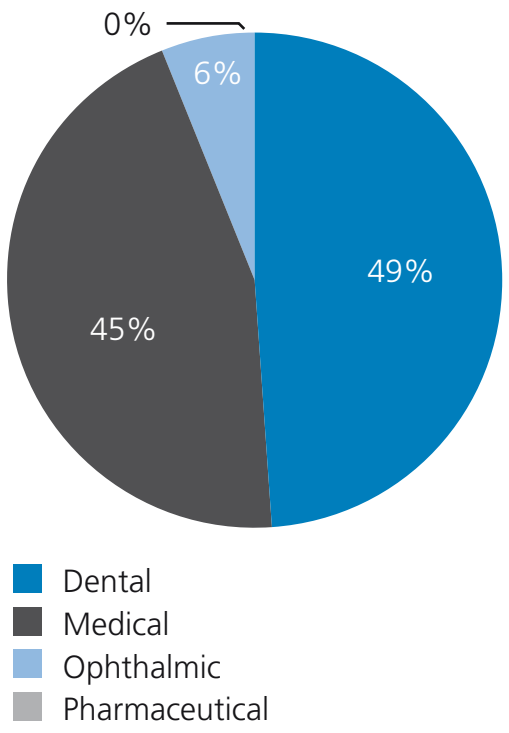
## Fitness to Practise: PCT notifications and checks

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 113 suspensions, with 75 still in force as at

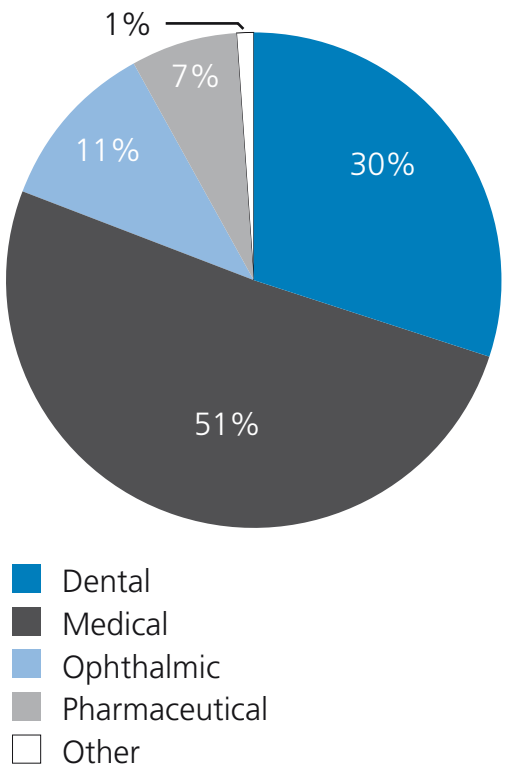
31 March 2011. The Authority also received notification of 1,596 other local decisions in respect of performers under the fitness to practise procedures, with an additional 40 notifications of withdrawn applications to join a list as required by the April 2010 Directions.

The Authority holds details of the notifications on a database for the purpose of responding to PCT requests for checks on performers, allowing them to protect NHS patients by making sure that these practitioners are fit to practise. During the year 15,573 requests were processed. The secure on-line checking system which was rolled out during 2008/9 provided immediate clearance of 97.25% of checks with the remaining 2.75% having to be referred to the Authority for further investigation.

**2010/11 Notifications (other than suspension) by profession**




**2010/11 Restriction checks by profession**



*David Bell*
*Director of Human Resources*

# Our people

The past 12 months have been anything but a period of stability and that is unlikely to change for the foreseeable future. We owe a huge amount of gratitude to the people who work for us, who have positively embraced the relocation of both our offices and our significant increase in the use of home working. This has been against the background of two reviews of our organisation, Department of Health recruitment controls and outsourcing proposals and further increases in volumes of work reflected elsewhere in this report and still we have continued to deliver the high quality services the NHS in England has come to expect. The results of our 2011 staff survey will be available in the next year and these will underpin our workforce strategy for the coming year.

An organisation chart is available on our website, together with other data about pay and staff roles.

## Creating a community of leaders

Our programme to improve and develop our leadership skills and to highlight our shared responsibility as leaders in our organisation has continued, with our non-executive directors becoming involved. The programme has led to some highly successful projects suggested by managers in a *Dragons' Den* type pitch to improve the engagement of our employees, including suggestion and shadowing schemes and 360° assessments, using the NHS Leadership Qualities Framework.

The Hubbub, our innovative and cost effective talent management programme in collaboration with other Department of Health sponsored organisations, has proved to be a great success and a second year is now well underway. Year one came to a magnificent conclusion with a reception at the Palace of Westminster and a World Café event at NHS Blood and Transplant premises in Birmingham. A great network is being built by the participants to support their future development in an uncertain environment. All the member organisations are facing some form of change in the coming years and so we are looking for new members and alternative funding arrangements.

### Equality and diversity

The Board continues to monitor a wide range of diversity statistics at its regular meetings, which are available on our website. We will review our work in this area during 2011 in support of the changes implemented by the Equality Act 2010 for public sector organisations.

We had no active equal pay claims on 31 March 2011.

## Good corporate citizen

The model developed by the Sustainable Development Commission (corporatecitizen.nhs.uk) for the NHS underpins our work in six key areas:

- Travel
- Procurement
- Facilities management
- Workforce
- Community engagement
- Buildings

We continue to take our responsibilities as a corporate citizen seriously, by use of an action plan, which you can see on our website. The Board receives updates on our impact as an organisation on the environment, which you can also access online, and we have set ourselves a target for mileage, which we were able to meet during the year.

Many more people now work from home, either all the time or a few days a week, using the robust and secure arrangements put in place by our IT team, which means a reduction in the environmental impact of our activities and increased flexibility for our employees. Sharing premises with other organisations means we are now using much less office space than a year ago and offers us the opportunity to look for further improvements.

Our work in this area is led by Professor Rory Shaw, a non-executive director.

## 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 subject to tender 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
Hempsons
Hill Dickinson LLP
Kennedys Law LLP
Ward Hadaway
Weightmans LLP

### Non-clinical claims: panel of solicitors

Barlow Lyde & Gilbert LLP
Browne Jacobson LLP
Hill Dickinson LLP
Kennedys Law LLP
Veitch Penny
Ward Hadaway
Weightmans LLP

### Actuaries

Lane, Clark & Peacock

### Risk management

Det Norske Veritas

## Advisory groups

### Risk Management Forum

This group met for the first time during 2010/11, with representatives from acute trusts across England. There are plans to establish a parallel forum for members from mental health and learning disability and community trusts. The minutes of the forum meetings are published on our website.

## 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 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 30 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 Chair of the QC appointments panel and a member of the House of Lords Appointments Commission; 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 and the National Patient Safety Forum.

## 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 Leeds and the day to day management of the claims functions.

## Keith Ford OBE

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; chairs the Authority's Audit and Risk Committee.

## Professor Rory Shaw

BSc, MD, MBA, FRCP *Non-Executive Member*

Medical Director of North-West London Hospitals NHS Trust; previously Chief Medical Officer at Royal Berkshire Hospital NHS Foundation Trust and Medical Director 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.

## Nina Wrightson OBE

Dip SH, LLB (Hons), CFIOSH
*Non-Executive Member*

Formerly Risk Management Director for Northern Foods plc; past President of the Institution of Occupational Safety and Health; a non-executive Director of Yorkshire Ambulance Service NHS Trust and a Public Member of Network Rail. Recently retired as Chairman of the British Safety Council and Complywise Ltd.

There were 8 Board meetings in 2010/11; attendance was as follows:

| Board member | Meetings attended |
|---|---|
| Joan Higgins | 8 |
| Steve Walker | 8 |
| Tom Fothergill | 7 |
| Keith Ford | 8 |
| Rory Shaw | 5 |
| Nina Wrightson | 8 |

# 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 £1,864.8 million, which represents an increase of £225.5 million on the restated figure for the previous year.

The Authority's net Operating Costs are required to be managed within a Revenue Resource Limit (RRL) agreed with the Department of Health. For 2010/11 the agreed RRL was £1,913.4 million; thus an under spend of £48.6 million is reported.

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, 75% (2009/10 80.4%), representing 84.8% (2009/10 84.1%) 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 2010/11 the Authority had a revenue cash limit of £85 million. Capital cash limits for the year were £410,000, with reported outturn at £409,000 showing an under spend of £1,000.

The balance sheet as at 31 March 2011 shows net liabilities of £16.843 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, s70 of the NHS Act 2006 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 International Accounting Standard 37 (IAS 37) to give readers a clear indication of the likely value of these claims were they all made and settled today.

These provisions are essentially a valuation as at the 31st March 2011 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 the 31st March 2011.

Another key balance sheet movement is the change in cash balances held at the year end (£31 million compared to £42 million in 2009/10). 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 2010/11 the Authority has reduced its overall cash balance by approximately £10.7 million. All cash balances are lodged within the Government Banking Framework; i.e. balances are not held in commercial accounts and so do not attract interest payments.

## 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 the time taken to respond to formal letters of claim and also time taken to make formal offers of settlement on claims we anticipate will be successful. i.e. measuring the responsiveness of the Authority to valid claims made by NHS patients, staff and visitors in order to satisfy our framework requirements to resolve valid claims as swiftly as possible whilst also striving to minimise 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. Due to the adversarial nature of the claims against the NHS, the Authority does not publish the details.

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 2010/11 is shown below:

| Regulations | Target time to determine (weeks) | Actual % within target | Average time taken (weeks) |
|---|---|---|---|
| **Pharmacy regulations** | | | |
| Summary | 100% in 5 | 100% | 3 |
| On the papers | 90% in 15 | 99% | 12 |
| | 10% between 16-18 | 1% | 16 |
| Oral hearing | 90% in 26 | 96% | 23 |
| | 10% between 37-35 | 2% | 31 |
| | Target not met | 2% | 47 |
| **Performer lists regulations** | | | |
| On the papers | 90% in 15 | 88% | 6 |
| | 10% between 16-18 | 12% | 17 |
| **Dispute resolution** | | | |
| On the papers | 90% in 15 | 100% | 12 |
| | 10% between 16-18 | N/A | N/A |
| Advice/hearing | 90% in 35 | 91% | 21 |
| | 10% between 36-40 | 6% | 37 |
| | Target not met | 3% | 44 |
| **GP registrars** | | | |
| Assessments | 100% in 4 | 80% | 2 |
| Representations | 90% in 15 | 100% | 6 |
| | 10% between 16-18 | N/A | N/A |

*New KPIs introduced for 2010/11 hence no comparable data for 2009/10*

## Government Review of Arm's Length Bodies

During 2010/11 the Authority has worked closely with the Department of Health and other ALBs on the impacts following publication of *Liberating the NHS: report of the Arm's Length Bodies Review* in July 2010.

The report recommended an industry review of the Authority to determine its future as an Arm's Length Body and consider any changes to service provision in readiness for the wider changes to the NHS landscape.

Between late December 2010 and April 2011 the Authority has assisted this review of its functions, led by Marsh, resulting in a report to DH. The ongoing recommendations flowing from that report will form the direction of travel for the work of the Authority, as a minimum over the next financial year, whilst the transition to the new arrangements is concluded.

The ALB report also discussed a formal review of what it terms business support functions and work has continued, led by the Department of Health, on a review of some key areas including Finance, Human Resources, Procurement and Estates Services. The aim of the review is to develop more appropriate models of service provision, including consideration of sharing services, to reduce the administrative costs to the DH and ALB community as a whole.

Work on the four key streams is well advanced and it is anticipated that specific work during 2011/12 will be aimed at assisting DH to deliver savings targets to assist the overall spending on those organisations within the current Comprehensive Spending Review period which runs to 31 March 2015.

## A year of transition

2011/12 will be a significant year of transition for us, following the review of our organisation by Marsh commissioned by the Department of Health. We have developed six key objectives to reflect this transition as a means of delivering our strategic aims:

### Strategic aim 1: improving effectiveness and efficiency

(1) best value – we will continue to work with the Department of Health to ensure that financial and human resources are used in the most effective way and that all financial targets are closely monitored, amended where agreed and subsequently met by year end.

(2) maintaining business continuity – during a challenging transitional period, our focus will be on the outcome of the Marsh review of our activities and the future shape and form of our organisation and ensuring that our business in support of the NHS in England is maintained without any diminution of quality or efficiency.

(3) delivering quality services – we will continue to identify ways of improving and developing the quality of our services during 2011/12, which will include implementing the recommendations from the Marsh review.

### Strategic aim 2: better risk management practices

(4) working for a safer NHS – we will continue to seek means to promote learning from our experience of litigation to reduce the number and severity of incidents giving rise to claims against NHS organisations from patients and staff, creating a safer environment and saving money.

(5) working closely with our partners – we will continue to develop and maintain our links and working practices with our partners to improve the effectiveness of all aspects of our work, especially in relation to claims and risk management.

### Strategic aim 3: enabling change and innovation

(6) delivering for the NHS and responding to change – we will continue to support the NHS with risk management and indemnity advice regarding new models of service delivery and changing priorities.

## 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 151 Buckingham Palace Road.

### Audit and Risk Committee

The Authority's Audit and Risk 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. Following a review of the Authority's committee structure by the Board, the Terms of Reference of the former Audit Committee were revised during 2010/11 to more clearly reflect all risks to the organisation.

The committee's non-executive members in 2010/11 were Keith Ford (Chairman), Rory Shaw and Nina Wrightson. The committee met four times in 2010/11 and attendance was as follows:

| Non-executive director | Meetings attended |
|---|---|
| Keith Ford | 4 |
| Nina Wrightson | 4 |
| Rory Shaw | 1 of 3 |

### 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 six times during 2010/11.

### 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, which will be reviewed and amended in line with the requirements of the Equality Act 2010.

### Comments and complaints

The Authority received 12 complaints in 2010/11 (7 in 2009/10), excluding correspondence about the management of particular claims files.

### Sickness absence

2.19% of working time was lost as a result of sickness during 2010/11 (3.57% 2009/10).

### Freedom of information

The Authority handled 239 (208 in 2009/10) requests for information under the *Freedom of Information Act 2000* in 2010/11, of which 97% (98.1%) received substantive responses within the 20 days prescribed by the Act.

### Pension liabilities

The Authority's employees are covered by the provisions of the NHS Pension Scheme, details of which are given in note 1.11 of the accounts. Pension liabilities in respect of Board members are given in the Remuneration Report.

### Personal data related incidents

A few minor incidents occurred in 2010/11, none of which involved the loss or inappropriate disclosure of confidential patient information. The Authority uses a secure document transfer system to minimise the risk of such incidents.

## Audit services

The Comptroller and Auditor General has provided the Authority's audit services at a cost of £78,700 for the current year. 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 three times during the year. Attendance was as follows:

| Non-executive director | Meetings attended |
|---|---|
| Joan Higgins (Chair) | 3 |
| Keith Ford | 3 |
| Rory Shaw | 2 |
| Nina Wrightson | 3 |

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 2010/11. The information in these two tables is subject to audit.

### Salaries and allowances

| | 2010-11 | | | 2009-10 | | |
|---|---|---|---|---|---|---|
| Name and title | Salary (bands of £5,000) £000 | Other Remuneration (bands of £5,000) £000 | Benefits in kind (Rounded to the nearest £100) £00 | Salary £000 (bands of £5,000) £000 | Other Remuneration (bands of £5,000) £000 | Benefits in kind (Rounded to the nearest £100) £00 |
| **Professor Dame Joan Higgins DBE** *(Chair)* | 35 – 40 | N/A | N/A | 35 – 40 | N/A | N/A |
| **Stephen Walker CBE** *(Chief Executive)* | 180 – 185 | N/A | 73* | 180 – 185 | 5 – 10 | 63* |
| **Tom Fothergill** *(Director of Finance)* | 150 – 155 | N/A | N/A | 150 – 155 | 0 – 5 | N/A |
| **Keith Ford OBE** *(Non-Executive Member)* | 10 – 15 | N/A | N/A | 10 – 15 | 0 – 5 | N/A |
| **Professor Rory Shaw** *(Non-Executive Member)* | 5 – 10 | N/A | N/A | 5 – 10 | 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 to lease cars.

## Pension Benefits

| Name and title | Real increase in pension at age 60 (bands of £2,500) £000 | Real increase in pension lump sum at aged 60 (bands of £2,500) £000 | Total accrued pension at age 60 at 31 March 2011 (bands of £5,000) £000 | Lump sum at age 60 related to accrued pension at 31 March 2011 (bands of £5,000) £000 | Cash Equivalent Transfer Value at 31 March 2011 £000 | Cash Equivalent Transfer Value at 31 March 2010 £000 | Real increase in Cash Equivalent Transfer Value £000 | Employer's contribution to stakeholder pension £00 |
|---|---|---|---|---|---|---|---|---|
| **Stephen Walker CBE** *(Chief Executive)* | 0 – 2.5 | 0 – 2.5 | 65 – 70 | 195 – 200 | 0** | 0** | N/A | 253 |
| **Tom Fothergill** *(Director of Finance)* | 0 – 2.5 | 2.5 – 5 | 30 -35 | 90 – 95 | 394 | 435 | -52 | 204 |

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

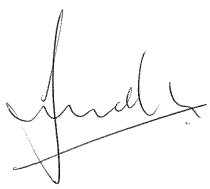
As non-executive members do not receive pensionable remuneration, there are no entries in respect of pensions for non-executive members.

### 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
23 June 2011

## 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 expenditure, 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

As Accounting Officer I have responsibility for maintaining a sound system of internal control that supports the achievement of the Authority's policies, aims and objectives, whilst safeguarding the public funds and the Authority's assets for which I am personally responsible, in accordance with the responsibilities assigned to me in Managing Public Money.

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 Committee makes recommendations to the Board on matters related to governance.

Operational responsibility for the Authority's financial governance systems is delegated to the Director of Finance. The Risk Management Team is responsible for the co-ordination of risk management activity, including information governance, within the Authority. The lead responsibility within that Team is vested in the Risk Management Director who is also the Authority's Senior Information Risk Owner and Data Protection Officer.

'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 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.

During 2010/11 internal audit have carried out an assurance stock-take and reported findings to the Audit and Risk Committee. The report made only one medium rated recommendation and two minor recommendations all of which were accepted and are being implemented by the Authority.

Corporate performance is reported to the Board on a regular basis. Variations from anticipated performance will usually be accompanied by reports from the Audit and Risk 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, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

The system of internal control has been in place in the Authority for the year ended 31 March 2011 and up to the date of approval of the annual report and accounts, and accords with Treasury guidance. 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 is committed to minimising the risks associated with information handling and to ensuring that all staff are fully aware of their responsibilities in relation to the management of information governance risks. Our Information Governance Strategy and related policies and protocols communicate a consistent approach to information handling within the Authority.

The Authority is well versed in handling sensitive data and takes its responsibilities very seriously. Our secure Document Transfer System (DTS) provides our stakeholders with a protected environment to transfer data to and from the Authority thus removing any risk of interception of sensitive documents. All of the Authority's equipment is appropriately encrypted and the use of items like USB keys is very strictly controlled using password encryption.

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. So, for example, our financial performance is documented on a regular basis to the Strategic Management Team and the Board of the Authority and is also reported periodically to the Department of Health to demonstrate that expenditure commitments are in line with forecasts and budgetary limits.

The Board receives assurance from the Audit and Risk Committee, which in turn receives assurance from and the Health, Safety and Risk Committee, 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 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 Audit and Risk Committee, which receives reports

from the Health, Safety and Risk Committee, and is accountable to the Board.

During the financial year the Authority has been dealing with a number of significant risks, some of which are to an extent outside our direct control.

The review of Arm's Length Bodies has left the ongoing status of the Authority unclear for a large part of the year. The industrial/commercial review of the Authority was expected to produce a report and recommendations for Ministers by Easter 2011 and any associated changes either in organisational form or else more fundamentally affecting how our service model will proceed were expected during the period after Easter.

Claims volumes reported to the Authority by its members have also risen sharply for the third successive financial year which creates increased pressure for our staff and solicitors since much of our funding for the financial year, including budgets for staff levels etc, are set well in advance of the start of the financial period. The Authority has therefore had to seek ways to adapt its business processes to generate further efficiencies to allow us to cope with volume increases which, in some business areas, are in excess of 25%.

During 2010/11 the Authority also successfully relocated both its London and Harrogate offices. These moves have resulted in a significant reduction in space and associated costs as well as equipping the Authority with the ability to meet a number of accepted benchmarks regarding its use of office space. The projects to move both offices were regularly reported to the Board of the Authority with risks appropriately identified, documented and monitored.

Given the voluntary nature of the schemes operated by the Authority it is important that we take account of members' views. It is therefore our policy to involve stakeholders, as appropriate, in all areas of our activities, including informing and consulting on the management of any significant risks or changes to our schemes. Our wide range of stakeholders includes not only the members of our schemes but also for example various Royal Colleges, the Association of Personal Injury Lawyers (APIL) and the Medical Defence Organisations.

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.

As with all NHS organisations the risk of fraud is a significant consideration for the Authority. The nature of our work inevitably focuses our attention on the risk of fraudulent claims being brought against the service and so great care is taken to review the appropriateness of our systems with reports made regularly to the Audit and Risk Committee by our Counter Fraud team. Evidence of attempted fraud has, to date, been relatively rare and, where any possibility is identified, the Authority immediately involves the appropriate authorities, as well as discussing the matter with any affected stakeholder and their local counter fraud specialists. Staff awareness regarding fraud is maintained by

regular updates, newsletters and examples of emerging patterns within the NHS.

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.

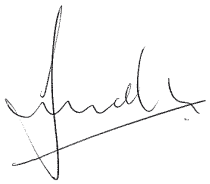
## Review of effectiveness

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. Members of the Strategic Management Team, 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. For example I meet regularly with other members of the Strategic Management Team to discuss the performance of the Authority and to receive assurance and feedback on their areas of responsibility. Throughout this financial year much of our discussion has been in regard to the significant pressure created by the increased volumes of claims reported to the Authority and how we might manage the risks associated with such growth, sharing information with relevant stakeholders and also reviewing claims data with a view to identifying any trends which may require specific attention.

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 2010/11 incorporated actions identified during the previous audits to improve the presentation and clarity of the accounts.

The Audit & Risk Committee meets regularly and reports to the Board. The Internal Auditors are present at the Audit and Risk Committee meetings and have also specifically reported on Corporate Governance during 2010/11.

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
23 June 2011

# 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 2011 under the National Health Service Act 2006. These comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity 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

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. My responsibility is to audit, certify and report on the financial statements in accordance with the National Health Service Act 2006. I conducted my audit in accordance with International Standards on Auditing (UK and Ireland). Those standards require me and my staff to comply with the Auditing Practices Board's Ethical Standards for Auditors.

## Scope of the Audit of the Financial Statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the NHS Litigation Authority's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the NHS Litigation Authority; and the overall presentation of the financial statements. In addition I read all the financial and non-financial information in the Annual Report to identify material inconsistencies with the audited financial statements. If I become aware of any apparent material misstatements or inconsistencies I consider the implications for my certificate.

In addition, I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income reported in the financial statements have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

## 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.

## Opinion on financial statements

In my opinion:

- the financial statements give a true and fair view of the state of the NHS Litigation Authority's affairs as at 31 March 2011 and of its net expenditure for the year then ended; and
- the financial statements have been properly prepared in accordance with the National Health Service Act 2006 and Secretary of State directions issued thereunder.

## Opinion on other matters

In my opinion:

- the part of the Remuneration Report to be audited has been properly prepared in accordance with Secretary of State directions issued under the National Health Service Act 2006; and
- the information given in 'Board Members' and 'Management Commentary' for the financial year for which the financial statements are prepared is consistent with the financial statements.

## Matters on which I report by exception

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept; or
- the financial statements and the part of the Remuneration Report to be audited are not in agreement with the accounting records or returns; or
- I have not received all of the information and explanations I require for my audit; or
- the Statement on Internal Control does not reflect compliance with HM Treasury's guidance.

## Report

I have no observations to make on these financial statements.

**Amyas C E Morse**
Comptroller and Auditor General
National Audit Office
157-197 Buckingham Palace Road
London SW1W 9SP

28 June 2011

# Financial accounts

## Statement of Comprehensive Net Expenditure for the Period ended 31 March 2011

| | Notes | 2010/11 £000 | Restated 2009/10 £000 |
|---|---|---|---|
| Programme costs | | | |
| Authority and claims administration | 2.1 | **13,683** | 14,121 |
| Unwinding of discounts | 2.1 | **(22,475)** | (42,039) |
| Other claims and associated costs | 2.1 | **2,712,883** | 2,423,302 |
| | | **2,690,408** | 2,381,263 |
| **Total programme costs** | 2.1 | **2,704,091** | 2,395,384 |
| Operating income | 4 | **(839,302)** | (756,068) |
| | 10 | **1,864,789** | 1,639,316 |
| **Net Expenditure** | 3.1 | **1,864,789** | 1,639,316 |

**Other Comprehensive Expenditure**
The Authority incurred no other comprehensive expenditure.

**All income and expenditure is derived from continuing operations**

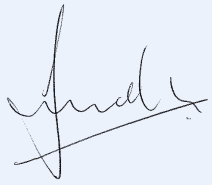
*The notes at pages 51 to 75 form part of these accounts.*

## Statement of Financial Position as at 31 March 2011

| | Notes | 31 March 2011 £000 | 31 March 2010 £000 |
|---|---|---|---|
| **Non Current Assets:** | | | |
| Property, plant & equipment | 5.3 | **2,244** | 651 |
| Intangible assets | 5.1 | **351** | 310 |
| | | **2,595** | 961 |
| **Current assets:** | | | |
| Trade and other receivables | 6 | **7,892** | 7,727 |
| Cash and cash equivalents | 7 | **31,294** | 41,984 |
| | | **39,186** | 49,711 |
| **Current liabilities:** | | | |
| Trade and other payables | 8 | **(38,425)** | (48,810) |
| **Non-current assets plus net current assets** | | **3,356** | 1,862 |
| **Non-current liabilities** | | | |
| Provisions for liabilities and charges – known claims | 9.1, 9.2 | **(7,509,788)** | (6,371,759) |
| Provisions for liabilities and charges – IBNR | 9.1, 9.2 | **(9,337,000)** | (8,696,000) |
| **Total non-current liabilities** | | **(16,846,788)** | (15,067,759) |
| **Assets less liabilities** | | **(16,843,432)** | (15,065,897) |
| **Taxpayers' equity** | | | |
| General Fund | | **2,604** | 2,085 |
| Government Grants Reserve | | **1,462** | 0 |
| Revaluation reserve | | **55** | 55 |
| ELS Reserve | | **(2,058,066)** | (1,937,974) |
| ExRHAS Reserve | | **(32,931)** | (35,254) |
| CNST Reserve | | **(14,562,473)** | (12,949,597) |
| PES Reserve | | **(4,320)** | (6,232) |
| LTPS Reserve | | **(189,763)** | (138,980) |
| **Total taxpayers' equity** | | **(16,843,432)** | (15,065,897) |

The General Fund and individual scheme reserves are used to account for all financial resources except for Government Grants and movements on revaluation. The Government Grant Reserve separately identifies assets acquired by the Authority for which a grant was received and any charges against these assets. The Revaluation Reserve records the unrealised gain or loss on revaluation of assets.

*The financial statements on pages 47 to 75 were approved by the Board on 23 June 2011 and signed by Stephen Walker*



Date: 23 June 2011

Accounting Officer

*The notes at pages 51 to 75 form part of these accounts.*

## Statement of Changes in Taxpayers' Equity

| | Notes | General Fund £000 | Govern-ment Grants £000 | Revalua-tion Reserve £000 | ELS Reserve £000 | ExRHAS Reserve £000 | CNST Reserve £000 | PES Reserve £000 | LTPS Reserve £000 | Total Reserves £000 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Balance at 01 April 2009** | | 1,645 | 0 | 55 | (1,889,698) | (42,127) | (11,463,675) | (5,517) | (114,586) | (13,513,903) |
| Net operating cost for the year | 9.3 | (1,884) | 0 | 0 | (132,283) | 5,882 | (1,485,922) | (715) | (24,394) | (1,639,316) |
| **Total recognised income and expense for 2009/10** | | (1,884) | 0 | 0 | (132,283) | 5,882 | (1,485,922) | (715) | (24,394) | (1,639,316) |
| Net Parliamentary funding | | 2,324 | 0 | 0 | 84,007 | 991 | 0 | 0 | 0 | 87,322 |
| **Restated Balance Balance at 31 March 2010** | | **2,085** | **0** | **55** | **(1,937,974)** | **(35,254)** | **(12,949,597)** | **(6,232)** | **(138,980)** | **(15,065,897)** |
| **Changes in taxpayers' equity for 2010/11** | | | | | | | | | | |
| Net operating cost for the year | 9.3 | (1,562) | (37) | 0 | (202,139) | 696 | (1,612,876) | 1,912 | (50,783) | (1,864,789) |
| **Total recognised income and expense for 2010/11** | | (1,562) | (37) | 0 | (202,139) | 696 | (1,612,876) | 1,912 | (50,783) | (1,864,789) |
| Net Parliamentary funding | | 2,081 | 1,499 | 0 | 82,047 | 1,627 | 0 | 0 | 0 | 87,254 |
| **Balance at 31 March 2011** | | **2,604** | **1,462** | **55** | **(2,058,066)** | **(32,931)** | **(14,562,473)** | **(4,320)** | **(189,763)** | **(16,843,432)** |

*The notes at pages 51 to 75 form part of these accounts.*

## Statement of Cash Flows for the year ended 31 March 2011

| | Notes | 2010/11 £000 | 2009/10 £000 |
|---|---|---|---|
| **Cash flows from operating activities** | | | |
| Net operating costs | | **(1,864,789)** | (1,639,316) |
| Other cashflow adjustments | 10 | **384** | 291 |
| Movement in Working Capital | 10 | **1,768,479** | 1,564,532 |
| **Net cash (outflow) from operating activities** | | **(95,926)** | (74,493) |
| **Cash flows from investing activities** | | | |
| Purchase of plant, property and equipment | 5.3 | **(274)** | (278) |
| Purchase of intangible assets | 5.1 | **(135)** | (162) |
| **Net cash inflow/(outflow) from investing activities** | | **(409)** | (440) |
| **Cash flows from financing activities** | | | |
| Net Parliamentary funding | | **85,645** | 87,322 |
| **Net financing** | | **85,645** | 87,322 |
| **Net increase/(decrease) in cash and cash equivalents** | | **(10,690)** | 12,389 |
| **Cash and cash equivalents at 31 March 2011** | 7 | **31,294** | **41,984** |

*The notes at pages 51 to 75 form part of these accounts.*

# Notes to the Accounts

## 1 Accounting policies

The financial statements have been prepared in accordance with the 2010/11 Government Financial Reporting Manual (FReM) issued by HM Treasury. The accounting policies contained in the FReM apply International Financial Reporting Standards as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be most appropriate to the particular circumstances of the Authority for the purpose of giving a true and fair view has been selected. The particular policies adopted by the Authority are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

The accounts are presented in pounds sterling and all values are rounded to the nearest thousand pounds (£'000). The functional currency of the Authority is pounds sterling.

### 1.1 Accounting conventions

This account is prepared under the historical cost convention, modified to account for the revaluation of property, plant and equipment and intangible 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.

### 1.2 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.

### 1.3 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-RHAS 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.

### 1.4 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.

## 1.5 Capital charges

The financial statements have been prepared in accordance with the 2010/11 Government Financial Reporting Manual (FReM) which from 1 April 2011 does not require a charge for the cost of capital. As this is a change in accounting policy, prior year figures have been restated and the prior year cost of capital charge removed.

## 1.6 Property, Plant and Equipment

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.

### *i) Capitalisation*

Plant, property and equipment are capitalised where they 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.

### *ii) Valuation*

These are measured at cost, representing the cost directly attributable to acquiring or constructing the asset and bringing it to the location and condition necessary for it to be capable of operating in the manner intended by management.

Equipment surplus to requirements is valued at net recoverable amount.

Adjustments arising from indexation price movements are taken to the Revaluation Reserve and shown in the Statement of Changes in Tax Payers Equity. Valuations changes arising from revaluation from cost to Depreciated Replacement Cost for newly constructed assets are also charged there, as such falls in value result from differing assumptions between valuation bases. Where valuations result in a reduction below costs, the reduction is recognised in the operating cost statement.

### *iii) Depreciation*

Depreciation is charged on a straight-line basis on each main class of fixed asset as follows:

| | |
|---|---|
| Furniture and Fittings | 10 years |
| Information Technology | 5 years |

### *iv) Leased assets*

Leases are classified as finance leases if substantially all the risks and rewards of ownership are transferred to the lessee. All other leases are classified as operating leases.

The asset is recorded as a tangible fixed asset and a debt is recorded to the lessor of the minimum lease payment discounted by the interest rate implicit in the lease.

The interest element of finance lease payments is charged to the Operating Cost Statement over the period of the lease at a constant rate in relation to the balance outstanding.

The Authority holds no finance leases.

Other leases are regarded as operating leases and the rentals are charged to the Operating Cost Statement on a straight line basis over the term of the lease.

## 1.7 Intangible Assets

### *i) Capitalisation*

Intangible assets which can be valued, are capable of being used in the Authority's activities for more than one year and have a cost equal to or greater than £5,000;

Purchased computer software licences are capitalised where expenditure of at least £5,000 is incurred and the software has service potential for the organisation.

### *ii) Internally generated intangible assets*

Expenditure on research is not capitalised. Expenditure on development is capitalised if it meets the following criteria;

An internally generated intangible asset arising from the Authority's development is recognised only if all of the following conditions are met:

– an asset is created that can be identified (such as bespoke software);

– it is probable that the asset created will generate future economic benefits; and

– the development cost of the asset can be measured reliably.

Intangible fixed assets are valued at cost.

### *iii) Amortisation*

For intangible assets with finite useful lives, amortisation is calculated so as to write off the cost of an asset, less its estimated residual value, over its useful economic life.
Software is amortised on a straight line basis over five years.

## 1.8 Impairment of non financial assets

Non financial assets are reviewed at each reporting date for indications of impairment. Where an asset is found to be impaired, it is written down through the operating cost statement to its estimated recoverable amount. The recoverable amount is the higher of value in use and the fair value less costs to sell the asset.

Value in use is the net present value of the estimated future cash flows of that asset.

Present values are computed using discount rates that reflect the time value of money and the risks specific to the unit whose impairment is being measured.

### 1.9 Assets Held for Sale

A non-current asset held for sale represents assets whose carrying amount will be recovered principally through a sale transaction rather than through continuing use. Non-current assets held for sale are included in the balance sheet at fair value less costs to sell, if this is lower than the previous carrying amount. Once an asset is classified as held for sale or included in a group of assets held for sale no further depreciation or amortisation is recorded.

### 1.10 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 12 is compiled directly from the losses and compensations register which is prepared on a cash basis.

### 1.11 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.nhsbsa.nhs.uk/pensions

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, every five years) and an 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.

In order to defray the costs of benefits, employers pay contributions at 14% of pensionable pay and most employees had up to April 2008 paid 6%, with manual staff paying 5%.

Following the full actuarial review by the Government Actuary undertaken as at 31 March 2004, and after consideration of changes to the NHS Pension Scheme taking effect from 1 April 2008, his Valuation report recommended that employer contributions could continue at the existing rate of 14% of pensionable pay, from 1 April 2008, following the introduction of employee contributions on a tiered scale from 5% up to 8.5% of their pensionable pay depending on total earnings. On advice from the scheme actuary, scheme contributions may be varied from time to time to reflect changes in the scheme's liabilities.

### b) Accounting valuation

A valuation of the scheme liability is carried out annually by the scheme actuary as at the end of the reporting period by updating the results of the full actuarial valuation.

Between the full actuarial valuations at a two-year midpoint, a full and detailed member data-set 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 2011, is based on detailed membership data as at 31 March 2008 (the latest midpoint) updated to 31 March 2011 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.

### c) Scheme provisions

In 2010/11 the NHS Pension Scheme provided defined benefits, which are summarised below. This list is an illustrative guide only, and is not intended to detail all the benefits provided by the Scheme or the specific conditions that must be met before these benefits can be obtained:

The Scheme is a "final salary" scheme. Annual pensions are normally based on 1/80$^{th}$ for the 1995 section and of the best of the last three years pensionable pay for each year of service, and 1/60$^{th}$ for the 2008 section of reckonable pay per year of membership. Members who are practitioners as defined by the Scheme Regulations have their annual pensions based upon total pensionable earnings over the relevant pensionable service. With effect from 1 April 2008 members can choose to give up some of their annual pension for an additional tax free lump sum, up to a maximum amount permitted under HMRC rules. This new provision is known as "pension commutation".

***Pensions Indexation***

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.

***Lump Sum Allowance***

A lump sum is payable on retirement which is normally three times the annual pension payment.

***Ill-Health Retirement***

Early payment of a pension, with enhancement in certain circumstances, is available to members of the Scheme who are permanently incapable of fulfilling their duties or regular employment effectively through illness or infirmity.

***Death Benefits***

A death gratuity of twice their final year's pensionable pay for death in service, and five times their annual pension for death after retirement is payable.

***Additional Voluntary Contributions (AVCs)***

Members can purchase additional service in the NHS Scheme and contribute to money purchase AVC's run by the Scheme's approved providers or by other Free Standing Additional Voluntary Contributions (FSAVC) providers.

***Transfer between Funds***

Scheme members have the option to transfer their pension between the NHS Pension Scheme and another scheme when they move into or out of NHS employment.

***Preserved Benefits***

Where a scheme member ceases NHS employment with more than two years service they can preserve their accrued NHS pension for payment when they reach retirement age.

***Compensation for Early Retirement***

Where a member of the Scheme is made redundant they may be entitled to early receipt of their pension plus enhancement, at the employer's cost.

### 1.12 Short Term Employee Benefits

Salaries, wages and employment-related payments are recognised in the period in which the service is received from employees, except for non consolidated performance pay, which, on the grounds of immateriality, is recognised when paid. Leave that has been earned but not taken at the year end is not accrued, as it is not material.

### 1.13 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.

### 1.14 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 IAS 37. A provision for these schemes is calculated in accordance with IAS 37 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 9.4.

Resolution of claims is difficult to predict as many factors can lead to delay during the settlement process whilst emerging evidence can alter valuation and thus the Authority makes a best estimate regarding the likely year of settlement and expected value of the claim against each notified claim. These estimates are reviewed throughout the life of the claim and amended to reflect variations in expectations which inevitably alters the value provided.

### 1.15 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 IAS 39 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 IAS 39. 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.

## 1.16 Critical Judgements and key sources of estimation uncertainty

In the application of the Authority's accounting policies, which are described in note 1, the directors are required to make judgements, estimates and assumptions about the carrying amounts of assets and liabilities that are not readily apparent from other sources. The estimates and associated assumptions are based on historical experience and other factors that are considered to be relevant. The judgements that have the most significant effect on the amounts recognised in the financial statements relate to the calculation of the provisions for known claims and for IBNR, as explained in Note 9. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

## 2.1 Authority programme expenditure

| | Notes | £000 | 2010/11 £000 | 2009/10 £000 |
|---|---|---|---|---|
| Non-executive members' remuneration | 2.2 | **71** | | 77 |
| Other salaries and wages | 2.2 | **6,982** | | 7,544 |
| Redundancy costs | 2.2 | **147** | | 137 |
| Supplies and services – general | | **1** | | 3 |
| Establishment expenses | | **571** | | 565 |
| Hire and operating lease rental | | | | |
| Land & buildings | | **660** | | 694 |
| Lease cars | | **19** | | 23 |
| Photocopiers | | **66** | | 83 |
| Other | | **7** | | |
| Transport and moveable plant | | **7** | | 8 |
| Premises and fixed plant | | **1,425** | | 1,240 |
| External contractors | | | | |
| Actuary's advice | | **314** | | 439 |
| Risk management | | **2,070** | | 1,991 |
| Other | | **852** | | 882 |
| Auditor's remuneration: audit fees* | | **79** | | 80 |
| Auditor's remuneration: IFRS preparation audit fees | | **0** | | 5 |
| Internal audit fees | | **45** | | 39 |
| Miscellaneous | | **(17)** | | 20 |
| | | | **13,299** | 13,830 |
| Depreciation | 5.3 | **235** | | 147 |
| Amortisation | 5.1 | **94** | | 141 |
| (Profit)/loss on disposal | | **55** | | 3 |
| | | | **384** | |
| | | | **13,683** | 14,121 |
| Other finance costs – unwinding of discount | 9.1, 9.2 | | **(22,475)** | (42,039) |
| Increase in provision for known claims (excl. unwinding of discounts) | 9.1, 9.2 | **2,071,883** | | 1,675,302 |
| Increase / (decrease) in the provision for IBNR | 9.1, 9.2 | **641,000** | | 748,000 |
| | | | **2,712,883** | |
| | | | **2,704,091** | 2,395,384 |

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

## 2.2 Staff numbers and related costs

| | 2010/11 Total | Permanently employed staff | Other | 2009/10 Total |
|---|---|---|---|---|
| | £000 | £000 | £000 | £000 |
| Salaries and wages | **6,013** | 5,585 | 428 | 6,542 |
| Social security costs | **491** | 491 | | 497 |
| Employer contributions to NHS Pensions | **696** | 696 | | 719 |
| | **7,200** | **6,772** | **428** | 7,758 |

The average number of employees during the year was:

| | Total Number | Permanently employed staff Number | Other Number | 2009/10 Total Number |
|---|---|---|---|---|
| **Total** | **136** | 124 | 12 | 147 |

**Redundancy Costs**
The cost to the Authority of redundancies in 2010/11 was £147,005 (2009/10: £136,513)

**Expenditure on staff benefits**
The amount spent on staff benefits during the year mainly on lease cars totalled £21,390 (2009/10: £32,550).

## 2.3 Exit Packages for staff leaving in 2010/11

| Payment Bands | Number of compulsory redundancies | Number of other departures agreed | Total number of exit packages by cost band |
|---|---|---|---|
| < £10,000 | 5 | 0 | 5 |
| £10,000 - £25,000 | 2 | 5 | 7 |
| £25,000 - £50,000 | 0 | 1 | 1 |
| £50,000 - £100,000 | 0 | 0 | 0 |
| £100,000 - £150,000 | 0 | 0 | 0 |
| £150,000 - £200,000 | 0 | 0 | 0 |
| **Total number of exit packages by type** | **7** | **6** | **13** |
| **Total cost (£'000s)** | **44** | **113 *** | **157** |

* Included within this figure is an extra-contractual payment for which approval was received from HM Treasury

## 2.4 Exit Packages for staff leaving (Prior Year)

| Payment Bands | Number of compulsory redundancies | Number of other departures agreed | Total number of exit packages by cost band |
|---|---|---|---|
| < £10,000 | 0 | 2 | 2 |
| £10,000 - £25,000 | 0 | 3 | 3 |
| £25,000 - £50,000 | 0 | 0 | 0 |
| £50,000 - £100,000 | 0 | 1 | 1 |
| £100,000 - £150,000 | 0 | 0 | 0 |
| £150,000 - £200,000 | 0 | 0 | 0 |
| **Total number of exit packages by type** | **0** | **6** | **6** |
| **Total cost (£'000s)** | **0** | **137** | **137** |

Redundancy and other departure costs have been paid in accordance with the provisions of the NHS Scheme. Exit costs in this note are accounted for in full in the year of departure. Where the Authority has agreed early retirements, the additional costs are met by the Authority and not by the NHS pensions scheme. Ill-health retirement costs are met by the NHS pensions scheme and are not included in the table.

## 3.1 Reconciliation of net operating cost to net resource outturn

| | 2010/11 |
|---|---|
| | £000 |
| Net operating cost | **1,864,789** |
| **Net Expenditure** | **1,864,789** |
| **Revenue resource limit** | **1,913,372** |
| **Under spend against revenue resource limit** | **48,583** |

## 3.2 Reconciliation of gross capital expenditure to capital resource limit

| | 2010/11 |
|---|---|
| | £000 |
| Gross capital expenditure | **2,018** |
| NBV of assets disposed | **(55)** |
| **Net capital expenditure** | **1,963** |
| Capital resource limit | **2,019** |
| **Under spend against capital resource limit** | **56** |

## 3.4 Other gains and losses

| | 2010/11 | 2009/10 |
|---|---|---|
| | £000 | £000 |
| (Loss) on disposal of plant and equipment | **(55)** | (3) |
| **Total** | **(55)** | (3) |

## 4 Operating income

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

| | Appropriated in aid 2010/11 | 2009/10 |
|---|---|---|
| | £000 | £000 |
| Programme income: | | |
| CNST contributions | 797,580 | 717,332 |
| PES contributions | 5,257 | 3,481 |
| LTPS contributions | 36,465 | 35,255 |
| **Total** | **839,302** | 756,068 |

## 5.1 Intangible assets

| | Information Technology | Software Licences | Total |
|---|---|---|---|
| | £000 | £000 | £000 |
| Gross cost at 1 April 2010 | 1,477 | 509 | 1,986 |
| Additions – purchased | 108 | 27 | 135 |
| Disposals | | (208) | (208) |
| **Gross cost at 31 March 2011** | **1,585** | **328** | **1,913** |
| Accumulated amortisation at 1 April 2010 | 1,233 | 443 | 1,676 |
| Charged during the year | 72 | 22 | 94 |
| Disposals | | (208) | (208) |
| **Accumulated amortisation at 31 March 2011** | **1,305** | **257** | **1,562** |
| Net Book Value at 1 April 2010 | 244 | 66 | 310 |
| **Net Book Value 31 March 2011** | **280** | **71** | **351** |

## 5.2 Intangible assets (Prior Year)

| | Information Technology | Software Licences | Total |
|---|---|---|---|
| | £000 | £000 | £000 |
| Gross cost at 1 April 2009 | 1,252 | 577 | 1,829 |
| Additions – purchased | 162 | | 162 |
| Reclassification | 63 | | 63 |
| Disposals | | (68) | (68) |
| **Gross cost at 31 March 2010** | **1,477** | **509** | **1,986** |
| Accumulated amortisation at 1 April 2009 | 1,125 | 478 | 1,603 |
| Charged during the year | 108 | 33 | 141 |
| Disposals | | (68) | (68) |
| **Accumulated amortisation at 31 March 2010** | **1,233** | **443** | **1,676** |
| Net Book Value at 1 April 2009 | 127 | 99 | 226 |
| **Net Book Value 31 March 2010** | **244** | **66** | **310** |

## 5.3 Property, Plant and Equipment

| | Information technology | Furniture & fittings | Total |
|---|---|---|---|
| | £000 | £000 | £000 |
| Valuation at 1 April 2010 | 1,014 | 219 | 1,233 |
| Additions – purchased | 244 | 1,639* | 1,883 |
| Disposals | (122) | (209) | (331) |
| **Valuation at 31 March 2011** | **1,136** | **1,649** | **2,785** |
| | | | |
| Accumulated depreciation at 1 April 2010 | 412 | 170 | 582 |
| Charged during the year | 191 | 44 | 235 |
| Disposals | (107) | (169) | (276) |
| **Accumulated depreciation at 31 March 2011** | **496** | **45** | **541** |
| | | | |
| Net Book Value at 1 April 2010 | 602 | 49 | 651 |
| | | | |
| **Net Book Value at 31 March 2011** | **640** | **1,604** | **2,244** |

* During the period, the Authority acquired property, plant and equipment with an aggregate cost of 1,883 of which 1,499 was funded by a government grant. Cash payments of 274 were made to purchase property, plant and equipment and 110 was provided for decommissioning costs. (All values are £000)

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

Capital commitments: The Authority has no capital commitments at 31 March 2011 (2009/10: nil).

## 5.4 Property, Plant and Equipment (Prior Year)

| | Information technology | Furniture & fittings | Total |
|---|---|---|---|
| | £000 | £000 | £000 |
| Valuation at 1 April 2009 | 830 | 219 | 1,049 |
| Additions – purchased | 278 | | 278 |
| Reclassification | (63) | | (63) |
| Disposals | (31) | | (31) |
| **Valuation at 31 March 2010** | **1,014** | **219** | **1,233** |
| Accumulated depreciation at 1 April 2009 | 302 | 161 | 463 |
| Charged during the year | 138 | 9 | 147 |
| Disposals | (28) | | (28) |
| **Accumulated depreciation at 31 March 2010** | **412** | **170** | **582** |
| Net Book Value at 1 April 2009 | 528 | 58 | 586 |
| **Net Book Value at 31 March 2010** | **602** | **49** | **651** |

## 6 Receivables

| | Ex RHAS | ELS | CNST | PES | LTPS | Admin | Total 31 March 2011 | Total 31 March 2010 |
|---|---|---|---|---|---|---|---|---|
| | £000 | £000 | £000 | £000 | £000 | £000 | £000 | £000 |
| NHS receivables – revenue | | | 2,389 | 32 | 1,224 | | **3,645** | 1,499 |
| Accrued income | | | | | | | **0** | 2,521 |
| Prepayments | 30 | 1,502 | 448 | | | 129 | **2,109** | 1,822 |
| Other receivables | | 25 | 43 | | 3 | 2,067 | **2,138** | 1,885 |
| | **30** | **1,527** | **2,880** | **32** | **1,227** | **2,196** | **7,892** | 7,727 |

**Intra-government balances**

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | **£000** | £000 |
| Balances with other central government bodies | | | | | | 2,028 | **2,028** | 1,809 |
| Balances with NHS Trusts | | | 627 | 19 | 937 | | **1,583** | 3,690 |
| Balances with public corporations and trading funds | | | 1,761 | 13 | 287 | | **2,061** | 313 |
| Subtotal of intra-government balances | **0** | **0** | **2,388** | **32** | **1,224** | **2,028** | **5,672** | 5,812 |
| Balances with bodies external to government | 30 | 1,527 | 492 | | 3 | 168 | **2,220** | 1,915 |
| | **30** | **1,527** | **2,880** | **32** | **1,227** | **2,196** | **7,892** | 7,727 |

## 7 Cash and cash equivalents

| | Ex RHAS | ELS | CNST | PES | LTPS | Admin | Total 31 March 2011 | Total 31 March 2010 |
|---|---|---|---|---|---|---|---|---|
| | £000 | £000 | £000 | £000 | £000 | £000 | £000 | £000 |
| At 1 April | 0 | (843) | 12,895 | 1,656 | 28,276 | 0 | **41,984** | 29,595 |
| Change During the year | **528** | **8,856** | **(12,493)** | **(281)** | **(8,299)** | **999** | **(10,690)** | 12,389 |
| At 31 March | **528** | **8,013** | **402** | **1,375** | **19,977** | **999** | **31,294** | 41,984 |
| **Made up of** | | | | | | | | |
| Cash with the Government Banking Service | **528** | **8,013** | **402** | **1,375** | **19,977** | **999** | **31,294** | 41,984 |
| **Cash and cash equivalents as in statement of financial position** | **528** | **8,013** | **402** | **1,375** | **19,977** | **999** | **31,294** | 41,984 |
| **Cash and cash equivalents as in statement of cash flows** | **528** | **8,013** | **402** | **1,375** | **19,977** | **999** | **31,294** | 41,984 |

## 8 Trade payables and other current liabilities

| | Ex RHAS | ELS | CNST | PES | LTPS | Admin | Total 31 March 2011 | Total 31 March 2010 |
|---|---|---|---|---|---|---|---|---|
| | £000 | £000 | £000 | £000 | £000 | £000 | £000 | £000 |
| NHS payables revenue | | | 3 | 285 | 764 | 12 | **1,064** | 1,949 |
| Prepaid Income | | 2,594 | | | 643 | 0 | **3,237** | 2,649 |
| Accruals | | 1,175 | 18,903 | | 1,581 | 274 | **21,933** | 31,568 |
| Other payables | | 311 | 9,325 | | 2,041 | 514 | **12,191** | 12,644 |
| | **0** | **4,080** | **28,231** | **285** | **5,029** | **800** | **38,425** | 48,810 |

**Intra-government balances**

| | | | | | | | £000 | £000 |
|---|---|---|---|---|---|---|---|---|
| Balances with other central government bodies | | | | | | 12 | **12** | 2,649 |
| Balances with NHS Trusts | | | 3 | 108 | 1,149 | | **1,260** | 1,195 |
| Balances with public corporations and trading funds | | | | 177 | 258 | | **435** | 754 |
| Subtotal of intra-government balances | **0** | **0** | **3** | **285** | **1,407** | **12** | **1,707** | 4,598 |
| Balances with bodies external to government | | 4,080 | 28,228 | | 3,622 | 788 | **36,718** | 44,212 |
| | **0** | **4,080** | **28,231** | **285** | **5,029** | **800** | **38,425** | 48,810 |

## 9.1 Provisions for liabilities and charges

| | Ex RHAS £000 | ELS £000 | CNST £000 | PES £000 | LTPS £000 | Total £000 |
|---|---|---|---|---|---|---|
| Opening Provision for Known Claims | (27,584) | (1,606,799) | (4,636,072) | (10,304) | (91,000) | (6,371,759) |
| Opening Provisions for IBNR | (8,000) | (414,000) | (8,207,000) | (1,000) | (66,000) | (8,696,000) |
| **Total Provisions as at 1 April 2010** | **(35,584)** | **(2,020,799)** | **(12,843,072)** | **(11,304)** | **(157,000)** | **(15,067,759)** |
| Discounting | 298 | 447,093 | 1,614,869 | 0 | (102) | **2,062,158** |
| Arising during the year | (3,285) | (782,644) | (3,979,666) | (5,844) | (83,474) | **(4,854,913)** |
| Reversed unused | 2,546 | 162,621 | 528,272 | 2,589 | 24,844 | **720,872** |
| Unwinding of discount | (862) | (27,888) | 51,209 | | 16 | **22,475** |
| Utilised during the year | 1,626 | 132,700 | 729,072 | 5,546 | 42,435 | **911,379** |
| | 323 | (68,118) | (1,056,244) | 2,291 | (16,281) | **(1,138,029)** |
| Movement in Net IBNR | 2,000 | (1,000) | (617,000) | 0 | (25,000) | **(641,000)** |
| Closing Provision for Known Claims | (27,261) | (1,674,917) | (5,692,316) | (8,013) | (107,281) | **(7,509,788)** |
| Closing Provisions for IBNR | (6,000) | (415,000) | (8,824,000) | (1,000) | (91,000) | **(9,337,000)** |
| **At 31 March 2011** | **(33,261)** | **(2,089,917)** | **(14,516,316)** | **(9,013)** | **(198,281)** | **(16,846,788)** |
| **Expected timing of cash flows:** | | | | | | |
| Within 1 year | (169) | (308,500) | (1,747,227) | (8,002) | (97,594) | **(2,161,492)** |
| 1-5 years | (6,128) | (409,175) | (3,920,005) | (1,011) | (86,687) | **(4,423,006)** |
| Over 5 years | (26,964) | (1,372,242) | (8,848,084) | 0 | (15,000) | **(10,262,290)** |
| | **(33,261)** | **(2,089,917)** | **(14,515,316)** | **(9,013)** | **(199,281)** | **(16,846,788)** |

The provisions relating to the Authority's schemes are the only provisions made by the Authority.

## 9.2 Provisions for liabilities and charges (Prior Year)

| | Ex RHAS £000 | ELS £000 | CNST £000 | PES £000 | LTPS £000 | Total £000 |
|---|---|---|---|---|---|---|
| Opening Provision for Known Claims | (29,457) | (1,509,456) | (3,940,348) | (12,696) | (73,906) | **(5,565,863)** |
| Opening Provisions for IBNR | (13,000) | (515,000) | (7,358,000) | (1,000) | (61,000) | **(7,948,000)** |
| **Total Provisions as at 1 April 2009** | **(42,457)** | **(2,024,456)** | **(11,298,348)** | **(13,696)** | **(134,906)** | **(13,513,863)** |
| Discounting | (930) | 610,006 | 1,179,159 | (3) | (16) | **1,788,216** |
| Arising during the year | (3,571) | (1,048,256) | (3,222,435) | (5,689) | (70,367) | **(4,350,318)** |
| Reversed unused | 6,204 | 225,279 | 634,368 | 1,658 | 19,291 | **886,800** |
| Unwinding of discount | (784) | (19,436) | 62,211 | 2 | 46 | **42,039** |
| Utilised during the year | 954 | 135,064 | 650,973 | 6,424 | 33,952 | **827,367** |
| | 1,873 | (97,343) | (695,724) | 2,392 | (17,094) | **(805,896)** |
| Movement in Net IBNR | 5,000 | 101,000 | (849,000) | 0 | (5,000) | **(748,000)** |
| Closing Provision for Known Claims | (27,584) | (1,606,799) | (4,636,072) | (10,304) | (91,000) | **(6,371,759)** |
| Closing Provisions for IBNR | (8,000) | (414,000) | (8,207,000) | (1,000) | (66,000) | **(8,696,000)** |
| **At 31 March 2010** | **(35,584)** | **(2,020,799)** | **(12,843,072)** | **(11,304)** | **(157,000)** | **(15,067,759)** |
| **Expected timing of cash flows:** | | | | | | |
| Within 1 year | (363) | (245,012) | (1,395,808) | (11,304) | (89,704) | **(1,742,191)** |
| 1-5 years | (6,521) | (507,268) | (3,708,976) | 0 | (57,296) | **(4,280,061)** |
| Over 5 years | (28,700) | (1,268,519) | (7,738,288) | 0 | (10,000) | **(9,045,507)** |
| | **(35,584)** | **(2,020,799)** | **(12,843,072)** | **(11,304)** | **(157,000)** | **(15,067,759)** |

## 9.3 Allocation of Income and Expenditure to the schemes

| | Ex-RHAS £000 | ELS £000 | CNST £000 | PES £000 | LTPS £000 | Equal Pay £000 | Appeals £000 | Government Grant £000 | Total 31 March 2011 £000 | Total 31 March 2010 £000 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Expenditure** | | | | | | | | | | |
| Authority and claims administration | 1 | 321 | 8,140 | 90 | 3,532 | 610 | 952 | 37 | **13,683** | **14,121** |
| Claims and associated costs | | | | | | | | | | |
| Increase/(decrease) in provision for known claims | 1,303 | 200,818 | 1,785,316 | 3,255 | 58,716 | 0 | 0 | 0 | **2,049,408** | 1,633,263 |
| Increase/(decrease) in the Provision for IBNR | (2,000) | 1,000 | 617,000 | 0 | 25,000 | 0 | 0 | 0 | **641,000** | 748,000 |
| | (697) | 201,818 | 2,402,316 | 3,255 | 83,716 | 0 | **0** | **0** | **2,690,408** | 2,381,263 |
| **Income** | | | | | | | | | | |
| Scheme income | 0 | 0 | (797,580) | (5,257) | (36,465) | 0 | **0** | **0** | **(839,302)** | (756,068) |
| **Net Operating Cost – (surplus)/deficit** | **(696)** | **202,139** | **1,612,876** | **(1,912)** | **50,783** | **610** | **952** | **37** | **1,864,789** | 1,639,316 |

## 9.4 Contingent liabilities

| | Ex-RHAS £000 | ELS £000 | CNST £000 | PES £000 | LTPS £000 | Total £000 |
|---|---|---|---|---|---|---|
| **Contingent liability for claims 2010/11** | **5,696** | **610,087** | **7,027,001** | **4,387** | **107,110** | **7,754,281** |
| Contingent liability for claims 2009/10 | 8,797 | 658,650 | 6,531,299 | 4,460 | 81,261 | 7,284,467 |

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 as a note to the financial statements because it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation.

***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 31st 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 1st April 1996.

***Clinical Negligence Scheme for Trusts (CNST)***

A provision for this scheme is calculated in accordance with IAS 37 by discounting the gross value of all claims received relating to incidents which occurred on or before 31 March 2010 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 31st March 2002 all outstanding claims for incidents post 1st April 1995 became the direct responsibility of the Authority. 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 Authority's proportion of each claim. The accounts for these schemes have been prepared in accordance with IAS 37.

***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)***

IAS 37 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 2011 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 Authority 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 Reconciliation of operating costs to operating cash flows

| | Notes | | **2010/11** | 2009/10 |
|---|---|---|---|---|
| | | | **£000** | £000 |
| Net operating cost | | | **(1,864,789)** | (1,639,316) |
| Adjustments for non-cash transactions | | | | |
| Depreciation | 2.1 | **235** | | 147 |
| Amortisation | 2.1 | **94** | | 141 |
| (Profit)/loss on disposal | 2.1 | **55** | | 3 |
| | | | **384** | 291 |
| Adjustments for movements in working capital other than cash | | | | |
| (Increase)/decrease in receivables | 6 | **(165)** | | 9,989 |
| Increase/(decrease) in payables | 8 | **(10,385)** | | 647 |
| Increase/(decrease) in provisions | 9 | **1,779,029** | | 1,553,896 |
| | | | **1,768,479** | 1,564,532 |
| **Net cash outflow from operating activities** | | | **(95,926)** | (74,493) |

## 11 Commitments under operating leases

The total future minimum lease payments under non-cancellable operating leases payable in each of the following periods are:

| | | **2010/11** | 2009/10 |
|---|---|---|---|
| **Land and buildings** | | **£000** | £000 |
| Amounts payable: | within 1 year | **283** | 368 |
| | between 1 and 5 years | **1,264** | 0 |
| | after 5 years | **2,069** | 0 |
| | | **3,616** | 368 |
| **Other leases** | | | |
| Amounts payable: | within 1 year | **29** | 80 |
| | between 1 and 5 years | **42** | 25 |
| | after 5 years | **0** | 0 |
| | | **71** | 105 |

## 12 Losses and special payments

There were 3 cases of losses and special payment (prior year: 1 case) totalling £11,195 (prior year £14,000) approved during 2010/11.

## 13 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 | | Total charge |
|---|---|---|---|
| **NHS Body** | **Income** | **Expenditure** | **Provision** |
| | **£'000** | **£'000** | **£'000** |
| All English Strategic Health Authorities | 150 | 3 | 1,217,697 |
| All English NHS Trusts and PCTs | 444,224 | 10,975 | 3,301,762 |
| All English NHS Foundation Trusts | 396,445 | 5,447 | 2,950,518 |
| NHS Blood and Transplant | 581 | 135 | 3,421 |
| The National Patient Safety Agency | 21 | | 59 |
| NHS Business Services Authority | 145 | | 921 |
| NHS Institute for Innovation and Improvement | 36 | | 0 |
| NHS Information Centre | 18 | 9 | 0 |
| National Treatment Centre | 10 | | 0 |
| Health Protection Agency | 404 | 22 | 1,519 |
| NHS Direct | 316 | 22 | 5,637 |
| NHS Professionals | 4 | | 0 |

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 £641m (2009/10 £748m).

In addition Professor R Shaw and Ms N Wrightson, non-executive directors of the Authority, are also employed by North West London Hospitals NHS Trust as the Medical Director, and as a non-executive Director of Yorkshire Ambulance Service NHS Trust, respectively.

## 14 Financial instruments

IFRS 7 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 IFRS 7 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 receivables, and cash, as set out in Notes 6 and 7 respectively, and financial liabilities in the form of NHS and other payables, as set out in Note 8. As these receivables and payables 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 receivables are not impaired, and there are no significant receivable balances with bodies external to government. The NHS Litigation Authority is, therefore, not exposed to significant credit risk.

## 15 Post Balance Sheet Events

These financial statements were authorised for issue on 28 June 2011 by the Accounting Officer.

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