



Department
of Health

Triennial Review of the NHS Litigation Authority

Call for Evidence

November 2014

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Introduction

In recent years, the health and social care system in England has undergone substantial change. The Health and Social Care Act 2012 and the Care Act 2014 have devolved functions and powers away from the Department of Health to local and Arm's Length Bodies.

In this new system, the Department has the key stewardship and assurance function designed to ensure that the new system, and the multiple new and reformed bodies within it, have the appropriate functions and are performing to a high standard.

To perform this stewardship function, the Department is putting in place Triennial Reviews of all its Arm's Length Bodies. This includes all Executive Non-Departmental Public Bodies (ENDPBs), Advisory Non-Departmental Bodies (ANDPBs), Executive Agencies and Special Health Authorities. As a Special Health Authority (SpHA), the NHS Litigation Authority is subject to review in 2014-15.

The programme of reviews builds on the approach developed by the Cabinet Office as part of their work on Public Bodies Reform.

Purpose of the Review

This review is part of a wider programme the Department of Health has developed in support of its stewardship and assurance function. The review has two main stages which will be undertaken simultaneously:

- The first is to provide a robust challenge of the continuing need for the NHS Litigation Authority, both in terms of the functions it performs and the model and approach in which these are delivered.
- The second is consideration of NHS Litigation Authority's governance, performance and capability as well as exploring opportunities for efficiencies.

This Call for Evidence seeks views from respondents to assist its consideration of both of the above stages.

Timeline

The Triennial Review of NHS Litigation Authority (NHS LA) has commenced and will be completed by the end of November 2014. The conclusions of the review will be announced in both Houses of Parliament and a copy of the final report will be published on the Department of Health website in late 2014.

Responding to this Review

In order to conduct the review in an open and transparent manner and ensure that the findings are rigorous and evidence-based, the review team is seeking the views of a wide range of stakeholders. We are interested in the views of individuals and organisations that engage with the Litigation Authority or have a wider interest in its operations. The key areas of enquiry, based on the five standard areas that apply to all Triennial Reviews are set out below. In particular, the review team will focus on the NHS LA's administration of the Clinical Negligence Scheme for Trusts, the Liabilities to Third Parties and the Property Expenses Scheme for Trusts.

The National Clinical Assessment Service and Family Health Services Unit functions are **outside the scope** of this review.

Submissions should be uploaded at <http://consultations.dh.gov.uk/triennial-reviews/nhs-litigation-authority> . The site is accessible, but alternatively responses can be sent to: nhsia.review@dh.gsi.gov.uk. Email submissions should clearly state interest and interaction with the NHS LA whether a member, claimant or defendant lawyer or other stakeholder.

Interested stakeholders are also invited to attend one of the three workshops to share their views on this Call for Evidence:

20 October 2014 13:00-15:30 hours London

<https://www.eventbrite.com/e/nhs-litigation-authority-review-member-workshop-tickets-13532188139>

23 October 2014 14:00-16:30 hours Leeds

<https://www.eventbrite.com/e/nhs-litigation-authority-triennial-review-member-workshop-tickets-13532731765>

29 October 2014 13:00-15:00 hours London

<https://www.eventbrite.com/e/nhs-litigation-authority-review-scheme-member-and-stakeholder-workshop-tickets-13532190145>

11 November 2014 15:00-17:00 hours London

<https://www.eventbrite.com/e/nhs-litigation-authority-triennial-review-scheme-member-and-stakeholder-workshop-tickets-13925887705>

Only information directly relevant to the areas of investigation will be considered. Information where relevance is not demonstrable will not be taken as evidence. The review team is unable to respond to individual cases or consider complaints. Complaints should be directed to the NHS LA at generalenquiries@nhsia.com. Patient Identifiable information should be avoided.

All submissions must be received by midnight on **12th November 2014**

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)).

If you want the information that you provide to be treated as confidential, please be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department of Health and a Ministry of State.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Useful Links

Below are a few links that are being used by the review team as part of the review. These are not necessarily recommended reading but some respondents may find them of use.

- NHS LA website <http://www.nhsla.com/Pages/Home.aspx>
- Marsh Industry Report <https://www.gov.uk/government/news/nhs-litigation-authority-industry-review-published>
- Department of Health website <https://www.gov.uk/government/organisations/department-of-health>
- Department of Health response to Marsh Industry Report <https://www.gov.uk/government/publications/nhs-litigation-authority-industry-review-department-of-health-response>
- NHS LA progress report against Marsh Industry Report <http://www.nhsla.com/OtherServices/Documents/Marsh%20Response.pdf>
- Cabinet Office Triennial Review guidance <https://www.gov.uk/government/publications/triennial-reviews-guidance-and-schedule>

About the NHS Litigation Authority

The NHS Litigation Authority (NHS LA) was established in 1995 as a Special Health Authority (National Health Service Act 2006). Its role is to administer risk pooling schemes through which NHS bodies (and NHS contractor bodies) can obtain indemnity against the cost of liabilities to third parties for loss, damage or injury arising from the carrying out of their functions.

NHS LA operates at arm's length from the Department of Health. As a public body established under the National Health Service Act 2006, it is a semi-autonomous body that forms part of the Department of Health's resource accounting system.

Context

The NHSLA has a number of functions, by far the most significant of which is to indemnify and manage litigation against NHS bodies, (and independent sector providers of NHS care) which involves managing around £1.5 billion of expenditure (over 1% of the NHS' budget).

In 2011, the Department of Health procured an "Industry Review" by Marsh (the March Review), an expert consultancy in the insurance business, into the role and remit of the NHS Litigation Authority (NHS LA). The review was regarded as authoritative by DH. The report supported the retention of the NHS LA and its main role of indemnifying NHS bodies and managing litigation involving them; however it produced 40 recommendations to improve the NHS LA's role and its performance and efficiency. This Triennial Review will therefore draw upon some of the previous expert analysis of the Schemes as part of how the NHS LA is assessed to be performing its functions in 2014.

The Department issued a response to the review in January 2012 accepting most of the recommendations, and the NHS LA has since been implementing the recommended changes, publishing its own report of progress against them in June 2014.

Because of this, the Triennial Review is focusing on NHS LA's progress in implementing the Marsh Review recommendations, its efficiency, customer perceptions of its services, its delivery model including organisational form, and its efficiency including the accounting arrangements for its schemes.

Introduction to the Questions

Triennial Reviews are usually carried out in two distinct phases. However, this review will consider the questions from both of these simultaneously. This recognises there was implicit consideration of the need for the functions and a body to deliver the functions, at arms-length from the Department, as part of the reshaping of the health and care system which came into effect in 2013.

This review will consider the observations and recommendations made in the 2011 Marsh Review (see useful links above) and the progress NHS LA has made against them.

The review team are particularly interested in evidence in support of responses to the questions set out in this call for evidence. There are eight questions in total in this Call for Evidence. Wherever possible, please provide evidence in support of your response.

The Review will be receiving a mixture of written evidence through this Call for Evidence as well as verbal submissions and testing through interview and workshops.

The Review is considering evidence of stage one and two together. Stage one focuses on the NHS LA's functions and how they are delivered and stage two considers the NHS LA's performance and capability, opportunities for efficiency and the governance arrangements.

The questions below invite interested stakeholders to consider both together and feed in where they feel appropriate.

*** Please respond to **one or more** of the following questions, in particular the Review is looking for evidence to inform considerations. ***

What more could NHS LA do to improve patient safety and the quality of patient care?

Please consider:

- Wider opportunities for the NHS LA to contribute to patient safety and the quality of patient care
- The development of NHS LA's safety and learning service
- How patient safety data held by NHS LA is currently used
- Whether there is more learning that could be derived from the patient safety data held by NHS LA
- How learning from class-actions for individual members or across the whole of England could be used to improve patient safety as well as improving efficiency

What are your experiences of working with the NHS LA?

Please consider:

- Where members have experience of other providers/insurers how the schemes compare
- Whether NHS LA consistently meets member expectations
- How well does NHS LA work with scheme members, legal firms and other stakeholders to improve the NHS LA service offering
- Areas where the NHS LA performs well or where it could improve its performance
- Indicators that could be used to illustrate the NHS LA performance
- Any other evidence you have on the NHS LA's performance and capability

How might NHS LA adapt its approach to improve the quality of its services for members?

Points to consider :

- Whether NHS LA engages members in the development of its services
- Whether services offered represent good value for money
- Whether NHS LA would benefit from additional regulatory or market freedoms or flexibilities
- What other corporate forms/governance arrangements could support the functions
- Whether NHS LA services offer value for money

What other delivery mechanisms could be used to successfully administer the schemes?

Points to consider:

- Where there might be economies of scale from partnering with other claims handling functions elsewhere in the public sector
- Any existing providers - in any sector - that could operate the schemes wholly or as a joint venture or whether the schemes could be mutualised or delivered via Community Interest Company/social enterprise, what would be the financial implications of such a model – please provide evidence as to the practicalities and benefits of doing so
- The risks, benefits or opportunities of the Schemes being run within the health and care system

This part of the Call for Evidence asks stakeholders to feed in on the NHS LA's performance, capability and efficiency.

Is there anything else NHS LA could do to be more efficient in its member operations?

Please consider:

- Whether there is scope for NHS LA to further improve its pricing methodology and how this might be achieved
- Any barriers experienced in joining or exiting the schemes and, if appropriate, how these might be changed
- The NHS LA's approach to claims which lack merit and to exaggerated claims for damages and costs
- The time taken to resolve claims and the balance between resolving cases with or without damages against those which are contested in court
- The NHS LA's ability to strike the right balance in contesting cases to trial or settling
- The NHS LA's role in co-ordinating legal actions and setting legal precedents in the interests of the NHS
- Whether the NHS LA's interaction with members has improved and is proportionate.

How might NHS LA collaborate with others in the NHS or wider public, private or social enterprise sector to develop commercial opportunities?

Please consider:

- How NHS LA could better collaborate with members or others to develop innovative solutions that could then be brought to market
- What economies of scale in claims handling NHS LA could offer others in the public sector
- Innovative ways the NHS LA might take advantage of commercial opportunities

- Any evidence to illustrate that NHS LA is operating more, or as efficiently than others (at the same or reduced costs) or where there is learning for NHS LA on further opportunities for greater efficiency

What might be learned from other organisations doing similar work?

Please consider:

- Examples in other sectors and/or internationally
- Similarities and key differences in member engagement
- How other organisations adapt to changing sector or market environments
- Where legal or other action was co-ordinated and precedents set in the interests of members/clients

How can NHS LA adapt its approach so the schemes offered can better withstand the changing market environment?

Please consider:

- The trends in litigation and likely future trends in the clinical negligence and Employment Liabilities /Public Liabilities market
- The NHS LA's response to trends in litigation
- Responsiveness to a changing legal landscape
- Responsiveness to changes in the wider health and care system
- How the schemes operate across care pathways
- Whether there are policy changes outside NHS LA control that could lead to improved value for money

If there is other evidence on the NHS LA role, functions, performance, efficiency or governance that you would like to submit as part of this Call for Evidence, please attach it and state what it relates to.

*****END*****