



Department  
of Health

# Triennial Review of NHS Litigation Authority

## Annexes to Main Report

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# Annex A - Compliance with principles of good corporate governance

## Overview

***Cabinet Office guidance on the conduct of a review of the principles of good corporate governance:***

### **Principles of Good Corporate Governance**

Good corporate governance is central to the effective operation of all public bodies. As part of the review process, therefore, as an Arm's Length Body (Special Health Authority) of the Department of Health, the governance arrangements in place in NHS LA should be reviewed. This should be led by the sponsoring Department, working closely with the Chair and CEO who will have a key responsibility for ensuring that strong and robust corporate governance arrangements are in place. As a minimum, the controls, processes and safeguards in place in the ALB should be assessed against the principles and policies set out in this guidance. These reflect best practice in the public and private sectors and, in particular, draw from the principles and approach set out in the draft *Corporate Governance in Central Government Departments: Code of Good Practice*.

### **Comply or Explain**

The "comply or explain" approach is the standard approach to corporate governance in the UK. In keeping with this approach, the Department and ALB will need to identify as part of the review any areas of non-compliance and explain why an alternative approach has been adopted and how this approach contributes to good corporate governance. Reasons for non-compliance might include the need for structures and systems to remain proportionate, commercial considerations or concerns about cost and value for money.

The following table sets out the factual findings of the review of NHS LA's corporate governance arrangements. The assessment of the underlying strengths and weaknesses of NHS LA's governance are discussed in the main report.

# ANNEX B - Governance Assessment

PRINCIPLES OF GOOD CORPORATE GOVERNANCE Accountability			
Statutory Accountability		Met (Yes/No)	Detail
Principle	<i>The public body complies with all applicable statutes and regulations, and other relevant statements of best practice.</i>		
Supporting Provisions	The public body must comply with all statutory and administrative requirements on the use of public funds. This includes the principles and policies set out in the HMT publication “Managing Public Money” and Cabinet Office/HM Treasury spending controls.	Yes	Framework Agreement (FA) - para 5.4; Annexes A and B
	The public body must operate within the limits of its statutory authority and in accordance with any delegated authorities agreed with the sponsoring department.	Yes	Framework Agreement, Section 3, Governance
	The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000. It should have a comprehensive Publication Scheme. It should proactively release information that is of legitimate public interest where this is consistent with the provisions of the Act.	Yes	There is a publication scheme which was being revised at the time of this assessment. It is available <a href="#">here</a> .  Framework Agreement, Annex B
	The public body must be compliant with Data Protection legislation.	Yes	Framework Agreement, Section 7, Transparency (para 7.5)
	The public body should be subject to the Public Records Acts 1958 and 1967.	Yes	Uncertainty in NHS LA as to whether covered by these Acts, however there are detailed records retention arrangements in place.

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
**Accountability**

<b>Accountability for public money</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets</i></b>		
Supporting Provisions	There should be a formally designated Accounting Officer for the public body. This is usually the most senior official (normally the Chief Executive).	<b>Yes</b>	<b>Framework Agreement, section 4, Accountability</b>
	The role, responsibilities and accountability of the Accounting Officer should be clearly defined and understood. The Accounting Officer should have received appropriate training and induction. The public body should be compliant with the requirements set out in "Managing Public Money", relevant Dear Accounting Officer letters and other directions. In particular, the Accounting Officer of the NDPB has a responsibility to provide evidence-based assurances required by the Principal Accounting Officer (PAO). The PAO requires these to satisfy him or herself that the Accounting Office responsibilities are being appropriately discharged. This includes, without reservation, appropriate access of the PAO's internal audit service into the NDPB.	<b>Yes</b>	<b>NHS LA guidance document, Accounting Officer (as set out in the Standing Orders). Framework Agreement, section 4, Accountability</b>
	The public body should establish appropriate arrangements to ensure that public funds: <ul style="list-style-type: none"> <li>• are properly safeguarded;</li> <li>• are used economically, efficiently and effectively;</li> <li>• are used in accordance with the statutory or other authorities that govern their use;</li> <li>• deliver value for money for the Exchequer as a whole.</li> </ul>	<b>Yes</b>	<b>Framework Agreement, Section 5, NHS LA Board and Annex B</b>

PRINCIPLES OF GOOD CORPORATE GOVERNANCE Accountability			
Accountability for public money		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Accounting Officer of the public body is personally responsible and accountable to Parliament for the use of public money by the body and for the stewardship of assets</i></b>		
	The public body's annual accounts should be laid before Parliament. The Comptroller and Auditor General should be the external auditor for the body.	Yes	Framework Agreement, Annex B

PRINCIPLES OF GOOD CORPORATE GOVERNANCE Accountability			
Ministerial Accountability		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.</i></b>		
Supporting Provisions	The Minister and sponsoring department should exercise appropriate scrutiny and oversight of the public body.	Yes	Framework Agreement, Section 4, Accountability
	Appointments to the Board should be made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments.	Yes	Framework Agreement, Section 5; Non-Executive Board members are to Commissioner for Public Appointments Code of Practice
	The Minister will normally appoint the Chair and all non-executive Board members of the public body and be able to remove individuals whose performance or conduct is unsatisfactory.	Yes	Framework Agreement, Para 4.7 and Annex A
	The Minister should be consulted on the appointment of the Chief Executive and will normally approve the terms and conditions of employment.	Yes	DH consults Ministers on key appointments, as part of the current recruitment process
	The Minister should meet the Chair and/or Chief Executive on a regular basis.	Yes	Meetings at least annually with the Chair and Chief Executive. Some meetings by demand. At point of assessment Minister was

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
**Accountability**

<b>Ministerial Accountability</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>The Minister is ultimately accountable to Parliament and the public for the overall performance of the public body.</i></b>		
			still to formally meet the Chair. Chair and Chief Executive have regular meetings with the Senior Departmental Sponsor as part of the formal accountability arrangements.
	<p>A range of appropriate controls and safeguards should be in place to ensure that the Minister is consulted on key issues and can be properly held to account. These will normally include:</p> <ul style="list-style-type: none"> <li>• a requirement for the public body to consult the Minister on the corporate and/or operational business plan;</li> <li>• a requirement for the exercise of particular functions to be subject to guidance or approval from the Minister;</li> <li>• a general or specific power of Ministerial direction over the public body;</li> <li>• a requirement for the Minister to be consulted by the public body on key financial decisions. This should include proposals by the public body to: (i) acquire or dispose of land, property or other assets; (ii) form subsidiary companies or bodies corporate; and (iii) borrow money;</li> <li>• a power to require the production of information from the public body which is needed to answer satisfactorily for the body's affairs.</li> </ul>	<b>Yes</b>	<b>Set out in the Framework Document, Directions and via formal Sponsor relationship.</b>
	There should be a requirement to inform Parliament of the activities of the public body through publication of an annual report.	<b>Yes</b>	<b>Framework Agreement, Section 7 and Annex B (para 10)</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Roles and responsibilities

Role of the Sponsor Department	Met (Yes/No)	Detail
<b>Principle</b>		<p><b><i>The departmental Board ensures that there are robust governance arrangements with the Board of each arm's length body. These arrangements set out the terms of their relationship and explain how they will be put in place to promote high performance and safeguard propriety and regularity.</i></b></p> <p><b><i>There is a sponsor team within the department that provides appropriate oversight and scrutiny of, and support and assistance to, the public body.</i></b></p>
Supporting Provisions	The Departmental Board's regular agenda should include scrutiny of the performance of the public body. The Departmental Board should establish appropriate systems and processes to ensure that there are effective arrangements in place for governance, risk management and internal control in the public body.	<p><b>Yes</b></p> <p><b>Formal sponsorship arrangements enable testing of the arrangements through quarterly assurance assessments, these are reported to the Board as well as less formal Senior Departmental Sponsor accountability meetings.</b></p> <p><b>NHSLA's Audit &amp; Risk Committee (ARC) has benchmarked its Terms of Reference against DH's standards and the NHS LA ARC Chair has participated in DH's ARC process and developed a positive relationship.</b></p> <p><b>Set out in Framework Agreement, Annex A, Management of Risk</b></p>
	There should be a Framework Document in place which sets out clearly the aims, objectives and functions of the public body and the respective roles and responsibilities of the Minister, the sponsoring department and the public body. This should follow relevant Cabinet Office and HM Treasury guidance. The Framework Document should be published. It should be accessible and understood by the sponsoring department, all Board members and by the senior management team in the public body. It should be regularly reviewed and updated.	<p><b>Yes</b></p> <p><b>Framework Agreement in place. Process for developing the Framework Agreement included sign off by both Cabinet Office and HM Treasury.</b></p>
	There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined.	<p><b>Yes</b></p> <p><b>Senior Departmental Sponsor leads the relationship with dedicated sponsor team in place. The role of the sponsor in DH is set out in the sponsorship standards and sponsor competency framework.</b></p>



	There should be regular and ongoing dialogue between the sponsoring department and the public body. Senior officials from the sponsoring department may as appropriate attend Board and/or committee meetings. There might also be regular meetings between relevant professionals in the sponsoring department and the public body.	Yes	<b>Senior Departmental Sponsor holds quarterly accountability and assurance meetings as well as ad hoc meetings between NHS LA and the Senior Departmental Sponsor or others in the sponsor team. Specific professional meetings include DH convened meetings with ALB Directors of Finance.</b>
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<b>PRINCIPLES OF GOOD CORPORATE GOVERNANCE</b> <b>Accountability</b>			
Role of the Board	Met (Yes/No)	Detail	
<b>Principle</b>			<p><b><i>The public body is led by an effective Board which has collective responsibility for the overall performance and success of the body. The Board provides strategic leadership, direction, support and guidance.</i></b></p> <p><b><i>The Board – and its committees – have an appropriate balance of skills, experience, independence and knowledge.</i></b></p> <p><b><i>There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.</i></b></p>
Supporting Provisions	The Board of the public body should: <ul style="list-style-type: none"> <li>• meet regularly;</li> <li>• retain effective control over the body;</li> <li>• effectively monitor the senior management team.</li> </ul>	Yes	Board minutes available <a href="#">here</a> .  Approach set out in Framework Agreement, Section 5, 5.2.
	The size of the Board should be appropriate.	Yes	Meets the relevant regulations
	Board members should be drawn from a wide range of diverse backgrounds.	Yes	Board CVs and discussions confirmed balance of skills, experience and knowledge and there is some geographical diversity amongst Non-Executive Board members. Review observed some limitation of NHS operational experience at Board level.
	The Board should establish a framework of strategic control (or scheme of delegated or reserved powers). This should specify	Yes	Standing Orders make clear those decisions reserved for the Board etc. The DH has circulated documents regarding

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Accountability

Role of the Board	Met (Yes/No)	Detail
<b>Principle</b>	<p><b><i>The public body is led by an effective Board which has collective responsibility for the overall performance and success of the body. The Board provides strategic leadership, direction, support and guidance.</i></b></p> <p><b><i>The Board – and its committees – have an appropriate balance of skills, experience, independence and knowledge.</i></b></p> <p><b><i>There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.</i></b></p>	
	which matters are specifically reserved for the collective decision of the Board. This framework must be understood by all Board members and by the senior management team. It should be regularly reviewed and refreshed.	<b>delegations which are adhered to and form part of the internal governance arrangements. A scheme of financial delegation is in place below the Accounting Officer to ensure adherence to limits and requirements.</b>
	The Board should establish formal procedural and financial regulations to govern the conduct of its business.	<b>Yes</b> <b>Framework Agreement, NHS LA Board, para 5.6 and Annex B</b>
	The Board should establish appropriate arrangements to ensure that it has access to all such relevant information, advice and resources as is necessary to enable it to carry out its role effectively.	<b>Yes</b> <b>No specific gaps identified to the Executive. Non-Executive Board members confirmed through individual discussions, they had appropriate information from the Chief Executive and Executive Board members to carry out their role effectively.</b>
	The Board should make a senior executive responsible for ensuring that Board procedures are followed and that all applicable statutes and regulations and other relevant statements of best practice are complied with.	<b>Yes</b> <b>Forms part of the Chief Executive responsibilities as the NHS LA Accounting Officer.</b>
	The Board should make a senior executive responsible for ensuring that appropriate advice is given to it on all financial matters.	<b>Yes</b> <b>Undertaken by Director of Finance &amp; Corporate Planning in support the NHS LA Accounting Officer and the existing governance framework eg Audit &amp; Risk Committee (ARC) and the Reserving Committee.</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**

**Accountability**

Role of the Board	Met (Yes/No)	Detail
<b>Principle</b>	<p><b><i>The public body is led by an effective Board which has collective responsibility for the overall performance and success of the body. The Board provides strategic leadership, direction, support and guidance.</i></b></p> <p><b><i>The Board – and its committees – have an appropriate balance of skills, experience, independence and knowledge.</i></b></p> <p><b><i>There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.</i></b></p>	
	Yes	<b>Remuneration Committee in place. See guidance document, on Committees, para 1.1 Remuneration Committee (RemCo)</b>
	Yes	<b>Framework Agreement, NHS LA Board, para 5.4</b>
	Yes	<p><b>The Board and the Audit &amp; Risk Committee carry out an annual self-assessment. On occasion these assessments have been facilitated eg by National Audit Office for Audit &amp; Risk Committee.</b></p> <p><b>The Chair is assessed by the DH Senior Departmental Sponsor and the Chair assesses the NED's. The Special Interest (Non-Executive) Director can take issues of concern to the Chair on behalf of other Non-Executive Directors. .</b></p>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**

**Accountability**

<b>Role of the Chair</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>The Chair is responsible for leadership of the Board and for ensuring its overall effectiveness.</i></b>		
Supporting Provisions	The Board should be led by a Non-Executive Chair.	<b>Yes</b>	<b>Framework Agreement, NHS LA Board, para 5.2</b>
	There should be a formal, rigorous and transparent process for the appointment of the Chair. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments. The Chair should have a clearly defined role in the appointment of non-executive Board members.	<b>Yes</b>	<b>Appointed through DH Appointments Unit to the Code of Practice. Framework Agreement, NHS LA Board, para 5.3</b>
	<p>The duties, role and responsibilities, terms of office and remuneration of the Chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the Chair will normally include:</p> <ul style="list-style-type: none"> <li>• representing the public body in discussions with Ministers;</li> <li>• advising the sponsoring Department and Ministers about Board appointments and the performance of individual Non-Executive Board members;</li> <li>• ensuring that Non-Executive Board members have a proper knowledge and understanding of their corporate role and responsibilities. The Chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive Board members' performance;</li> <li>• ensuring that the Board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers;</li> <li>• ensuring that the Board carries out its business efficiently and effectively;</li> <li>• representing the views of the Board to the general public;</li> </ul>	<b>Yes</b>	<p><b>Appointed in line with Cabinet Office guidance through DH Appointments Unit to OCPA standards.. Role and responsibilities partly covered in Framework Agreement, NHS LA Board, para 5.4</b></p> <p><b>The role of the Chair is also set out in the NHS LA Standing Orders (sighted) but note NHS LA is a Special Health Authority rather than ENDPB / ANDPB or Government Department so some 'interpretation' of the Code is required.</b></p>

PRINCIPLES OF GOOD CORPORATE GOVERNANCE Accountability			
Role of the Chair		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Chair is responsible for leadership of the Board and for ensuring its overall effectiveness.</i></b>		
	<ul style="list-style-type: none"> <li>developing an effective working relationship with the Chief Executive and other senior staff.</li> </ul>		
	The roles of Chair and Chief Executive should be held by different individuals.	<b>Yes</b>	

PRINCIPLES OF GOOD CORPORATE GOVERNANCE Accountability			
Role of Non-Executive Board Members		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>As part of their role, non-executive Board members provide independent and constructive challenge.</i></b>		
Supporting Provisions	There should be a majority of Non-Executive members on the Board.	<b>Yes</b>	<b>Breakdown is:</b>  <b>NHS LA Board led by a Non-Executive Chair, plus four other Non-Executive members and four Executive members, holding the offices of Chief Executive Officer, Director of Finance &amp; Corporate Planning, Director of Claims and Director of Safety, Learning &amp; People.</b>
	There should be a formal, rigorous and transparent process for the appointment of non-executive members of the Board. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments.	<b>Yes</b>	<b>Framework Agreement, NHS LA Board, para 5.3</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
**Accountability**

<b>Role of Non-Executive Board Members</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>As part of their role, non-executive Board members provide independent and constructive challenge.</i></b>		
	<p>The duties, role and responsibilities, terms of office and remuneration of non-executive Board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The corporate responsibilities of non-executive Board members (including the Chair) will normally include:</p> <ul style="list-style-type: none"> <li>• establishing the strategic direction of the public body (within a policy and resources framework agreed with Ministers);</li> <li>• overseeing the development and implementation of strategies, plans and priorities;</li> <li>• overseeing the development and review of key performance targets, including financial targets;</li> <li>• ensuring that the public body complies with all statutory and administrative requirements on the use of public funds;</li> <li>• ensuring that the Board operates within the limits of its statutory authority and any delegated authority agreed with the sponsoring department;</li> <li>• ensuring that high standards of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way;</li> <li>• representing the Board at meetings and events as required.</li> </ul>	<b>Yes</b>	<b>Some material contained in Framework Agreement, Transparency section; Framework Agreement, Annex A</b>
	All Non-Executive Board members must be properly independent of management.	<b>Yes</b>	<b>All Non-Executive Board members are independently recruited using DH Appointments Unit to OCPA standards.</b>
	All non-executive Board members must allocate sufficient time to the Board to discharge their responsibilities effectively. Details of Board attendance should be published (with an accompanying	<b>Yes</b>	<b>Published in Annual Report and Accounts</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
**Accountability**

<b>Role of Non-Executive Board Members</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>As part of their role, non-executive Board members provide independent and constructive challenge.</i></b>		
	narrative as appropriate).		
	There should be a proper induction process for new Board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.	<b>Yes</b>	<b>Non-Executive Directors confirmed organisational induction and Chair led development activities. Chair provided some evidence of planned further Board development activity.</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
**Effective Financial Management**

<b>Effective Financial Management</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.</i></b>		
Supporting Provisions	The body must publish on a timely basis an objective, balanced and understandable annual report. The report must comply with HM Treasury guidance.	Yes	Report produced complies with HM Treasury guidance and is consistently published 'in time', before Parliamentary Summer recess.
	The public body must have taken steps to ensure that effective systems of risk management are established as part of the systems of internal control.	Yes	NHS LA report on system of internal control through Governance Statement. NHS LA Audit & Risk Committee oversee arrangements on behalf of the Board. Framework Agreement, Section 10, Risk Management
	The public body must have taken steps to ensure that an effective internal audit function is established as part of the systems of internal control. This should operate to Government Internal Audit Standards and in accordance with Cabinet Office guidance.	Yes	Provided through DH contract. Framework Agreement, Annex B, paragraph 13
	There must be appropriate financial delegations in place. These should be understood by the sponsoring department, by Board members, by the senior management team and by relevant staff across the public body. Effective systems should be in place to ensure compliance with these delegations. These should be regularly reviewed.	Yes	Scheme of Delegation is in place, with specific arrangements for extraordinary payments (sighted). Framework Agreement, section 9, Delegation and Financial Management
	There must be effective anti-fraud and anti-corruption measures in place.	Yes	Mandatory fraud training pack and working with NHS Protect on a further assurance process
	There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules. The public body should proactively publish information on expenses claimed by Board members and senior staff.	Yes	There is a travel expenses and reimbursement policy which is attached and published on our staff intranet. There is an approval process for all expenses and reimbursement claims. NHS LA publishes information about expenses on our website. See <a href="#">here</a> .



**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Effective Financial Management

Effective Financial Management		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The public body has taken appropriate steps to ensure that effective systems of financial management and internal control are in place.</i></b>		
	The annual report should include a statement on the effectiveness of the body's systems of internal control.	Yes	<b>Governance statement published with Annual Report and Accounts in lieu of a Statement on Internal Control</b>
	The Board should establish an audit (or audit and risk) committee with responsibility for the independent review of the systems of internal control and of the external audit process.	Yes	<b>Audit &amp; Risk Committee established with evidence of audit plan in place. Guidance document, Committees, Audit &amp; Risk Committee, para 1</b>
	The body should have taken steps to ensure that an objective and professional relationship is maintained with the external auditors.	Yes	<b>Audit &amp; Risk Committee is attended by internal and external auditors.</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Communications

Communications		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Public Body is open, transparent, accountable and responsive.</i></b>		
Supporting Provisions	The public body should have identified its key stakeholders. It should establish clear and effective channels of communication with these stakeholders.	Yes	<b>Some evidence through Board minutes that stakeholder strategy shared with and reported to the Board. Additional evidence provided by NHS LA Chief Executive and Head of Education and Learning. Wider engagement of health and care national partners being led by Chair.</b>
	The public body should make an explicit commitment to openness in all its activities. It should engage and consult with the public on issues of real public interest or concern. This might be via new media. It should publish details of senior staff and Board members together with appropriate contact details.	Yes	<b>Details of the Board and senior staff are published. This can be found on the governance pages of the NHS LA website.</b>  <b>Given the nature of the work that is carried out by the NHS LA in all its functions, with the duty of confidentiality owed to the claimant and much of the work being carried out under legal privilege, transparency is not possible for all activity. However, NHS LA has made commitments to share the learning from claims</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Communications

Communications		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Public Body is open, transparent, accountable and responsive.</i></b>		
			to the service and public. NHS LA are also part of the national 'Sign up for Safety' campaign.
	The public body should consider holding open Board meetings or an annual open meeting.	<b>Yes</b>	<b>There is an Annual General Meeting. Part 1 of the Board is an open meeting.</b>
	The public body should proactively publish agendas and minutes of Board meetings.	<b>Yes</b>	Information can be found on NHS LA website <a href="#">here</a> .
	The public body should proactively publish performance data.	<b>Yes</b>	<b>Board papers, where appropriate, contain this data as does the Annual Report, Strategic Plan and annual Business Plan.</b>  Some performance indicators and information is deemed commercially sensitive and is not in the public domain. (Information sighted).
	In accordance with transparency best practice, public bodies should consider publishing their spend data over £500. By regularly publishing such data and by opening their books for public scrutiny, public bodies can demonstrate their commitment to openness and transparency and to making themselves more accountable to the public.	<b>Partly</b>	<b>Spend is published for items over £25k and can be found on NHS LA website <a href="#">here</a>.</b>
	The public body should establish effective correspondence handling and complaint procedures. These should make it simple for members of the public to contact the public body and to make complaints. Complaints should be taken seriously. Where appropriate, complaints should be subject to investigation by the Parliamentary Ombudsman. The public body should monitor and report on its performance in handling correspondence.	<b>Yes</b>	<b>The Complaint Policy is available on NHS LA website <a href="#">here</a>. Roles and responsibilities within the policy are set out.</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Communications

Communications		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Public Body is open, transparent, accountable and responsive.</i></b>		
	The public body must comply with the Government's conventions on publicity and advertising. These conventions must be understood by Board members, senior managers and all staff in press, communication and marketing teams.	<b>Yes</b>	<b>This is covered within the 'delegations' from DH which NHS LA complies with and is referenced in the procurement arrangements.</b>
	Appropriate rules and restrictions must be in place limiting the use of marketing and PR consultants.	<b>Yes</b>	<b>This can be found in the NHS LA Procurement Policy. This policy sets out restrictions on spend.</b>
	The public body should put robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying. This includes restrictions on Board members and staff attending political conferences in a professional capacity.	<b>Yes</b>	<b>This has been communicated to staff and they are reminded – particularly in lead to elections etc.</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Conduct and behaviour

Conduct and behaviour		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.</i></b>		
Supporting Provisions	A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all Board members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment.	<b>Yes</b>	<b>Framework Agreement sets out the requirements to follow the Code. This is also included within NHS LA's Governance Statement.</b>

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
Conduct and behaviour

Conduct and behaviour		Met (Yes/No)	Detail
<b>Principle</b>	<b><i>The Board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.</i></b>		
	The public body has adopted a Code of Conduct for staff. This is based on the Cabinet Office model Code. All staff should be aware of the provisions of the Code. The Code should form part of the terms and conditions of employment.	Yes	Standard contract refers to the Code of Conduct.
	There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for Board members and senior staff. This is regularly updated.	Yes	Held by Director of Finance & Corporate Planning and regularly subject to audit.
	There are clear rules and guidelines in place on political activity for Board members and staff. There are effective systems in place to ensure compliance with any restrictions.	Yes	Included within the contracts for Executive Board members. Applicants for Non-Executive Board roles are asked to complete a monitoring form detailing any political activity in the last 5 years with DH required to publicise any declared political activity to comply with para 4.2 of <a href="http://www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf">the Commissioner for Public Appointments' Code of Practice</a> . Non-Executive Board member appointment letters includes a requirement on political involvement as set out in the <i>Code of Conduct for Board Members of Public Bodies</i> ( <a href="http://www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf">http://www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf</a> ). Political activity is covered on page 7, para 3.11
	There are rules in place for Board members and senior staff on the acceptance of appointments or employment after resignation or retirement. These are effectively enforced.	Partly	Where appropriate, yes. Where not legally enforceable we remind staff of duties to public purse.  Non-Executive Board member appointment letters explain that the <i>Code of Conduct for Board Members of Public Bodies</i> ( <a href="http://www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf">http://www.bl.uk/aboutus/governance/blboard/BoardCodeofPractice2011.pdf</a> .) applies to their appointment. This includes the requirement on the need to comply with the rules of the body on leaving office on the acceptance of future employment or

**PRINCIPLES OF GOOD CORPORATE GOVERNANCE**  
**Conduct and behaviour**

<b>Conduct and behaviour</b>		<b>Met (Yes/No)</b>	<b>Detail</b>
<b>Principle</b>	<b><i>The Board and staff of the public body work to the highest personal and professional standards. They promote the values of the public body and of good governance through their conduct and behaviour.</i></b>		
			<b>appointments (para 3.16)</b>
	Board members and senior staff should show leadership by conducting themselves in accordance with the highest standards of personal and professional behaviour and in line with the principles set out in respective Codes of Conduct.	<b>Yes</b>	Standard contract refers to the Code of Conduct.

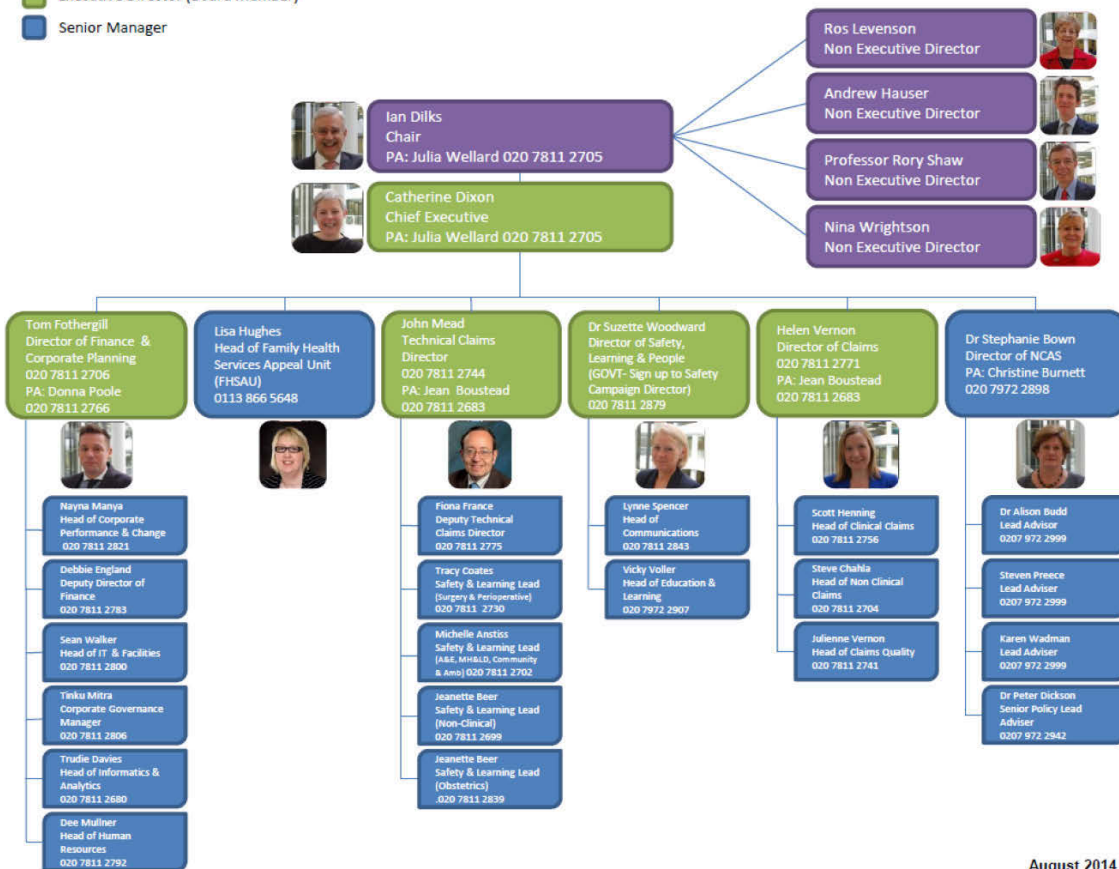
# Annex C - NHS LA Organisation Charts

At September 2014

## NHS LA Organisational Chart and Administrative Bases

## NHS Litigation Authority

- Non Executive Director (Board Member)
- Executive Director (Board Member)
- Senior Manager



**NHS Litigation Authority (NHS LA) HQ**  
2<sup>nd</sup> Floor  
151 Buckingham Palace Road  
London SW1W 9SZ  
Tel: 020 7811 2700  
Fax: 020 7821 1998  
Website: [www.nhsla.com](http://www.nhsla.com)

**Family Health Services Appeal Unit (FHSAU)**  
1 Trevelyan Square  
Boar Lane  
Leeds LS1 6AE  
Tel: 0113 866 5500  
Fax: 020 7821 0029  
Website: [www.nhsla.com](http://www.nhsla.com)

**National Clinical Assessment Service (NCAS)**  
London Office  
Area 1C  
Skipton House  
80 London Road  
London SE1 6LH  
Tel: 020 7972 2999  
Fax: 020 7972 2977  
Website: [www.ncas.nhs.uk](http://www.ncas.nhs.uk)

**Northern Ireland Office**  
Office Suite 3  
Lisburn Square House  
Haslem's Lane  
Lisburn  
BT28 1TW  
Tel: 028 9266 3241  
Fax: 028 9260 3619  
Website: [www.ncas.nhs.uk](http://www.ncas.nhs.uk)

**Wales Office**  
First Floor, 2 Caspian Point  
Caspian Way  
Cardiff Bay  
Cardiff  
CF10 4DQ  
Tel: 029 2044 7540  
Fax: 029 2044 7549  
Website: [www.ncas.nhs.uk](http://www.ncas.nhs.uk)

August 2014

# Annex D - NHS Litigation Authority Regulations

The NHS Litigation Authority (NHSLA) was first established by the **National Health Service Litigation Authority (Establishment and Constitution) Order 1995, S.I. 1995/2800**. The order was made under section 11(1), (2) and (4) of, and paragraph 9(7)(b) of schedule 5 to, the National Health Service Act 1977.

Following the consolidation of the enabling authority, this order now has effect as if made under the National Health Service Act 2006, section 28 and the National Health Service (Wales) Act 2006, section 22, by virtue of the National Health Service (Consequential Provisions) Act 2006, section 4, schedule 2, part 1, paragraph 1. S.I. 1995/2800 which has been amended by:

- the National Health Service Litigation Authority (Establishment and Constitution) Amendment Order 2002, S.I. 2002/2621; and
- the National Health Service Litigation Authority (Establishment and Constitution) Amendment (No. 2) Order 2005, S.I. 2005/2621.

The National Health Service Litigation Authority Regulations 1995, S.I. 1995/2801, make detailed provision about the operation of the NHSLA. The Regulations were made under sections 16 and 126(4) of, and paragraphs 12 and 16 of schedule 5 to, the National Health Service Act 1977. Following the consolidation of the enabling authority, these regulations now have effect as if made under the National Health Service Act 2006, section 29, schedule 6, paragraphs 5, 13 and the National Health Service (Wales) Act 2006, section 25, schedule 5, paragraphs 5, 13, again by virtue of the National Health Service (Consequential Provisions) Act 2006, section 4, schedule 2, part 1, paragraph 1. S.I. 1995/2801 has been amended by:

- National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996, S.I. 1996/708;
- National Health Service Litigation Authority (Amendment) Regulations 1996, S.I. 1996/968;
- Health Authorities (Membership and Procedure) Amendment Regulations 1997, S.I. 1997/2991;
- National Health Service (Pilot Schemes: Miscellaneous Provisions and Consequential Amendments) Regulations 1998, S.I. 1998/646;
- Special Health Authorities (Amendment) Regulations 1998, S.I. 1998/1576;
- Health Authorities (Membership and Procedure) Amendment Regulations 2000, S.I. 2000/696;
- National Health Service Litigation Authority (Amendment) Regulations 2000, S.I. 2000/2433;
- National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002, S.I. 2002/2469;
- National Health Service (Local Pharmaceutical Services etc.) Regulations 2002, S.I. 2002/2861;
- Health and Social Care (Community Health and Standards) Act 2003 (Supplementary and Consequential Provision) (NHS Foundation Trusts) Order 2004, S.I. 2004/696;
- National Health Service (Local Pharmaceutical Services etc.) Regulations 2006, S.I. 2006/552; and

- Enterprise Act 2002 (Disqualification from Office: General) Order 2006, S.I. 2006/1722.

The Special Health Authorities (SHA) Abolition Order 2005, S.I. 2005/502, dealt with the abolition of the Family Health Services Appeal Authority (FHSA) and transferred its responsibilities to the NHSLA. This order was made under the powers conferred by sections 11(1), (2) and (4) and 126(3) and (4) of the National Health Service Act 1977. Following the consolidation of the enabling authority, this order now has effect as if made under the National Health Service Act 2006, section 28 and the National Health Service (Wales) Act 2006, section 22 by virtue of the National Health Service (Consequential Provisions) Act 2006, s 4, schedule 2, part 1, paragraph 1.

The National Health Service (Complaints) Regulations 2004, S.I. 2004/1786, make provision for complaints in the NHS for specific NHS bodies, which include SHAs to which section 2 of the Health Services Commissioners Act 1993 applies. These regulations were amended by the National Health Service (Complaints) Amendment Regulations 2006, S.I. 2006/2084

Section 2(5)(b) of the Health Service Commissioner Act 1993 provides for an Order in Council to be made to include other SHAs than those listed at section 2(1). The NHSLA was included through the following order:

The Health Service Commissioner for England SHAs Order 2005, S.I. 2005/251.

The Secretary of State is also able to direct the NHSLA by virtue of sections 16D, 17, 18(3) and 126(4) of the National Health Service Act 1977, section 7(3) and (4) of the Health and Medicines Act 1988. The enabling authority under the 1977 Act has subsequently been consolidated under section 8 of the NHS Act 2006.

Directions that regulate the NHSLA are:

- The National Health Service Litigation Authority (Functions) Directions 1995;
- The National Health Service (Clinical Negligence Scheme) Directions 1997;
- The National Health Service (Existing Liabilities Scheme) Directions 1997;
- Directions to the National Health Service Litigation Authority Arrangements for Reimbursement of Health Authorities For Payments Under Structured Settlements in Respect of Clinical Negligence Claims 1999;
- The National Health Service Litigation Authority Directions 2005;
- Directions as to the Functions of the National Health Service Litigation Authority (GDS Contracts Disputes) 2005;
- Directions as to the Functions of the National Health Service Litigation Authority (PDS Agreements Disputes) 2005;
- Directions as to the Functions of the National Health Service Litigation Authority (GDS Contract and PDS Agreements Transitional Disputes) 2005;
- National Health Service Litigation Authority (Functions) (England) Directions 2005;
- National Health Service Litigation Authority (Functions) (England and Wales) Directions 2005;



- The National Health Service Litigation Authority and National Health Service Trusts (Supply Of Services and Facilities To The FHSAA) Directions 2005;
- National Health Service Litigation Authority and Primary Care Trust Directions 2005; and
- The National Health Service Litigation Authority (Functions) (England) (Amendment) Directions 2007.

In future, the Secretary of State intends to issue Directions to the NHSLA with regard to the resolution of disputes in primary medical services over the general practitioner systems of choice primary care trust-practice agreement.

The National Health Service Litigation Authority (Amendment) Directions 2013

The Secretary of State for Health, in exercise of the powers conferred by sections 7(1), 8(1), 272(7) and 273(1) of the National Health Service Act 2006(a) gives the following Directions.

#### **NCAS and FHSAU 2013 amendments**

# Annex E - Written Ministerial Statement announcing the review

*I am today announcing that the Department of Health is commencing a Triennial Review of the NHS Litigation Authority. This review forms part of the first tranche of reviews to be announced this session.*

*Triennial Reviews of Arms-Length-Bodies are a key part of the Department's stewardship and assurance of the health and care system, they also contribute to the Government's wider programme of work on Public Bodies Reform.*

*The review will consider the body's functions and corporate form, as well performance and capability, governance and opportunities for greater efficiencies. The Department will be working with a wide range of stakeholders throughout the review.*

*I will announce the findings of the review later this year.*

# Annex F - Call for Evidence

## Overview of the Call for Evidence

A Call for Evidence (the Call) was in place between 16 October and 12 November 2014. The Call sought views from respondents to assist its consideration of the functions, form, performance, capability, governance and efficiency of the NHS LA.

There were eight questions in total in the Call. The review considered evidence against both stage one and stage two together. Stage one focused on the NHS LA's functions and how they are delivered and stage two considered the NHS LA's performance and capability, opportunities for efficiency and the governance arrangements.

The Call is now archived at <http://consultations.dh.gov.uk/triennial-reviews/nhs-litigation-authority>. The questions asked, which were summarised in face to face discussions, are below.

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

***What are your experiences of working with the NHS LA?***

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

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

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

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

***What might be learned from other organisations doing similar work?***

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

***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.***

# Annex G - Scope

## Key Deliverables

A credible review process consistent with the DH Triennial Programme and that takes account of the Cabinet Office guidance to include:

- Effective engagement with key stakeholders and users of the NHS Litigation Authority (NHS LA).
- An evidence based report with recommendations.

## Within Scope

### *Functions*

- Consideration of the extent to which NHS LA is involved in policy setting eg duty of candour, sign-up to safety and whether there is any conflict of interest between policy-making and independent operation of the Schemes
- Consideration of future market environment and policy –eg claims growth and the nature and financing of indemnities provided to members under Clinical Negligence Scheme for Trusts (CNST).

### *Delivery Model*

- Is Special Health Authority the right corporate vehicle for the NHS LA's activities, and in particular its indemnity schemes, or whether there should be a greater or lesser degree of separation from the Secretary of State for Health.
- The extent to which the Marsh recommendations for improving the NHS LA have been taken forward
- Review of KPIs to ensure that they provide relevant and optimal means of measuring the NHS LA's performance

### *Performance*

- Progress on “barriers to exit” (of the NHS LA Schemes); these could be seen as involuntarily tying in members.
- Customer/consumer views on experiences of the Schemes, specifically including new Independent Sector members (for comparisons with commercial insurers) and members who have expressed discontent with aspects of the Schemes.

### *Governance*

- Board composition, effectiveness and succession arrangements

### *Efficiency*

- The extent to which the Marsh recommendations on efficiency and performance have been taken forward. With particular focus on tendering efficiencies.
- NHS LA's handling of class-actions and whether this approach has improved outcomes and reduced cost.
- Benchmarking areas where there is more of a private sector market for cover e.g. EL/PL.
- Scope for joint working with other Departments or Administrations to improve the effective and efficient handling of Government risk pooling indemnity schemes, including but not limited to Department of Education Academy Schools Risk Pool; Welsh Risk Pool; Ministry of Justice compensation Pool (awards compensation to armed forces personnel).
- Whether the accounting and budgeting arrangements for NHS LA are optimal eg charging of in-year cash payments as expenditure and the future costs accruing from current activity as provisions

### **Outwith Scope**

- National Clinical Assessment Service (NCAS) and Family Health Services Assessment Unit (FHSAU): NCAS transferred to NHS LA in April 2013 and with subsequent restructure it is not viable to assess the impact on performance at this point. The proportionate approach of this Review places FHSAU as a lower priority in considerations based on resource usage.
- Recruitment and workforce establishment: The Review will not make recommendations on staffing establishment or capacity. The Review will rely on agreed post transition establishment unless there is significant risk or variance to agreed numbers/tolerances.
- New data collection: Collection of new data sets will be outwith the scope of this Review with the Review relying on existing information and evidence submitted through the call for evidence and desk research.

# Annex H - Review governance and project arrangements

## Review Team Membership

Andrew Baigent (DH), Senior Review Sponsor  
Lorraine Thomas (DH), Lead Reviewer

The wider review team included part-time co-opted members. These included:

Angela Johnson, Reviewer  
Raja Nadarajan, Reviewer (Cabinet Office)  
Russell Parkinson, Reviewer  
Tom Bacon, Project Manager and Reviewer  
Trusha Patel, Project Support

## Project Board Membership and Terms of Reference

### Members

Andrew Baigent (Chair), Director, Group Financial Management, Department of Health (DH)  
Ben Masterson, Deputy Director, Procurement, DH  
Catherine Dixon, Chief Executive, NHS Litigation Authority (to 30 November 2014)  
Helen Vernon, Chief Executive, NHS Litigation Authority (from 1 December 2014)  
Lorraine Thomas, Lead Reviewer, DH  
Tom Fothergill, Director of Financial and Corporate, NHS Litigation Authority (attends)

### Terms of Reference

The role of the Project Board is to provide direction, leadership and challenge and to provide a regular forum through which risks and issues can be addressed.

The purpose of the Project Board is to drive the delivery of the NHS LA Review through:

- Appropriately scoping each review in line with Departmental and Cabinet Office expectations.
- Holding the Review team to account for delivering against plans.
- Management of risks and issues, and mitigating actions.
- Ensuring sufficient resources and capability, including identifying specialist skills as required.

## Challenge Group Membership and Terms of Reference

### Members

Julian Kelly (Chair) Director General of Public Spending and Finance, HM Treasury  
Neil Riley Deputy Chief Executive, Sheffield Teaching Hospitals NHS FT  
Oli Blackaby, Crown Commercial Lead, Cabinet Office  
Andrew Baigent Director Group Financial Management, DH  
Lorraine Thomas, Lead Reviewer, DH (attends)

### Terms of Reference

The Challenge Group will assess and give challenge to the NHS LA review's scope, approach, organisation and reporting. It will ensure the review scope sits within the wider objectives of public service reform, the lead reviewer is reasonably independent, that the review is understanding of the business and reflects the need for greater efficiency in public services and the approach taken is objective, proportionate and transparent.

### Other Governance Arrangements

The Project Board, through the Lead Reviewer, will report on progress to the Triennial Review Steering Group.

# Annex I - Stakeholder engagement and communications

## Background:

The review's stakeholder engagement and communications strategy set out the approach to both identifying and engaging organisations and people with an interest in the NHS LA by:

- Identifying those stakeholders who the project board believe have a legitimate interest in the review
- Setting out the relationship of those stakeholder to the NHSLA and their interest in the review
- Highlighting the areas where stakeholders were expected to engage; and
- Articulating how the review intended to engage with them.

The review used existing channels where they existed and were appropriate. Key routes to stakeholders were:

- The formal 'Call for Evidence' with follow-up interventions
- Face to face interaction during the engagement period, including health care, indemnity/insurance industry and sector based workshops
- An opportunity to make written representations

## Key Messages

- Triennial reviews are a routine part of the Department's assurance and stewardship of the health and care system.
- The review will be a collaborative process
- The review is built on best practice and learning.



# Annex J - Summary of evidence approach

## Publications/websites reviewed

This review was undertaken using a mixture of evidence drawn from publicly available reports and articles and internal policy development documents and other grey literature. This evidence was a result of desk research, responses to the Call for Evidence and requests to the NHS LA, DH officials and others in Government.

### Summarised approach to evidencing this review was:

#### Evidence gathering and consideration – desk research

- Over 120 pieces of evidence identified and considered through desk research including policy development and assurance documentation
- Additional evidence from Call for Evidence, interviews and workshops
- Evidence mapped against broad lines of enquiry – functions, form, delivery model, performance, governance, efficiency
- And against specific areas of focus including – barriers to exit, market environment and claims growth, joint working, tendering efficiencies

#### Scheme member and other stakeholder evidencing

- Call for Evidence online response
- Additional evidence from individual and group interviews and discussions
- Face to face engagement included workshops Leeds and London, individual meetings, team meetings and telephone interviews

#### NHS LA and DH engagement through structured discussion around set themes

- Individual Board member discussions (all Board members)
- Meetings with whole Board
- Individual and team discussions with key staff members in NHS LA and DH

# Annex K - Contributors to this review

This review had a range of contributors both within the formal Triennial Review Programme but also across the range of NHS Litigation Authority (NHS LA) and Department of Health stakeholders. Thanks are extended to the Department's Communications Directorate particularly the Stakeholder and Partnerships Branch for providing support to the stakeholder engagement approach.

The project team would particularly like to thank the NHS LA for their helpful contributions, both in formal discussions and in providing evidence.

The review team would also like to thank those internal and external stakeholders who whilst not part of the contributors formally responding to the review, found time to informally contribute or provide the team a steer toward additional evidence or additional contributors.

Below are the key contributors to this review, the stakeholders who responded to the Call for Evidence, participated in individual and group discussions and, in the interests of transparency, a summary of the evidence reviewed during the course of this review.

## Respondents (by organisation)

### Response to Call for Evidence

Actions Against Medical Accidents  
Bevan Brittan LLP  
Christopher Melton QC, Independent  
DAC Beachcroft LLP  
Leigh Day LLP  
Lincolnshire Community Health Services NHS Trust  
Lockton Companies LLP  
Medical Defence Union  
Medical Protection Society  
MJP Solicitors  
Northampton General Hospital NHS Trust  
Oxford University Hospitals NHS Trust  
Probus Surgical Centre  
Royal College of Obstetricians and Gynaecologists  
The Rotherham NHS Foundation Trust  
The Walton Centre NHS Trust  
Weightmans LLP

### Structured discussions

British Medical Association  
Care UK  
Homerton University Hospital NHS Foundation Trust  
Leeds Teaching Hospitals NHS Trust  
Liverpool Women's NHS Foundation Trust  
Lockton Companies LLP  
Medical Defence Union  
Medical and Dental Defence Union of Scotland  
Michael Parker, Parkers Accountancy  
Michael Weaver, Health Governance Consulting Ltd  
Mid Yorkshire Hospitals NHS Trust  
North Middlesex University Hospital NHS Trust  
North Tees and Hartlepool NHS Foundation Trust  
NHS Employers  
North East London NHS Foundation Trust

Plymouth Community Healthcare CIC  
Royal College of Anaesthetists  
Royal College of Midwives  
Royal College of Obstetrics and Gynaecology  
Southend University Hospital NHS Foundation Trust  
Warrington and Halton Hospitals NHS Foundation Trust

#### **NHS LA Legal Panel Members (Discussion 4<sup>th</sup> November 2014)**

Approximately 32 representatives at Partner level. The legal firms represented included:

Bevan Brittan  
BLM  
Browne Jacobson  
Capsticks  
Clyde & Co  
DAC Beachcroft  
Hempsons  
Hill Dickinson  
Kennedys  
Ward Hadaway  
Weightmans

#### **NHS LA Individual structured discussions October 2014**

Chair  
Non-Executive Directors (Chair, Audit Committee, Special Interest Director)  
Chief Executive  
Director of Finance  
Director of Claims  
Technical Claims Director  
Director of NCAS  
Director of Safety, Learning & People (Campaign Director Sign up to Safety)  
Safety and Learning Leads  
Head of Clinical Claims  
Head of Non-Clinical Claims  
Head of Claims Quality  
Head of Governance  
Head of Education and Learning

#### **Department of Health Individual structured discussions**

Director General of Finance and NHS Group  
Director of Assurance  
Deputy Director {Property & Commercial)  
Deputy Director, NHS Security Management  
Head of Internal Audit, NHS LA  
Finance Business Partner (NHS LA)  
Deputy Director Property & Commercial Policy / NHS LA Senior Sponsor  
NHS LA Sponsor Team members

#### **Control and Risk Self-Assessment Forum (25 September 2014)**

Informal discussions with individual members from commercial, public (NHS and ex NHS) and charitable sectors and academia. Total 18 members in attendance. Chair Paul Moxey, Visiting Professor LSBU.

# Annex L - Evidence reviewed summary

The following summary list sets out some of the evidence reviewed during the course of the review. Additional policy development documents and analysis from the Department of Health, NHS Litigation Authority and others were also sighted and considered as part of the review process.

- ALARM (2013), Alarm expresses an interest in LGA Insurance Roundtable accessed 14<sup>th</sup> July 2014*
- Association of Chartered Certified Accountants (2010) Understanding governance in the NHS – A research project by ACCA in collaboration with the Department of Health – Report on Year 3*
- Cabinet Office (2012) Public Bodies Reforms: Checklist for departments*
- Cabinet Office (2013) Managing Public Money*
- Cabinet Office /HM Treasury (2011) Corporate Governance Code for Central Government Departments – Code of good practice*
- Cabinet Office, Mutuels Task Force (2011) Our Mutual Friends: Making the Case for Public Service Mutuels*
- Cabinet Office/Department of Health (2014) Letter Mutuels in Health: Pathfinder Programme (28<sup>th</sup> July 2014)*
- Daily Telegraph, 'Soaring NHS Legal costs will eat up George Osborne's £2bn cash injection' accessed 5<sup>th</sup> December 2014*
- Department for Education (2014) Risk protection arrangement (RPA) for academy trusts, Membership rules June 2014*
- Department of Health (2011) Response to Marsh Industry Report, Department of Health*
- Department of Health (2013) A promise to learn – a commitment to act- Improving the Safety of Patients in England; National Advisory Group on the Safety of Patients in England*
- Department of Health (2013) Hard Truths The Journey to Putting Patients First Volume One of the Government Response to the Mid Staffordshire NHS Foundation Trust Public Inquiry*
- Department of Health (2014), 'Improving patient safety and openness (October 2014)*
- Department of Health/NHS Litigation Authority (2013) Framework Agreement between the Department of Health and the NHS Litigation Authority*
- Det Norske Veritas (2012) Suite of documentation of NHS LA commissioned reviews including Managing Risk - A Review of Accreditation Programmes; Feedback on the NHS LA standards and assessment process; Identification of data and information available from other sources; Information and Findings to inform NHS LA Assessments and Processes, Summary Report; Mapping the NHS LA and CNST Standards; The value of standards and accreditation programmes: A literature review.*
- Department of Health (2014) – Feedback on returns Cabinet Office QDS accessed 20<sup>th</sup> August 2014*
- Eversheds (2012) Article A commercial insurance alternative to the NHS Litigation Authority for personal injury claims brought against Foundation Trusts – An interview with Mark Riley-Pitt of RK Harrison Insurance Services (accessed 28 August 2014)*
- Guardian Online (2014) Article 'How the NHS should listen and act on patient complaints' (11<sup>th</sup> November 2014) accessed 18<sup>th</sup> November 2014*
- Health Investor (2013) Article Private providers divided on changes to NHS Insurance scheme (posted 17<sup>th</sup> April 2013) accessed 14<sup>th</sup> July 2014*
- Health Service Journal (2012) Article Mental health trust set to leave litigation scheme (22<sup>nd</sup> March 2012) accessed 28<sup>th</sup> August 2014*
- Health Service Journal (2012) Article Exclusive: mental health trust is first to quite clinical negligence scheme (2<sup>nd</sup> April 2012) accessed 28<sup>th</sup> August 2014*
- Health Service Journal (2012) Article Quarter of trusts consider negligence scheme exit (29<sup>th</sup> March 2012) accessed 28<sup>th</sup> August 2014*

*Health Service Journal (2013) Article Revised negligence scheme 'will not lead to big price swings' (9<sup>th</sup> September 2013) accessed 28<sup>th</sup> August 2014*

*Health Service Journal (2014) Article 'Brave' new patient safety drive launched (17<sup>th</sup> October 2014) accessed 17<sup>th</sup> October 2014*

*Health Service Journal (2014) Article 'Debunking the myths about the clinical negligence bill' (6<sup>th</sup> January 2014) accessed 15<sup>th</sup> October 2014*

*Health Service Journal (2014) Article The three ways to drive transformational change in the NHS accessed 18<sup>th</sup> November 2014*

*Health Service Journal (2014) Article 'The no fault compensation model needs a radical overhaul' (6<sup>th</sup> August 2014) accessed 17<sup>th</sup> and 28<sup>th</sup> August 2014*

*Health Service Journal (2012) Article £200m boost for NHS compensation fund accessed 28<sup>th</sup> August 2014*

*Health Service Journal (2012) Article Quarter of trusts consider negligence scheme exit (29<sup>th</sup> March 2012) accessed 28<sup>th</sup> August 2014)*

*Health Service Journal (2013) Article Lawyers are not just ambulance chasers - Kate Rohde, Head of clinical negligence at Kingsley Napley LLP – (19<sup>th</sup> November 2013) accessed 28<sup>th</sup> August 2014*

*Health Service Journal (2013) Article Lawyers are not just ambulance chasers accessed 28<sup>th</sup> August 2014*

*Health Service Journal (2014) Article The no fault compensation model needs a radical overhaul 6<sup>th</sup> August 2014 Michael Devlin, Head of Professional Standards and Liaison , Medical Defence Union (Accessed 28<sup>th</sup> August 2014)*

*Health Service Journal (2014) Article Mutuals 'central' to solving NHS challenges (29<sup>th</sup> August 2014) accessed 29<sup>th</sup> August 2014*

*Health Service Journal (2014) Article 'OOH providers warn over rising indemnity costs' accessed 12<sup>th</sup> December 2014*

*Health Service Journal (2014) Article 'Patient safety bill to legislate for zero NHS harm' (18<sup>th</sup> November 2014) accessed 18 November 2014*

*Health Service Journal (2014) Article 'The MDU's proposal for a negligence cap would be bad for patients (15<sup>th</sup> Oct 2014) accessed 15 October 2014*

*Health Service Journal (2014) Article Opinion Piece, Chris Ham – Public service mutual will inspire greater staff engagement (14<sup>th</sup> July 2014) accessed 15<sup>th</sup> July 2014*

*Health Service Journal (2014) Article Richard Jolly 'Who pays when it goes wrong? The uncertainty of private provider in the NHS?' accessed 3<sup>rd</sup> October 2014*

*Health Service Journal (2014) Article Who pays when it goes wrong? The uncertainty of private providers in the NHS accessed 3 October 2014*

*Health Service Journal (HSJ) Article £200m boost for NHS compensation fund (12<sup>th</sup> January 2012) by the Press Association accessed by 3 October*

*Health Service Journal (HSJ) Article Debunking the myths about the clinical negligence bill (6<sup>th</sup> January 2014) by Christine Tomkins accessed 3<sup>th</sup> October 2014*

*Health Service Journal, (2014) Article 'Parliament gives 'zero harm' bill financial backing' by Shaun Lintern accessed 27<sup>th</sup> November 2014*

*HM Treasury (2004) Orange Book Management of Risks, Principles and Concepts (updated 2013)*

*HMSO (1997) Statutory Instruments 1997 No. 2991 National Health Service, England and Wales, The Health Authorities (Membership and Procedure) Amendment Regulations 1997*

*HMSO (2002) Statutory Instrument 2002 No. 2621- The National Health Service Litigation Authority (Establishment and Constitution) Amendment Order 2002*

*HMSO (2005) National Health Service Act 1977, Health and Medicines Act 1988 - National Health Service Litigation Authority (functions) (England) Directions 2005*

*HMSO (2005) National Health Service Act 1977, National Health Service Litigation Authority (functions) (England and Wales) Directions 2005*

HMSO (2005) *National Health Service, England, National Health Service Act 1977, The National Health Service Litigation Authority Directions 2005*

HMSO (2005) *Statutory Instruments 2005 No. 1445 National Health Service, England, The National Health Service Litigation Authority (establishment and Constitution) Amendment (No.2) Order 2005*

Independent (2014) *Examining new options and opportunities for providers of NHS care: The Dalton Review*

*Injury Lawyers for You (2014) plus various public facing 'claimant lawyer' websites – information for patients (all accessed 1 November 2014)*

Institute for Government (2012) *It Takes Two – How to create effective relationships between government and arm's length bodies*

Kings Fund (2014) – *Improving NHS Care by Engaging staff and developing Decision Making report of the Review of Staff Engagement and Empowerment in the NHS*

Lexis Nexis (2014), *Lexis PSL Personal Injury, Clinical negligence claims, taking chances in court 08 September 2014 (accessed 15 September 2014)*

Litigationfutures (2014) *Article 'NHS LA hits out a claimant lawyers over rising claims and costs' (11 July 2014 accessed 15 September 2014)*

Marsh Risk Consulting Ltd (2012) *Comparison of the NHS Litigation Authority and the Commercial Insurance Market: Briefing Paper*

Marsh Risk Consulting Ltd (2011) *Department of Health, NHS Litigation Authority Industry Report*

Medical Defence Union (2013) *Medico-legal guide to Clinical negligence – 5.3 Background to litigation*

Medical Defence Union (2012) *Legal Reform needed to curb compensation bill 3 July 2012 (accessed 30 June 2014)*

Medical Defence Union (2012) *Medico-legal guide to Clinical Negligence – 5.2 Your response to litigation*

Medical Defence Union (2013) *Article £22.7bn NHS Claims liabilities shows need for reform of compensation system, 19 July 2013 (accessed 30 June 2014)* Medical Defence Union (2013) *What the contractual duty of candour means for doctors, 12 March 2013 (accessed 18 August 2014)*

Merrill Legal Solutions, *Mid Staffordshire Inquiry (July 2011) - NHS LA failing Stafford Hospital, that the Trust had been assessed.*

Ministry of Justice (2012) *'Damages Act 1996: The Discount Rate 'How should this be set?' Consultation Paper (CP 12/2012)*

Ministry of Justice (2012) *'Solving disputes in the county courts: creating a simpler, quicker and more proportionate system, A consultation on reforming civil justice in England and Wales, the Government response' (February 2012)*

Ministry of Justice (2013) *'Damages Act 1996: The Discount Rate Review of the Legal Framework': Consultation Paper (CP 3/2013).*

Money Saving Expert (2014) *Guide to claiming PPI (accessed 1 November 2014)*

Monitor (2013) *A Fair Playing Field Review for the benefit of patients: Monitor's independent review for Secretary of State for Health*

National Assembly for Wales (2013) *Quality, Safety & Experience Committee, Welsh Risk Pool Assessment (April 2013)*

National Audit Office (2001) *'Handling clinical negligence claims in England', (Session 2000-2001:3 May 2001)*

National Audit Office (2013) *Maternity Services in England*

National Audit Office (2014) *Department of Health and NHS England, 'Funding healthcare: Making allocations to local areas', by the Comptroller and Auditor General (Session 2014-15 11 September 2014)*

National Audit Office (2014) – *Management report on Triennial Reviews*

National Audit Office (2014) *Cabinet Office; Progress on public bodies reform HC 1048*

National Health Service, England (2013 No. 497) *The National Health Service (Clinical Negligence Scheme) Amendment Regulations 2013, Statutory Instruments.*

NHS (2014) *Five Year Forward View*

NHS England (2014) *A Guide for patients on making complaints and giving feedback about NHS Care*

NHS England (2014) *Making complaints and giving feedback (The NHS Constitution)*

NHS Leadership Academy (2013) *The Healthy NHS Board 2013, Principles for Good Governance*

NHS Litigation Authority, *NHS LA Risk Management Survey 2012- Summary of analysis of responses.*

NHS Litigation Authority (2014) *Website (accessed 1 November 2014)*

NHS Litigation (2012) *Policy for Management of the NHS LA Risk Register RM06*

NHS Litigation Authority (2012), *NHSLA Risk Management Standards 2012-13 for NHS Trusts providing Acute, Community, or Mental Health & Learning Disability Services – Report (reference T123) on sampled a NHS Foundation Trust, January 2013*

NHS Litigation Authority (2014) *NHS LA Board papers 12 March 2014; 22 January 2014*

NHS Litigation Authority (2004) *A review of the NHS LA Incident Reporting and Management and Learning from Experience Standards – Assessment Outcomes April 2003-March 2004*

NHS Litigation Authority (2011) *Standing Orders No. FINP 001*

NHS Litigation Authority (2012) *Fraud and Corruption Policy No. FINP 003*

NHS Litigation Authority (2012) *NHSLA Risk Management Standards 2012-13 for NHS Trusts providing Acute, Community, or Mental Health & Learning Disability Services and Non-NHS Providers of NHS Care, January 2012 Version 1*

NHS Litigation Authority (2012) *Website – Finance and IT (accessed 25 June 2014)*

NHS Litigation Authority (2012) *NHS LA Risk Grading Tool No. RM17*

NHS Litigation Authority (2013) *'Procurement Policy'; 'Procurement Procedure'; 'Standing Orders NO.FP'; Standing Financial Instructions*

NHS Litigation Authority (2013) *Addendum to the NHSLA Risk Management Standards 2013-14*

NHS Litigation Authority (2013) *Claim Fraud Prevention – Mandatory Training*

NHS Litigation Authority (2013) *Clinical Negligence Scheme for Trusts (CNST) Contribution assessment for the 2014/15 financial year.*

NHS Litigation Authority (2013) *Letter from Tom Fothergill, 'Advise you of your trust's contribution to NHS LA Schemes'.*

NHS Litigation Authority (2013) *NHS LA Board Meeting Papers 6<sup>th</sup> November 2013*

NHS Litigation Authority (2013) *NHS Litigation Authority Risk Standards 2013-14*

NHS Litigation Authority (2013) *NHS Litigation Authority, Report and Accounts 2012/2013*

NHS Litigation Authority (2013); *NHS LA Establishment Legislation Summary*

NHS Litigation Authority (2014) *'Mediating claims in the NHS, supporting their patients, their claim, their families and the NHS to resolve disputes fairly'*

NHS Litigation Authority (2014) *Board Meeting Papers 2014: 22<sup>nd</sup> January, 12<sup>th</sup> March, 7<sup>th</sup> May, 7<sup>th</sup> July, 3<sup>rd</sup> September*

NHS Litigation Authority (2014) *NHS LA Complaints Policy*

NHS Litigation Authority (2014) *NHS LA Policy for Management of the NHS LA Risk Register*

NHS Litigation Authority (2014) *NHS LA Business Plan 2014-15*

NHS Litigation Authority (2014) *NHS LA Factsheet 2, Financial information*

NHS Litigation Authority (2014) *NHS Litigation Authority Board Meeting 22<sup>nd</sup> January 2014 and 12<sup>th</sup> March 2014 – Finance Report*

NHS Litigation Authority (2014) *NHS Litigation Authority Report and Accounts 2013/14*

NHS Litigation Authority (2014) *Our Three-Year Plan, 2014-2016 Who we are and what we do*

*NHS Litigation Authority (2014) Press Notice 'Catherine Dixon appointed Chief Executive of the Law Society, Thursday 14 August 2014*

*NHS Litigation Authority (2014) Progress against Marsh Report, NHS Litigation Authority*

*NHS Litigation Authority (2014) Reporting claims to the NHS LA Version 1.01*

*NHS Litigation Authority (2014) The NHS LA's response to the recommendations contained in the Marsh Review June 2014*

*NHS Litigation Authority (2014) What we expect from you once a claim has been reported*

*NHS Litigation Authority (2004) A Review of the NHSLA Incident Reporting and Management and Learning from Experience Standards; Assessment Outcomes April 2003 – March 2004 Background to standards and some policy context*

*NHS Litigation Authority, Annual Review 2012/13 and Forward Look 2013/14*

*NHS Litigation Authority, NHS LA Organisational Chart and Administrative Bases, August 2014 (website accessed 24 July 2014; 19 August 2014; 8 September 2014)*

*NHS National Leadership Council (2010) The Healthy NHS Board, Principles for Good Governance*

*NHS Wales, Welsh Assembly, Keith Evans (2014) A Review of Concern (Complaints) Handling in NHS Wales – Using the Gift of Complaints*

*Penningtons (2012) Clinical Negligence Annual Report 2012 (extracted) Key facts and figures; and Clinical negligence claims – volume, payment value and time to settle*

*Quantia Health System Solutions (2014) Improve Performance by Aligning Your Physician (accessed 17/09/2014)*

*Risk protection arrangement (RPA) for Academy Schools*

*Santander (2014) (accessed 1 November 2014)*

*Scottish Government (2010) 'No- fault compensation schemes for medical injury, (Interim Report). Dr Anne-Maree Farrell, Ms Sarah Devaney and Ms Amber Dar, School of Law, University of Manchester,*

*The Judge (2014) Article 'Fixed Costs Pilot Scheme for Clinical Negligence' (November 2014)*

*The Medical Negligence Solicitor (2014) Article '£2.5bn Medical Mistakes – Improve Safety NHS Told, (1<sup>st</sup> December 2014, by Tim) Accessed*

*Various (2014) Claims management companies and financial institutions example of claims management procedures and calculators (accessed 1<sup>st</sup> November 2014)*

*Various (2014) Financial institutions customer guides to claiming PPI (accessed 1<sup>st</sup> November 2014)*

*Wales Assembly (2013) Welsh Risk Pool*

*World Health Organisation (2013) Health Financing Revisited - Risk Pooling*