



Department
of Health



Litigation Authority

**Framework Agreement
Between the Department of Health and the NHS Litigation Authority
2013**

Contents:

1	Purpose of this document	Page 3
2	NHS Litigation Authority's purpose	Page 4
3	Governance	Page 5
4	Accountability	Page 7
5	NHS Litigation Authority's Board	Page 9
6	Partnership working	Page 11
7	Transparency	Page 13
8	Audit	Page 15
9	Delegations and financial management	Page 16
10	Risk management	Page 17
11	Human resources	Page 18
12	Relations with the Department's other arm's length bodies	Page 19
13	Review	Page 20

Annexes (in separate documents):

- Annex A Wider guidance
- Annex B Finance and accounting responsibilities
- Annex C Public-facing communications
- Annex D Relationships with other bodies
- Annex E Public and Parliamentary accountability and protocol



Signed.....

Date...11th March 2014

Richard Douglas, Director General

On behalf of the department



Signed.....

Date 7th March 2014

Catherine Dixon, Chief Executive

On behalf of the NHS LA

1. Purpose of this document

1.1 The purpose of this document is to define the critical elements of the relationship between the Department and the NHS Litigation Authority (NHS LA). The document is focused on:

- How the Department and the NHS LA will work in partnership to serve patients, the public and the taxpayer; and
- How both the NHS LA and the Department discharge their accountability responsibilities effectively.

2. The NHS Litigation Authority's purpose

2.1 The National Health Service Litigation Authority plays an important role in the health care system by administering on behalf of the Secretary of State the NHS indemnity schemes (the Schemes), established under s.71 of the National Health Service Act 2006 and associated regulations. This enables the Secretary of State to set up schemes to help the NHS and providers of NHS care to pool the costs of any "expenses arising from any loss of or damage to their property, and liabilities to third parties for loss, damage or injury arising out of the functions of the bodies concerned".

The NHS LA also undertakes other activities in order to promote the highest possible standards of patient care and reduce the risk to staff and other third parties visiting members' property.

2.2 The NHS LA discharges these functions by:

- Paying justified claims promptly and appropriately;
- Rigorously defending un-meritorious claims;
- Undertaking appropriate and proportionate risk management activities with members with a view to assisting members to minimise their claims and thus improve patient and staff safety;
- Ensuring that the lessons learned from claims and the other activities of the NHS LA are appropriately shared in order to help reduce adverse incidents in the future;
- Providing advice and assistance to the Department and the NHS on a range of legal issues including human rights, equality and equal

pay in order to support fairness and best practice;

- Providing a Family Health Services Appeal Unit to assist in resolving disputes and appeals involving GPs, dentists, opticians and other health care professionals with a view to supporting effective primary care contracting;
- Administering, in accordance with the National Health Service (Performers Lists) (England) Regulations 2013, a list of healthcare performers who have had action taken against them by primary health commissioners;
- Providing a National Clinical Assessment Service (NCAS) to help improve and promote patient safety by resolving concerns about the professional practice of doctors, dentists, pharmacists. NCAS provides expert advice, support and assessment interventions and training to the NHS, devolved Governments and other healthcare partners;
- NCAS is also responsible for the issuing of Health Professional Alert Notices (HPANs) to other healthcare professionals who are members of a profession which are regulated by a health regulatory body; and
- The NHS LA is a 'designated body' for the purposes of the Medical Profession (Responsible Officer) regulations 2010.

3. Governance

3.1 The NHS LA has a Board consisting of a Non-executive Chair, four other Non-Executive members and four Executive members, holding the offices of Chief Executive Officer, Chief Finance Officer, and such other executive appointments as decided by the NHS LA Board (pursuant to the NHS LA (Establishment and Constitution) Order 1995 [as variously amended]).

3.2 The Permanent Secretary has appointed a Senior Departmental Sponsor (SDS) to act as the NHS LA's designated, consistent point of contact within the Department. The SDS acts as the link at executive level between the NHS LA and the senior officials of the Department, and also with ministers. Whilst the SDS role is facilitative and recognises the need for direct engagement between the NHS LA and other parts of the Department and ministers, it also supports the Permanent Secretary in holding the NHS LA to account and providing assurance on its performance. The SDS is currently the Director General for Strategy, Finance and the NHS. The SDS is supported by a Departmental sponsor team, who are the principal day-to-day liaison between the Department and the NHS LA.

Process for setting objectives

3.3 The process for setting objectives for the NHS LA is as follows:

Corporate Plan

At the request of the Department, every three years the NHS LA will present to the Secretary of State a Corporate Plan setting out the

proposed evolution of the organisation over the relevant three-year period. Once approved by the Department and the Secretary of State, the plan will be published. The plan will be subject to annual review to reflect any changes with a fundamental review every three years.

The Corporate Plan will include:

- Strategic issues such as:
 - Development of existing responsibilities;
 - New activities and responsibilities; and
 - The management and control of all these responsibilities.
- Projections as to the resources in respect of the Schemes, the FHSAU and NCAS and the staff and premises;
- Policy matters relating to the services provided by the NHS LA;
- A statement on priorities for the activities for the NHS LA;
- Proposals for improvements in the efficiency and effectiveness of the operation of any of its functions;
- Proposals for the measures to assess the effectiveness of the Schemes in meeting their overall objectives;
- Advice on litigation aspects relating to Human Rights Act Information Service; and
- Policy matters in respect of any other function given to the NHS LA or as requested by the Secretary of State.

Annual Business Plan

Each year the Chief Executive of the NHS LA will present to the Permanent Secretary a proposed Business Plan. The NHS LA will have been in discussion with the Department regarding the cash and resources in

the months preceding the submission of the Plan. The Plan, which has to be approved by the Department, will include the following elements:

- i) a report against the previous year's Plan;
- ii) for the coming financial year:
 - (a) the proposed budget for each Scheme;
 - (b) the expected expenditure for each Scheme;
 - (c) the monitoring arrangements for all the NHS LA's contractors including instructed solicitors, actuaries and contractors;
 - (d) the administration costs for the NHS LA split between Schemes and generically, HRAIS, FHSAU, Equal Pay Claims, and NCAS;
 - (f) an indication of any uncertainty in these projections;
 - (g) proposed ways in which such uncertainties will be managed; and
 - (h) the proposed budget for NCAS including a projection of income available from income generation activities.

This list is not exhaustive and the NHS LA and the Department will agree further areas as appropriate. The Annual Business Plan will also be published.

Discharge of statutory functions

3.3 The NHS LA will ensure that it has appropriate arrangements in place for the discharge of each of the statutory functions for which it is responsible and is clear about the legislative requirements associated with each of them, specifically any restrictions on the delegation of those functions. It will ensure that it has the

necessary capacity and capability to undertake those functions, and will ensure that it has the statutory power to take on a statutory function on behalf of another person or body before it does so. The NHS LA will also ensure that there is regular audit of the discharge of its statutory functions so that the delivery of them remains effective, efficient and legally compliant. The NHS LA should include a review of this in their three year audit cycle, but ensure that they take steps to sufficiently assure themselves on an annual basis and include details of this within their governance statements.

Cross-government clearance

3.4 In addition to internal governance, cross-government clearance is required for major new policy decisions of the type set out in Cabinet Office guidance.¹ Although such cases are likely to be small in number, the Secretary of State will be responsible for obtaining clearance and the NHS LA will adhere to any conditions applied through the clearance process. There will also be cases where the Secretary of State must consult Cabinet colleagues before giving the Government's view, even if collective agreement is not required. In such cases, the NHS LA will supply the Secretary of State with any information he or she needs in a timely fashion.

¹ Guide to Cabinet and Cabinet Committees, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224997/Guide_to_Cabinet_Committees_2012.pdf (pages 6-9)

4. Accountability

Secretary of State

4.1 The Secretary of State is accountable to Parliament for the health system (its “steward”), including the NHS LA. The Department of Health supports him or her in this role. This involves:

- setting national priorities and monitoring the whole system’s performance to ensure it delivers what patients, people who use services and the wider public need and value most;
- setting budgets across the health system, including for the NHS LA;
- setting objectives for the NHS LA in accordance with the process outlined in 3.2;
- supporting the integrity of the system by ensuring that funding, legislation and accountability arrangements protect the best interests of patients, the public and the taxpayer;
- accounting to Parliament for the NHS LA’s performance and the effectiveness of the health and care system overall.

The Principal Accounting Officer and the NHS LA’s Accounting Officer

4.2 The Department of Health’s Permanent Secretary is the Principal Accounting Officer (PAO) and so is accountable in Parliament for the general performance of the health and care system in England, including the NHS LA. This requires him or her to gain assurance that the NHS LA is discharging its statutory duties and meeting the objectives set out in the Corporate Plan and the Annual Business Plan. In this way the PAO is able to report to Parliament on the Department’s stewardship of the public

funds it distributes and for which it holds overall accountability.

4.3 The Department’s Permanent Secretary, as the Department’s Principal Accounting Officer (PAO), has appointed the NHS LA’s Chief Executive as its Accounting Officer (AO). The AO may be called to Parliament to account for the performance of the NHS LA in administering the schemes to help the NHS and providers of NHS care to pool the costs of any loss of or damage to property and liabilities to third parties for loss, damage or injury arising out of the carrying out of their functions. The PAO can also be held to account in Parliament since the PAO’s oversight should allow him or her to assess the adequacy of the NHS LA’s stewardship of public funds and discharge of its duties. This assessment includes making judgments about whether the NHS LA is operating to adequate standards of regularity, propriety, feasibility and value for money (assessed for the Exchequer as a whole).

4.4 The PAO’s oversight of the NHS LA’s performance relies upon the provision of information, and processes to enable both parties to review performance. Prior to each accountability review the Authority supplies a report summarising activity for the period under review which includes all KPI performance as well as a summarised view of the financial performance of the organisation. In addition regular financial monitoring returns are received by the PAO via the normal ALB monitoring arrangements.

4.5 To enable the Department to hold the NHS LA to account, and to support the Secretary of State’s duty to keep the NHS LA’s achievements

against its objectives or requirements under review, a framework has been put in place to provide assurance to the Department on the NHS LA's delivery of its objectives whilst avoiding an unduly heavy reporting burden. Quarterly accountability reviews are conducted with the NHS LA by the senior sponsor in the Department, to provide assurance that the NHS LA is delivering against its objectives, managing its finances, identifying and managing risks and working well with partner organisations. In addition, an annual formal accountability review will take place to review the past year's performance against objectives and look forward to the next year. In order to assess performance at these reviews, the outcomes of the NHS LA's activities are measured using a number of Key Performance Indicators.

4.6 These KPI's, which are reviewed annually by the PAO and the AO, are set with the aim of measuring the effectiveness of the NHS LA across its main functional business areas. For 2013/14, they include:

- measures regarding speed of resolution of claims notified to the NHS LA,
- prompt response to first notification of a claim,
- closure rate across the schemes managed by the Authority (i.e. are the volumes of claims reported being effectively managed), and
- measures regarding the financial position of the Authority against its agreed funding position.

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

- All funds allocated to the NHS LA must be spent on the statutory functions of the NHS LA. If any funds are spent outside the statutory functions of the NHS LA the Department could seek adjustments to the grant in aid for running costs (administration) to compensate.
- The Secretary of State may remove any Non-executive member from the Board on the grounds of incapacity, misbehaviour or failure to carry out his or her duties as a Non-executive member.

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

5. The NHS LA's Board

5.1 The NHS LA is governed by its Board. The role of the Board is to establish and take forward the strategic aims and objectives of the NHS LA, consistent with its overall strategic direction and within the policy and resources framework determined by the Secretary of State. Its role is described in the corporate governance code for central government departments² and includes holding its executive management team to account and ensuring the organisation is able to account to Parliament and the public for how it has discharged its functions.

5.2 The Board is led by a Non-executive chair, who is responsible to the Secretary of State for ensuring that the NHS LA's affairs are conducted with probity, and that the NHS LA's policies and actions support it in the discharge of its functions and duties efficiently and effectively and meet NHS LA's objectives, including those set out in its business plan. The Senior Departmental Sponsor will ensure that there is an annual objective setting and review process in place for the chair. The chair, Chief Executive and Non-executive Directors are responsible for appointing the Executive Directors.

5.3 The NHS LA's chair and Non-executive Directors are appointed by the Secretary of State. Appointments will be transparent, will be made on

² The corporate governance guidelines (available at <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments>) are written for central government departments, although, as it says in the guidelines, "the principles in the Code generally hold across other parts of central government, including departments' arm's length bodies".

merit, and are regulated by the Commissioner for Public Appointments.

5.4 The responsibilities of the Chief Executive are:

- Safeguarding the public funds and assets for which the Chief Executive has charge;
- Ensuring propriety, regularity, value for money and feasibility in the handling of those funds;
- The day-to-day operations and management of the NHS LA;
- Ensuring that the NHS LA is run on the basis of the standards (in terms of governance, decision-making and financial management) set out in *Managing Public Money*, including seeking and assuring all relevant financial approvals;
- Together with the Department, accounting to Parliament and the public for the NHS LA's financial performance and the delivery of its objectives;
- Accounting to the Department's Permanent Secretary, who is Principal Accounting Officer for the whole of the Department of Health's budget, providing a line of sight from the Department to the NHS LA;
- Reporting quarterly to the PAO on performance against the NHS LA's objectives, to be discussed at one of the formal quarterly accountability meetings chaired by the Senior Departmental Sponsor or a deputy.

5.5 The responsibilities of the Board as a whole include supporting the Accounting Officer in ensuring that the NHS LA exercises proper stewardship of public funds, including compliance with the principles laid out in *Managing Public Money*; and ensuring that total capital and revenue resource use in a

financial year does not exceed the amount specified by the Secretary of State.

5.6 The Board should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The Board must set up an Audit Committee, chaired by an independent Non-executive member with significant experience of financial leadership at Board level. Other members need not be main Board members but should be able to demonstrate relevant sectoral experience at Board level. The Committee should have at least four members, although this can be fewer if the Board feel that is justified, and at least half of these should be main Board members. The internal and external auditors must be invited to all meetings and be allowed to see all the papers.

6. Partnership working

6.1 The Department and the NHS LA will work together, and with the Department's other arm's length bodies, in the interests of patients, people who use services and the public to maximise the health and wellbeing gain for the population, working to the values set out in the NHS Constitution.

6.2 To support the development of this relationship, the Department of Health and the NHS LA have agreed to a set of shared principles:

- Working together for patients, people who use services and the public, demonstrating our commitment to the values of the NHS set out in its Constitution;
- Respect for the importance of autonomy throughout the system, and the freedom of individual organisations to exercise their functions in the way they consider most appropriate;
- Recognition that the Secretary of State is ultimately accountable to Parliament and the public for the system overall. The NHS LA supports the Department in the discharge of its accountability duties, and the Department supports the NHS LA in the same way;
- Working together openly and positively. This includes working constructively and collaboratively with other organisations within and beyond the health and social care system.

6.3 To support this approach, the NHS LA and the Department will follow an 'open book' approach. In the case of issues with an impact on the development or implementation of policy, the Department can expect to be kept informed by the NHS LA, especially in relation to the NHS LA's long-term projections for the number and cost of claims against the NHS, given that there is often scrutiny of the size of, and any increases in, clinical negligence provisions in the NHS LA's annual accounts. In the same way, the Department will seek to keep the NHS LA apprised of developments in policy and Government. There are likely to be some issues where the Department or the NHS LA expects to be consulted by the other before the Department or the NHS LA makes either a decision or a public statement on a matter. The Department and the NHS LA will make clear which issues fall into this category in good time. The sponsor team are responsible for ensuring that this works effectively.

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

Public and Parliamentary Accountability

6.5 The Department and its ALBs share responsibility for accounting to the public and to Parliament for policies, decisions and activities across the health and care sector. Accountability to Parliament is often demonstrated through parliamentary questions, MPs' letters and appearances before parliamentary committees. Accountability to the public may be through the publication of information on the NHS LA's website, as well as through responses to letters from the public and responses to requests under the Freedom of Information Act.

6.6 The Department and its ministers remain responsible to Parliament for the system overall, so will often have to take the lead in demonstrating this accountability. Where this is the case, the NHS LA will support the Department by, amongst other things, providing information for ministers to enable them to account to Parliament. In its turn, the Department will provide leadership to the system for corporate governance, including setting standards for performance in accountability.

6.7 The NHS LA will, however, have its own responsibilities in accounting to the public and to Parliament, and its way of handling these responsibilities will be agreed with the Department. In all matters of public and parliamentary accountability the Department and its ALBs will work together considerately, cooperatively and collaboratively, and any information provided by the NHS LA will be timely, accurate and, where appropriate, consistent with information provided by the

Department. To facilitate this, the Department and the NHS LA have agreed a public and parliamentary accountability protocol that sets out how they will work together to secure the confidence of the public and Parliament, and to maintain the service levels that MPs and the public have come to expect.

7. Transparency

7.1 The NHS LA is an open organisation that carries out its activities transparently whilst protecting patient and personal sensitive information. It demonstrates this by proactively publishing on its website key information on areas including pay, diversity of the workforce, performance, the way it manages public money and the public benefits achieved through its activities, and by supporting those who wish to use the data by publishing the information within guidelines set by the Cabinet Office³. The publication of its Annual Report and Accounts also plays a role in this process. The annual report will include a governance statement, which is to be reviewed by the Senior Departmental Sponsor.

7.2 To underpin the principles of good communication, 'no surprises' and transparency, the NHS LA and the Department will put in place arrangements for managing communications. Further details are provided in Annex C.

7.3 The NHS LA's Executive and Non-executive Board members will operate within the general principles of the corporate governance guidelines set out by HM Treasury⁴. They will also comply with the Cabinet Office's Code of Conduct for Board Members of Public Bodies⁵ and NHS LA's rules on disclosure of financial interests.

³ The guidance is available on the gov.uk website:
<https://www.gov.uk/government/policies/improving-the-transparency-and-accountability-of-government-and-its-services>

⁴ See footnote 2

⁵

<http://www.bl.uk/aboutus/governance/blboard/Board%20Code%20of%20Practice%202011.pdf>

7.4 The NHS LA will develop a code of conduct for all staff which will comply with the principles in the Cabinet Office's model code for staff of executive non-Departmental public bodies⁶, which includes rules on conflicts of interest, political activity and restrictions on lobbying.

7.5 The NHS LA will take all necessary measures to ensure that:

- patient, personal and/or sensitive information within its care and control is well managed and protected through all stages of its use, including through compliance with the Data Protection Act;
- it provides public assurance in respect of its information governance practice by completing and publishing an annual information governance assessment using an agreed assessment mechanism;
- it meets its legal obligations for records management, accountability and public information by compliance with relevant standards, including government and NHS codes of practice on confidentiality, security and records management.

7.6 The NHS LA's Senior Information Risk Owner and Caldicott Guardian will work together to ensure that both patient and other personal information are handled in line with best practice in government and the wider public sector.

⁶ http://www.civilservice.gov.uk/wp-content/uploads/2011/09/5_public_body_staffv2_tcm6-2484.pdf

Sustainability

7.7 As a major public sector body, the NHS LA has a key role to play in driving forward the government's commitment to sustainability in the economy, society and the environment. As a minimum, the NHS LA should comply with the Greening Government Commitments⁷ that apply to all government departments, executive agencies and non-departmental public bodies, set out in the action plan for driving sustainable operations and procurement across government. Reporting will be via the Department (including the consolidation of relevant information in the Department's annual resource account), and the Department will ensure that the NHS LA is aware of the process for this.

Whistleblowing

7.8 The NHS LA, as with the Department and all its ALBs, should have whistleblowing policies and procedures in place that comply with the Public Interest Disclosure Act 1998 and best practice guidance⁸. It should prohibit the use of confidentiality clauses that seek to prevent staff from speaking out on issues of public interest

⁷ <http://sd.defra.gov.uk/documents/Greening-Government-commitments.pdf>

⁸ <http://www.nhsemployers.org/EmploymentPolicyAndPractice/UKEmploymentPractice/RaisingConcerns/Pages/Whistleblowing.aspx>

8. Audit

8.1 The Comptroller and Auditor General will audit NHS LA's Annual Report and Accounts. Assuming a satisfactory audit, the C&AG will provide an audit certificate and audit report in time for NHS LA to lay the Annual Report and Accounts before Parliament in accord with published timetables.

8.2 The Comptroller and Auditor General may also choose to conduct a value-for-money audit of any aspect of the NHS LA's work: the NHS LA will cooperate fully with the National Audit Office in pursuing such audits, and give them full access to all relevant files and information.

8.3 The NHS LA is responsible for establishing and maintaining internal audit arrangements in accordance with the Public Sector Internal Audit Standards. The NHS LA's internal audit function should report to its Audit and Risk sub-committee, and should consider issues relating to the NHS LA's adherence to its business plan. The Department's Audit and Risk Committee remit includes risk management, corporate governance and assurance arrangements in all its subsidiary bodies and so the NHS LA's Audit and Risk Committee should work closely with the Departmental committee.

9. Delegations and financial management

9.1 Details of the NHS LA's financial arrangements, including funding allocation, in-year reporting, preparation of accounts, and the accounting officer's responsibilities in relation to financial management and the NHS LA's accounts, are provided in Annex B.

9.2 The NHS LA's delegated authorities are issued to it by the Department, including those areas where the NHS LA must obtain the Department's written approval before proceeding. The NHS LA will adhere to these delegated authorities.

9.3 The NHS LA must demonstrate that it is delivering its functions in the most efficient manner, and must provide timely returns to the Department where these are required either by it or by other departments within central government.

9.4 The NHS LA, as with all public bodies and government departments, must operate within any relevant set of efficiency controls. These controls may affect areas of spend such as information communications technology (ICT), marketing and advertising, procurement, consultancy, the public sector estate, recruitment, major projects or strategic supplier management. The Department will ensure that the NHS LA is kept informed of any efficiency controls in operation.

9.5 As part of the government's approach to managing and delivering public service at a reduced cost base, the NHS LA, as with all other arm's length bodies and the Department, will in future and where such services support and enable the NHS LA to

discharge its statutory functions receive its back office support, including finance and accounting, HR, payroll, procurement and ICT, through a shared or standardised service approach. Details of the services between the NHS LA and the service provider will be set out in contract, or where appropriate, in a service level agreement (SLA).

9.6 A shared or standardised value for money approach will also apply to the use of estate. The NHS LA will comply with guidance on property and asset management, as set out in Annex B, and the principles set out by the Department's Estate Strategy Optimisation Board.

9.7 The NCAS division of the NHS LA may make such charges and/or put in place such charging mechanisms (under the *NHS Litigation Authority Directions 2013*), in accordance with *Managing Public Money*, as approved by the Department and the NHS LA Board, to generate income and/or self-funding to replace or partly replace Grant in Aid funding at a time that it is deemed safe and appropriate to do so.

10. Risk management

10.1 The NHS LA will ensure that it deals with the risks that it faces in an appropriate manner, according to best practice in corporate governance, and develop a risk management strategy in accordance with the Treasury guidance *Management of Risk: Principles and Concepts*⁹. It will adopt and implement policies and practices to safeguard itself against fraud and theft, in line with HM Treasury guidance¹⁰. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract or to give grant or grant-in-aid.

10.2 The NHS LA will develop a reporting process to assure its Board of financial and operational performance against the Plan at its meetings (held every other month). This assurance report will include information on risks and how they are being managed in accordance with the Treasury guidance mentioned above. The information prepared will be shared with the Department to enable the Department to assure itself on risk management. NHS LA and the Department will agree a process and trigger points for the escalation of risks to the Department's Audit and Risk Committee, where those risks will have a potentially significant impact on the NHS LA, the Department or the wider system, which requires a co-ordinated response.

9

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220647/orange_book.pdf

10

http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing_the_risk_fraud_guide_for_managers.pdf

10.3 The NHS LA will have effective and tested business continuity management (BCM) arrangements in place to be able to respond to disruption to business and to recover time-critical functions where necessary. In line with Cabinet Office guidelines, the BCM system should aim to comply with ISO 22301 Societal Security – Business Continuity Management Systems.

10.4 Risks to the wider system that arise from NHS LA's operations, identified by NHS LA, the Department or another body, will be flagged in the formal quarterly accountability meetings chaired by the Senior Departmental Sponsor. Such risks may also be flagged by the NHS LA's Board and escalated to the Department's Audit and Risk Committee for consideration. It is the responsibility of the NHS LA and its sponsor to keep each other informed of significant risks to, or arising from, the operations of the NHS LA within the wider system.

11. Human resources

11.1 The NHS LA is responsible for recruiting staff, but will comply with any departmental or government-wide recruitment controls. The Department will ensure that the NHS LA is made aware of any such controls. Very senior managers in the NHS LA are subject to the Department of Health pay framework for very senior managers in arm's length bodies, and may be subject to additional governance as specified by the Department. The Department will ensure that the NHS LA is aware of any such requirements or restrictions.

11.2 The NHS LA must obtain the approval of the Secretary of State in respect of policies relating to remuneration, pensions, allowances or gratuities. Very senior manager remuneration is subject to the recommendations of the Senior Salaries Review Body. In relation to pensions, the organisational pension scheme is the NHS Pensions scheme, which is administered by the NHS Business Services Authority and has rules set down in legislation.

11.3 Like all departments and arm's length bodies, the NHS LA is required to follow any requirements for disclosure of pay or pay-related information.

11.4 Subject to its financial delegations, the NHS LA is required to comply with the Department's and HM Treasury's approval processes in relation to contractual redundancy payments. All novel or contentious payments require the Department's and HM Treasury's approval. Special severance payments are always considered novel or contentious (this includes any proposal to make a

payment as a result of judicial mediation).

Equalities

11.5 The public sector equality duty requires the NHS LA (as a public body) to have due regard to the need to:

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

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

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

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

12.1 The NHS LA will work in partnership with the Department and its other arm's length bodies, in the interests of patients, people who use services and the public, to maximise the health and wellbeing gain for the population, and working to the values set out in the NHS Constitution.

12.2 The Department and its arm's length bodies have complementary but distinct roles within the system to ensure that service users receive high quality services which deliver value for public money. Annex D sets out key relationships across the health and care system. Details of the working arrangements with these bodies will be agreed and set out in a partnership agreement.

13. Review

13.1 To enable the Department to hold the NHS LA to account, and to support the Secretary of State's duty to keep the NHS LA's achievements against its objectives or requirements under review, a framework has been put in place to provide assurance to the Department on the NHS LA's delivery of its objectives whilst avoiding an unduly heavy reporting burden. A quarterly accountability review is conducted with each ALB by the senior sponsor in the Department, to provide assurance that the ALB is delivering against its objectives, managing its finances, identifying and managing risks and working well with partner organisations. An annual formal accountability review will take place to review the past year's performance against objectives and look forward to the next year.

13.2 In addition to formal accountability meetings, the Department will undertake an in-depth review of the NHS LA as well as its other arm's length bodies on at least at triennial basis.

13.3 The NHS LA was established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995, S.I. 1995/2800 and by the NHS LA Regulations 1995, S.I. 1995/2801, which has been amended by further statutory instruments. 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 has been amended by:

- the National Health Service Litigation Authority (Establishment and Constitution) Amendment Order 2002, S.I. 2002/2621;
- the National Health Service Litigation Authority (Establishment and Constitution) Amendment Order, S.I. 2005/503;
- the National Health Service Litigation Authority (Establishment and Constitution) Amendment (No.2) Order, S.I. 2005/1445; and
- the National Health Service Litigation Authority (Establishment and Constitution) Amendment Order, S.I. 2013/295.

13.4 Any change to the NHS LA's core functions or duties, including mergers, significant restructuring or abolition would therefore require further secondary legislation. If this were to happen, the Department would then be responsible for putting in place arrangements to ensure a smooth and orderly transition, with the protection of patients being paramount. In particular, the Department is to ensure that, where necessary, procedures are in place in the ALB so the Department can obtain independent assurance on key transactions, financial commitments, cash flows, HR arrangements and other information needed to handle the transition effectively and to maintain the momentum of any ongoing and / or transferred work.

13.5 This agreement will be reviewed every three years, or sooner upon request of either party.