

# **Clinical Negligence Scheme for General Practice (CNSGP) and Existing Liabilities Scheme for General Practice (ELSGP)**

## **Scheme rules**

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## 1. General description

- 1.1 The Clinical Negligence Scheme for General Practice (CNSGP) was established by the CNSGP Regulations (as defined below) and The Existing Liabilities Scheme for General Practice (ELSGP) was established by the ELSGP Regulations (as defined below) which were both made pursuant to section 71 of the 2006 Act.
- 1.2 The Regulations specify that the Schemes are to be administered by the Secretary of State. The National Health Service Litigation Authority, currently known as NHS Resolution, exercises the Secretary of State's administration functions, in relation to both Schemes, on behalf of the Secretary of State and, accordingly, will be referred to as the **Administrator** under these rules. As part of these administration functions, NHS Resolution currently considers Requests and manages Claims under the CNSGP and, subject to consideration by the Secretary of State of the long-term position, also under the ELSGP.
- 1.3 It is the responsibility of an Eligible Person who is relying on benefits made available under the Schemes to ensure that they have full knowledge of the rules and any relevant guidance issued by the Administrator or the Secretary of State. For the CNSGP it is also the responsibility of the Eligible Person to take reasonable steps to satisfy themselves that liabilities incurred for the NHS activities carried out by them, their employees or any other person engaged (or permitted) by them to undertake such activities, will be covered under the relevant Scheme.
- 1.4 By requesting Scheme Benefits in relation to a Claim, Eligible Persons agree to be bound by these rules.
- 1.5 Subject to the approval of the Secretary of State, these rules may be amended from time to time by the Administrator.

## 2. Definitions and Interpretation

- 2.1 A reference to a numbered rule is a reference to the rule which bears that number in these rules and a reference to a numbered regulation is a reference to a regulation which bears that number in either the CNSGP Regulations or ELSGP Regulations as specified.
- 2.2 Nothing in these rules limits or amends the meaning of any terms in, or the scope of, the Regulations. In the event of a conflict between these rules and the relevant Regulations (CNSGP or ELSGP) then the Regulations shall prevail.
- 2.3 In these rules, unless the context otherwise requires, the following expressions shall have the following meanings:

**"2006 Act"** means the National Health Service Act 2006 as amended;

**"Administrator"** means NHS Resolution when exercising the Secretary of State's functions in administering the Schemes, or whosoever is appointed from time to time by the Secretary of State to administer the Schemes;

**"Adverse Incident"** means an incident arising, or alleged to have arisen, from an act, or an omission to act, as described in rule 3 for the CNSGP Scheme, or any event as described in rule 3.3 for the ELSGP Scheme has occurred or has been alleged to have occurred;

**"Ancillary Health Services"** means services, other than Primary Medical Services, provided as part of the National Health Service in England by a person who at the time of providing the services was:

- a) a Part 4 Contractor whose principal activity consisted of the provision of Primary Medical Services;
- b) a Primary Medical Services Sub-contractor whose principal activity consisted of the provision of Primary Medical Services; or
- c) a person providing the services under a contractual arrangement with a person specified in paragraph a) or b) above, provided that, unless determined otherwise by the Administrator, any such services delivered by a Subsidiary Company are excluded from coverage under the CNSGP Scheme;

**"Board"** means the board of the Administrator from time to time;

**"Claim"** means any demand, however made, for monetary compensation in respect of an Adverse Incident;

**"Claimant"** means a person making a Claim;

**"CNSGP Commencement Date"** means the 1 April 2019 for the CNSGP Scheme;

**"CNSGP Regulations"** means the National Health Service (Clinical Negligence Scheme for General Practice) Regulations 2019 (*SI 2019/334*);

**"CNSGP Scheme"** means the Clinical Negligence Scheme for General Practice established under CNSGP Regulation 3(1);

**"CNST Regulations"** the National Health Service (Clinical Negligence Scheme) Regulations 2015;

**"Company"** has the meaning given in section 1159(4) of the Companies Act 2006;

**"Contributing Person"** means one or more Persons, in addition to the Eligible Person, who is potentially liable or jointly liable with the Eligible Person in respect of the relevant Claim;

**“Data Protection Legislation”** means (i) the Data Protection Act 1998 (ii) the Data Protection Act 2018 (iii) the General Data Protection Regulation (*Regulation (EU) 2016/679*), the Law Enforcement Directive (*Directive (EU) 2016/680*) and any applicable national Laws implementing them as amended from time to time (iv) all applicable Law concerning privacy, confidentiality or the processing of personal data including but not limited to the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations;

**“Defence Costs”** means reasonable and necessary legal fees and disbursements;

**“Duty of Candour”** means the duty owed to patients under Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and equivalent professional obligations to be open and transparent with patients

**“Eligible Person”** means a Person who is, or who, on the date of the Adverse Incident, was:

- a) a Part 4 Contractor;
- b) a Primary Medical Services Sub-contractor; or
- c) a Person, providing Ancillary Health Services other than:
- d) a Part 4 Contractor or Primary Medical Services Sub-contractor; or
- e) a Person providing Ancillary Health Services under a contract of employment;
- f) in respect of the ELSGP Scheme only, a Person engaged or permitted (other than under a contract of employment) by an Eligible Person falling under paragraphs (a), (b) or (c) above to carry out a Relevant Function;

**“ELSGP Commencement Date”** means 6<sup>th</sup> April 2020;

**“ELSGP Regulations”** means The National Health Service (Existing Liabilities Scheme for General Practice) Regulations 2020;

**“ELSGP Scheme”** means the Existing Liabilities Scheme for General Practice established under ELSGP Regulation 3(1);

**“Existing Liability”** means any liability in tort under the law of England and Wales, owed by an Eligible Person to a third party, which arises from an act or omission to act that—

- a) occurred before 1st April 2019;
- b) was connected to a Relevant Function;
- c) results, or resulted, in personal injury or loss to the third party; and

e) was an act or an omission to act on the part of the Eligible Person, or an employee of the Eligible Person, connected to the diagnosis of an illness or the care or treatment of any person;

**“Indemnity Provider”** means a provider of indemnity or insurance arrangements for liabilities arising out of the activities of an Eligible Person other than the Administrator under this Scheme;

**“Medical Defence Organisation”** means an organisation that does not carry on activities for the purposes of making profits for distribution to its members or others that has amongst its objects the provision of professional indemnity cover, on a discretionary basis, for persons providing services as part of the NHS in England;

**“NHS Digital”** means the special health authority established under statute as the Health and Social Care Information Centre;

**“NHS England”** means the National Health Service Commissioning Board established under section 1H of the 2006 Act;

**“NHS Resolution”** means the special health authority established as the National Health Service Litigation Authority, pursuant to an order made by the Secretary of State under section 28 of the 2006 Act, namely the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 and this reference includes, where appropriate, the Board and any committee or sub-committee of the Board and the officers of NHS Resolution;

**“Notification of Claim”** means the method by which a Claimant notifies an Eligible Person of a Claim. It will usually, but not always be a letter before action or a claim form;

**“Part 4 Contractor”** means a person providing, or arranging for the provision of, Primary Medical Services in accordance with a contractual arrangement made with that person under section 83(2), 84(1) or 92(1) of the 2006 Act or, where relevant in respect of an Existing Liability, Primary Medical Services provided under repealed statutory provisions re-enacted in these provisions;

**“Periodical Payments Regime”** means any Settlement in respect of a Claim whereby the whole or part of the damages is expressed to be paid at future dates whether absolutely or conditionally;

**“Person”** includes companies, statutory bodies, partnerships, firms, individuals, government departments and other administrative organisations and any other body of persons, whether incorporated or unincorporated;

**“Primary Medical Services”** means the primary medical services that, in accordance with section 83 of the 2006 Act, (or, in respect of an Existing Liability, any repealed statutory provision re-enacted in section 83), NHS England, or any predecessor of NHS England, is, or was, under a duty to secure;

**“Primary Medical Services Sub-contractor”** means a person providing Primary Medical Services under a contractual arrangement made with a Part 4 Contractor;

**“Regulations”** means the CNSGP Regulations and the ELSGP Regulations unless specified otherwise;

**“Relevant Function”** means:

- a) making arrangements for the provision of Primary Medical Services;
- b) providing Primary Medical Services;
- c) making arrangements for the provision of Ancillary Health Services;
- d) providing Ancillary Health Services;
- e) carrying out an activity in connection with any of the activities in paragraphs (a) to (d);

**“Relevant Liability”** means a liability of the kind described in rule 3.1 for the CNSGP Scheme and rule 3.3 for the ELSGP Scheme;

**“Request”** means a request for Scheme Benefits made by an Eligible Person in accordance with rule 6.1;

**“Rules”** means the rules in this document, as varied from time to time in accordance with rule 1.5;

**“Scheme Benefits”** means benefits available under the Schemes;

**“Schemes”** means the CNSGP Scheme and the ELSGP Scheme;

**“Secretary of State”** means the Secretary of State for Health and Social Care;

**“Settlement”** means the amount of damages agreed pursuant to a legally binding agreement with a Claimant in respect of a Claim (whether with or without admission of liability) or the amount of damages awarded in respect of a Claim pursuant to an order of a court or other tribunal, whether the payment of such damages will be made by a single payment or under a Periodical Payments regime and **“settled”** shall be construed accordingly;

**“Subsidiary”** has the meaning given in section 1159(1) of the Companies Act 2006;

**“Year”** means the period from and including 1 April in any calendar year until and including 31 March the following calendar year.

2.4 All terms defined in the Regulations that are the source of these rules shall bear the same meaning as in the relevant Regulations to which the Claim relates unless the context requires otherwise.

2.5 Clause headings and the index are for ease of reference only and are not to affect the interpretation of these rules.

2.6 Words denoting the singular include the plural and vice-versa.

### 3. Relevant liabilities

#### Relevant Liabilities under the Clinical Negligence Scheme for General Practice

- 3.1 Subject to rule 3.2 and provisions in the CNSGP Regulations, the liabilities to which the CNSGP Scheme applies are those falling within regulation 5 of CNSGP namely liabilities in tort under the law of England and Wales that arise as a consequence of a breach of a duty of care owed by an Eligible Person to a third party in connection with a Relevant Function, where:
- 3.1.1 an act, or an omission to act, on the part of:
    - 3.1.1.1 an Eligible Person;
    - 3.1.1.2 an employee of the Eligible Person; or
    - 3.1.1.3 any other individual otherwise engaged, or permitted, by an Eligible Person to carry out an activity connected to a Relevant Function results in personal injury or loss to the third party;
  - 3.1.2 the act, or omission to act, is related to the diagnosis of an illness or the provision of care or treatment to the third party; and
  - 3.1.3 the act or omission to act occurred on or after the CNSGP Commencement Date.
- 3.2 If the liabilities of the Eligible Person meet the criteria in regulation 5 of the CNSGP Regulations and in regulation 8(1) of the CNST Regulations, then the Administrator may exercise the function of the Secretary of State in determining whether the liability should be met as a Claim under CNSGP or alternatively as a claim under the CNST Regulations.

#### Relevant Liabilities under the Existing Liabilities Scheme for General Practice

- 3.3 Subject to rule 3.4 and provisions in the ELSGP Regulations, the liabilities to which the ELSGP Scheme applies are Existing Liabilities, from the Specified Date, where:
- 3.3.1 the Secretary of State has entered into a contractual arrangement with a Medical Defence Organisation; and
  - 3.3.2 under the arrangement with the Medical Defence Organisation, the Secretary of State is, from the Specified Date, required to consider requests for the provision of indemnity or assistance under the ELSGP Scheme in respect of an act or omission to act of a member or former member of the Medical Defence Organisation which gives rise to the Existing Liability.
- 3.4 For the purposes of rule 3.3 above, the Specified Date is either:
- 3.4.1 1st April 2021; or
  - 3.4.2 any earlier date determined by the Secretary of State and published in the London, Edinburgh and Belfast Gazettes.

## 4. Scheme commencement

- 4.1 The CNSGP Scheme came into effect on the CNSGP Commencement Date.
- 4.2 The ELSGP Scheme shall come into effect on the ELSGP Commencement Date.

## 5. Benefits available

### 5.1 Discretion of the Secretary of State under the CNSGP Scheme and the ELSGP Scheme (as exercised by the Administrator on the Secretary of State's behalf)

All benefits available under the Schemes are provided at the sole and absolute discretion of the Administrator (i.e. in the exercise of the Secretary of State's functions relating to the Scheme) whose decision in these matters shall be final and binding. These rules shall not, under any circumstances, be construed to imply that any contract of insurance exists between any Person and the Secretary of State or that the benefits available under the Schemes are not discretionary. Subject to the total funds available for the purposes of the Schemes and subject to the discretion of the Administrator (as mentioned above), there shall be no limit to the financial benefits available under the Schemes in any Year.

### 5.2 Eligibility for benefits under the Schemes

The Administrator may, in relation to each Request, determine whether or not to provide any of the benefits available under whichever of the Schemes is relevant and, in doing so, may have regard to the information provided under rule 9 and to such other factors as the Administrator considers to be relevant to the determination.

## 6. Requests for scheme benefits

### 6.1 Procedure

- 6.1.1 From time to time, the Administrator shall publish guidance on the form and manner in which Requests must be made. Such guidance shall be incorporated into and form part of these rules. The nature of the information required from the Persons making Requests may vary according to the expected value and nature of the Claim.
- 6.1.2 Subject to rule 6.1.4, upon receipt of a Notification of Claim from a Claimant, a Person may make a Request to the Administrator for benefits under whichever of the Schemes is relevant to be provided in relation to that Claim. The Request must be submitted in the form and manner specified by the Administrator and must be submitted as soon as reasonably practicable after the Notification of Claim. The Request must include all appropriate and relevant documentation to enable the Administrator to determine, whether:

- 6.1.2.1 the provider of the services is an Eligible Person in respect of the Adverse Incident;
  - 6.1.2.2 the Claim is made in respect of a Relevant Liability and under either the CNSGP Scheme or the ELSGP Scheme; and
  - 6.1.2.3 any further information is required in order to establish whether the Eligible Person should be provided with Scheme Benefits in relation to the Claim.
- 6.1.3 If further information is required, the Administrator shall issue a notice to the Eligible Person in accordance with rule 9.2.
- 6.1.4 Guidance issued by the Administrator may require Eligible Persons to inform the Administrator if they become aware of a potential class of Claim prior to sending a Notification of Claim.
- 6.1.5 Having considered all of the information relating to a Request made in respect of a Claim, including any further information that may be received as a result of a request for further information under rule 6.1.3, the Administrator may:
- 6.1.5.1 refuse the request. For example the Administrator could decide to refuse a request where:
    - 6.1.5.1.1 the liability in respect of which the Claim is made is not a Relevant Liability;
    - 6.1.5.1.2 the Eligible Person has failed to comply with these rules; or
    - 6.1.5.1.3 in respect of a liability covered under the CNSGP Scheme, the Administrator has determined that the Claim is to be covered under the CNST Regulations pursuant to rule 3.2 above; or
  - 6.1.5.2 determine that benefits under the CNSGP Scheme or the ELSGP Scheme (as applicable) are to be made available in respect of the Claim.

## 6.2 Claims where the Eligible Person no longer exists

Where the Eligible Person no longer exists (for example due to death, or if a company or partnership entity has been dissolved), references in these rules to an Eligible Person should, nevertheless, be read as a reference to the Eligible Person as if they were still in existence.

## 7. Management of Claims by the Administrator

- 7.1 An Eligible Person must co-operate with the Administrator and provide all such assistance and information which the Administrator may request in respect of the conduct of a Claim made in respect of a Relevant Liability of the Eligible Person.

- 7.2 Without prejudice to the foregoing, the Administrator may exercise any contractual or other rights or powers of an Eligible Person relating to the conduct of a Claim including, in particular the selection, instruction and dismissal of legal and other advisers; the terms of any retainer for services of legal and other advisers; any right to raise claims or defences; any right to bring proceedings.
- 7.3 In addition, and at no charge, the Eligible Person must give the Administrator full access to all documents, records, computer databases or other property, to premises and to employees, reasonably required for the purposes of enabling the Administrator to manage any Claim effectively.
- 7.4 If there is one or more Contributing Person in relation to a Claim:
- 7.4.1 where the Contributing Person has separate indemnity or insurance arrangements in place with an Indemnity Provider which may cover the Claim, the Administrator may:
    - 7.4.1.1 liaise with the Indemnity Provider of the Contributing Person in order to apportion the value of the Claim between the Eligible Person and the Contributing Person in whatever manner the Administrator may decide; and/or
    - 7.4.1.2 liaise with the Indemnity Provider of the Contributing Person in relation to how the Claim is to be handled
  - 7.4.2 where a Contributing Person does not have separate indemnity or insurance arrangements in place and is not an Eligible Person, or is an Eligible Person but has not made a Request to the Administrator, the Administrator may liaise with the Contributing Person in order to:
    - 7.4.2.1 apportion the amount of such contribution, in whatever manner it may decide, taking into account such factors as, in the reasonable opinion of the Administrator, a court may have regard to when determining apportionment; and/or
    - 7.4.2.2 agree how the Claim is to be handled.
- 7.5 The Administrator may appoint, on its own behalf and on behalf of any Eligible Person, legal and other advisers selected by the Administrator either to act generally in respect of Claims or in relation to particular Claims or categories of Claims.
- 7.6 In the event that the Administrator appoints any legal adviser as referred to above then the Administrator may appoint and pay such legal adviser on whatever terms it considers appropriate.
- 7.7 The Eligible Person agrees to take all reasonable steps to eliminate or mitigate any cost, expense or liability in respect of any Claim. In particular, any monies recovered from any other source in respect of a Claim shall be set off against any Scheme Benefits made available to the Eligible Person under the Schemes, unless agreed otherwise by the Administrator beforehand.

## 8. Benefits provided by the scheme

### 8.1 Payments out of the Scheme

- 8.1.1 For the purposes of the Schemes, the Administrator may, subject to rule 5.1, make a payment:
- 8.1.1.1 to, or on behalf of, an Eligible Person in respect of any Relevant Liability of the Eligible Person; or
  - 8.1.1.2 in respect of a Relevant Liability of an Eligible Person where the Eligible Person:
    - 8.1.1.2.1 has died;
    - 8.1.1.2.2 been dissolved or wound up (within the meaning of the Companies Act 2006); or
    - 8.1.1.2.3 is bankrupt or has entered into insolvency and (under the CNSGP Scheme) the Administrator is satisfied that a Relevant Liability of the Eligible Person is not also a Relevant Liability of any other Eligible Person.

### 8.2 Determination of the Amount of Payment

In determining the amount of any payment to be made under rule 8.1 in the circumstances specified in each of rules 8.2.1 to 8.2.5, the Administrator will have regard to the relevant matters specified in each of those paragraphs, as appropriate.

- 8.2.1 Where an award of damages has been made by a court against an Eligible Person, the relevant matters are the amount of:
- 8.2.1.1 the award;
  - 8.2.1.2 the legal and associated costs awarded to the Claimant; and
  - 8.2.1.3 any legal and associated costs incurred by or on behalf of the Eligible Person.
- 8.2.2 Where, in any legal proceedings, a settlement has been agreed to by, or on behalf of an Eligible Person, the relevant matters are the amount of:
- 8.2.2.1 any sum paid or payable by the Eligible Person in relation to the Claim;
  - 8.2.2.2 the Eligible Person's contribution towards any legal and associated costs incurred by the Claimant; and
  - 8.2.2.3 any legal and associated costs incurred by or on behalf of the Eligible Person.
- 8.2.3 Where, in any legal proceedings, a court has declined to award damages against an Eligible Person, the relevant matters are:

8.2.3.1 the amount of any legal and associated costs incurred by or on behalf of the Eligible Person; and

8.2.3.2 the extent to which those costs are not recoverable either from the Claimant or from the Legal Aid Agency under regulations<sup>1</sup> made by virtue of section 26(5) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>2</sup> (costs in civil proceedings).

8.2.4 Where, other than in the course of legal proceedings, an Eligible Person has agreed, whether in settlement of a Claim against the Eligible Person or otherwise, to make a payment to, or any contribution towards any legal and associated costs incurred by, a person, in respect of a Relevant Liability of the Eligible Person, the relevant matters are the amount of:

8.2.4.1 the payment agreed;

8.2.4.2 the contribution; and

8.2.4.3 any legal or associated costs incurred by or on behalf of the Eligible Person.

8.2.5 Where an Eligible Person has agreed to be bound by the determination of any Person as to the making of a payment by the Eligible Person in respect of a Relevant Liability, the relevant matters are the amount of:

8.2.5.1 the payment;

8.2.5.2 any legal or associated costs awarded to the Claimant; and

8.2.5.3 any legal or associated costs incurred by or on behalf of the Eligible Person in connection with the Claim.

### 8.3 Exclusions from Scheme Benefits

8.3.1 The Administrator recognises that a Duty of Candour may be owed to the Claimant or a relevant third party. The Administrator will not withhold Scheme Benefits under the Schemes as a result of compliance or attempted compliance with this duty. In particular, the Administrator would not withhold or reduce Scheme Benefits because an apology or explanation has been provided to the Claimant in compliance with any Duty of Candour owed to the Claimant.

8.3.2 Without limit to the Administrator's powers under the Regulations (see rule 8.1.1) and subject to rule 8.3.1, the Administrator may decide not to provide any Scheme Benefits if:

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<sup>1</sup> S.I. 2013/611

<sup>2</sup> 2012 (c. 10)

- 8.3.2.1 an Eligible Person has made an admission of liability without first obtaining written consent from the Administrator;
- 8.3.2.2 liability has been determined by a court in proceedings conducted by, or on behalf of, an Eligible Person, otherwise than in consultation with the Administrator and in accordance with these rules, in particular rule 7;
- 8.3.2.3 an Eligible Person has not complied with a condition imposed by the Administrator relating to a Claim;
- 8.3.2.4 an Eligible Person agrees to:
  - 8.3.2.4.1 be bound by the determination of any person or body as to the making of a payment in respect of a Relevant Liability; or
  - 8.3.2.4.2 make any other payment in respect of a Relevant Liability otherwise than in the course of legal proceedings or in consequence of a settlement of legal proceedings, without the prior written consent of the Administrator;
- 8.3.2.5 a payment that is of an amount less than the amount which is, for the time being, specified by the Administrator as being the minimum amount to be paid in respect of a Relevant Liability; or
- 8.3.2.6 the Eligible Person has in the reasonable opinion of the Administrator failed, whether fully or in part, to comply with a notice issued under rule 9.2.1.

## 9. Provision of Information

### 9.1 General

- 9.1.1 Any persons making Requests must provide such information as is reasonably required by the Administrator in relation to a Claim made against them together with any evidence requested by the Administrator to verify the person's status as an Eligible Person. Persons making Requests acknowledge and agree that by submitting a Request any and all information and data (howsoever stored) provided by them to the Administrator may be disclosed without restriction or conditions by the Administrator, the Secretary of State and/or their respective officers, agents, employees and sub-contractors for the purposes of the Schemes, or as may be in the public interest, for example to make a report to regulatory organisations such as the General Medical Council or to notify NHS England of concerns which may be relevant to the Performers List Regulations. For the avoidance of doubt, any such information provided to the Administrator shall be and remain the property of the Administrator.

9.1.2 Persons making Requests shall also promptly disclose to the Administrator any further information relevant to any Claim which arises post-Request, regardless of whether or not the information has been requested by the Administrator.

## 9.2 Notices issued by the Administrator

9.2.1 The Administrator may, by notice in writing, request Eligible Persons to provide the Administrator with any assistance or information specified by the Administrator in the notice.

9.2.2 A notice issued under rule 9.2.1 may specify:

9.2.2.1 the date by which the specified assistance or information must be provided; and

9.2.2.2 the manner in which the assistance or information is to be provided to the Administrator.

9.2.3 Persons making Requests must comply with a notice issued under rule 9.2.1.

## 9.3 Confidentiality of Statistical Data

On a case-by-case basis, the Administrator may ask the Eligible Person to provide certain statistical information that will enable it to identify trends in clinical negligence litigation and enable learning from claims. Whilst this information may be published to assist others in their risk management processes and learn lessons, statistical information on individual Eligible Persons will only be available to that Eligible Person and the Administrator, and the Administrator shall use reasonable endeavours not to disclose such information to third parties in a form which identifies individuals without the prior consent of that Eligible Person or unless such information is required to be disclosed by law or requested by the Secretary of State or by any regulatory authority or in accordance with such policies and procedures which require the Administrator to share and disseminate information.

## 9.4 Claim Reports

The Eligible Person will be required to meet the reporting frequency and information requirements as defined and published from time to time by the Administrator.

## 9.5 Data Protection

The Eligible Person is required to ensure that their organisation complies with Data Protection Legislation and all applicable laws and regulations relating to the processing of personal data and confidentiality. The Eligible Person should ensure that both they and their sub-contractors have robust policies in place to protect patient information. So far as is practical, the Eligible Person must act in accordance with the Administrator's Data Protection Policy, as updated from time to time. The Eligible Person must further have regard to any code of practice on the processing of patient information issued by NHS England under section 13S of the 2006 Act and by NHS Digital under section 263 of the Health and Social Care Act 2012.

## **10. Claims Management dispute procedure**

- 10.1 If there is a dispute on the handling of a Claim between the Eligible Person and the Administrator then subject in all cases to the overriding discretion of the Administrator, the Scheme Benefits available to that Eligible Person may be affected, as follows:
- 10.1.1 where the Eligible Person wishes to settle but the Administrator recommends defending, no Scheme Benefits will be available;
  - 10.1.2 where the Eligible Person wishes to defend but the Administrator recommends that the Claim is settled by agreement:
    - 10.1.2.1 the Scheme Benefits available will be no more than those accruing from the amount recommended by the Administrator to be offered to settle the Claim; and
    - 10.1.2.2 should the Eligible Person continue to pursue the defence of the Claim and succeed the Eligible Person will be eligible for reimbursement of 100% of the unrecovered Defence Costs up to the value of, but not exceeding those Scheme Benefits available under rule 10.1.2.1.

## **11. Appeals procedure**

- 11.1 In the event that an Eligible Person disagrees with a decision made by the Administrator pursuant to these rules or regarding the management of a Claim the dispute will be referred to the Chief Executive of the Administrator or their nominated representative.

## **12. Liaison and Co-operation**

- 12.1 Any Person making a Request shall fully co-operate and liaise with the Administrator and take such steps as the Administrator may request in connection with, inter alia, the administration of the Scheme including, without limitation, by responding promptly to any requests for information.

## **13. Governing Law**

- 13.1 These rules shall be governed by and construed in accordance with English Law.

(Published May 2020)