

22 December 2022

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To whom it may concern,

Hewitt Review: Call for Evidence

Please consider this as NHS Resolution's (NHSR) written submission to the Department of Health and Social Care's Hewitt Review: Call for Evidence.

NHSR is an Arm's Length Body of the Department of Health and Social Care. We have four key service areas:

- **Claims Management:** delivering expertise in handling both clinical and non-clinical claims to members of our Indemnity Schemes.
- **Practitioner Performance Advice:** providing advice, support and interventions in relation to concerns about the individual performance of Doctors, Dentists and Pharmacists.
- **Primary Care Appeals:** offering an impartial resolution service for the fair handling of Primary Care contracting services.
- **Safety and Learning:** supporting the NHS to better understand and learn from claims, concerns and disputes; to target safety activity while sharing learning across the NHS.

NHSR operates seven clinical negligence schemes, the largest of which, is the Clinical Negligence Scheme for Trusts (CNST). This scheme handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995 (or when the body joined the scheme, if that is later). From 1st April 2013, independent sector providers of NHS care have been able to join CNST and cover under CNST was also extended to include the cost of representation at inquests.

Although membership of the schemes is voluntary, all trusts in England currently belong to CNST. The costs of the scheme are met by membership contributions. The projected claims costs are assessed in advance each year by professional actuaries. Contributions are then calculated to meet the total forecast expenditure for that year. Individual member contribution levels are influenced by a range of factors, including the type of trust, the specialties it provides and the number of "whole time equivalent" clinical staff it employs. Claims history is also taken into account meaning that members with fewer, less costly

[Advise / Resolve / Learn](#)

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our [privacy statement at resolution.nhs.uk/privacy-cookies/](https://resolution.nhs.uk/privacy-cookies/)



claims pay less in contributions relative to others. In 2021/22 contributions from CNST members (all NHS foundation trusts and NHS trusts) totaled £2,427 million. Of this, contributions for maternity services totaled £975 million.

Following a rise in indemnity costs for general practice, NHSR also started operating the state indemnity scheme for general practice in England in 2019. In 2019, the Clinical Negligence Scheme for General Practice (CNSGP) was launched to cover all clinical negligence liabilities arising in general practice in relation to incidents that occurred on or after 1 April 2019. NHSR also manages the Existing Liabilities Scheme for General Practice (ELSGP) which was established to provide indemnity cover for NHS clinical negligence claims made against current and former GP members of medical defence organisations (MDOs) in respect of liabilities incurred before 1 April 2019, where agreed with relevant MDOs. All providers of NHS primary medical services are covered under CNSGP, including out of hours providers and other NHS services (referred to as ancillary services) provided by general practices including local authority commissioned public health services. The scheme extends to all GPs and others working for general practice who are carrying out activities in connection with the delivery of primary medical services – including salaried GPs, locums, students and trainees, nurses, clinical pharmacists, agency workers and other practice staff.

NHSR also manages the Clinical Negligence Scheme for Coronavirus, this scheme was established in accordance with new powers from the Coronavirus Act 2020. It provides additional indemnity coverage for clinical negligence liabilities that may arise when healthcare workers and others are working as part of the coronavirus response, or undertaking NHS work to backfill others, in the event that existing arrangements through CNST or individual arrangements do not cover a particular activity. We also manage two non-clinical schemes, which all trusts in England are also members of, under the heading of the Risk Pooling Schemes for Trusts.

In our new strategy, [‘Advise, Resolve and Learn: Our strategy to 2025’](#) we have committed to working with others to address the costs associated with compensation claims thereby releasing public funds for other priorities including healthcare. In addition, by keeping matters out of court wherever possible we are seeking to reduce the distress caused to both patients and healthcare staff involved when a claim or concern arises. Specifically, our third strategic priority, *Collaborate to improve maternity outcomes*, includes two maternity initiatives to reduce the human, workforce and financial costs of preventable harm thus contributing to the [National Maternity Safety Ambition](#) to halve maternal and neonatal deaths and reduce significant harm. These maternity initiatives relate to the identification and management of maternity claims and their costs, namely:

- **Maternity Incentive Scheme (MIS):** This initiative supports the delivery of safer maternity care through an incentive element to trust contributions to the CNST. The scheme rewards trusts that meet 10 safety actions designed to improve the delivery of best practice in maternity and neonatal services.
- **Early Notification (EN) Scheme:** This initiative proactively investigates specific brain injuries at birth for the purposes of determining if negligence has caused the harm. We do this by requiring our CNST members to notify us of maternity incidents which meet a certain clinical definition. The scheme allows NHSR to investigate potential eligibility for compensation and take proactive action to reduce legal costs. It aims to improve the experience for the family and affected staff, meeting needs in real time where possible and trying to reduce the risk of claims increasing in value due to inflation or unmet needs (such as psychological support) translating into larger losses.

NHSR suggests that the Hewitt Review considers the level of Integrated Care System and Integrated Care Board (ICB) awareness and engagement with their system member’s contributions to NHSR’s clinical and non-clinical indemnity schemes. An awareness and understanding of member contributions could ensure an oversight of the costs of clinical negligence at member and system level. As part of this consideration, the review may also wish to examine the influence that ICB’s should have amongst their providers and or provider collaboratives in relation to the quality and safety of services delivered to patients within their system. When this knowledge is combined with our patient safety initiatives described above it can help NHSR scheme members and their associated ICBs to better understand their claims risk profiles and target safety activities to help prevent patient safety incidents and potential claims in the future.

We would be happy to be part of further discussions in relation to this review, and work with you to progress further.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Helen Vernon', with a small flourish at the end.

Helen Vernon
Chief Executive