



From: Julie Thompson, Director of Finance

Date: 3 August 2005

To: Don Hill

CC:

HYPONATRAEMIA INQUIRY - CLINICAL NEGLIGENCE

Background

1. Following the demise of the Medical Defence Organisation in 1990, the HPSS assumed responsibility for the settlement of clinical negligence cases, with the management of the claims process being taken forward by the individual Boards and Trusts involved as the legal respondents in each case.
2. Prior to the introduction of the previous conservative government's health reforms all cases were handled by the 4 Health and Social Services Boards. As Trusts came on stream between 1993 and 1996 responsibility for responding to new cases transferred to them as legal entities. Much of the content of F Circulars from 1990 reflects these changes.
3. Changes to the arrangements for the handling of clinical negligence cases at the time of the deaths of Adam Strain (28.11.95), Lucy Crawford (14.4.00) and Raychel Ferguson (7.6.01) and since, have been notified to HPSS through various HSS (F) circulars.
4. The arrangements for handling clinical negligence in place at the time of the first death 28 November 1995 stem from those of 1990.
5. A copy of each circular notifying a change is appended and a summary provided below. Appendix 1 lists the various circulars that have been issued.

Background to Clinical Negligence Policy at 1995 (Adam Strain died 28.11.95)

HSS (TC8) 14/89 [Tab 1] issued on 21 December 1989, HSS (F) 1/90 [Tab 2] issued 16 January 1990, superseded by HSS (F) 20/02, and HSS (TC8) 12/90 [Tab 3] issued on 8 November 1990

6. Describe the changes in the handling of clinical negligence arrangements from 1 January 1990.
7. From 1 January 1990 the Boards superseded the Medical Defence Organisations and provided indemnity and carried the costs and damages of medical negligence claims against medical and dental practitioners. This change was prompted by the a rapid rise in medical defence subscriptions in the 1980s due to both the number of, and size of clinical negligence awards made by the courts.
8. From 1 January 1990 Boards were asked to:
 - Assume responsibility for new and existing claims of medical negligence
 - Ensure a named officer had sufficient authority to make decisions on the conduct of cases on the Board's behalf
 - Cease the requirement that their medical and dental staff subscribe to a recognised professional defence organisation and cease to reimburse two-thirds of medical defence subscriptions
 - Distribute urgently to all medical and dental staff copies of a leaflet explaining the new arrangements
 - Submit by May 15 a return of the clinical negligence liabilities for the financial year to enable the Department to assess resource consequences and provide an audit check.
9. Circular HSS(TC8)12/90 also advised that the general provisions of the indemnity arrangements would apply equally to HS Trusts who would be liable for the negligent acts or omissions of their staff from the time that such Trusts became operational.

Clinical Negligence Policy Since 1995

HSS (F) 26/97 [Tab 4] issued on 20 June 1997 and superseded on 12.9.02 by HSS (F) 20/02

10. Provided interim guidance on the funding of clinical negligence claims for the new HSS Trusts with responsibility being dependent on whether the incident related to pre-Trust period in which case it would be the responsibility of the Board or post-Trust in which case the Trust was responsible
11. It advised of the imminent establishment of the Central Fund in April 1998 which will be funded through contributions from Boards on a capitation basis, to manage payment of claims.

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12. The Central Fund will be administered by the Central Services Agency and will require Trusts to inform it quarterly in advance of settlements which will likely require payment within the forthcoming quarter to enable the funding requirements to be estimated. It established that for payments from the Central Fund, a payment request including settlement costs and any fees should be submitted by the Trust, allowing the CSA to transfer the funds to the Trusts who will then pay the recipient directly. Reimbursements are then sought from the Board on a capitation basis.

HSS (F) 19/98 [Tab 5] issued on 15 May 1998 and superseded on 21.4.00 by HSS (F) 19/00

13. Advised of the funding and administrative arrangements of the new Clinical Negligence Central Fund, established from 1 April 1998, which was set up to meet the costs of post-Trust settlements. It is advised that the Fund is to be administered by the Central services Agency and how Trusts may access the fund.

HSS (F) 20/98 issued 15 May 1998 [Tab 6] – extant.

14. The purpose of this Finance Directorate circular to all Trusts and Boards was:

- To set out the guidance on the handling of clinical negligence claims and outline the requirement for each HPSS body to "set up and regularly maintain a database with information on all claims". In addition each body "will be required to submit a subset of this information annually to the Central Services Agency".
- to highlight that following the assumption of responsibility for claims by Trusts, the Department emphasised the need to ensure that Trusts have procedures in place to administer the claim handling process, and provided detailed guidance on the data that should be held locally.
- To advise Trusts of the £250,000 delegated limit for Departmental approval of Trusts' clinical negligence out of court settlements. Settlements above this figure required prior Departmental approval.

HSS (F) 20/98 Supplement Number 1 [Tab 7] issued on 21 January 1999 (superseded on 12.9.02 by HSS (F) 20/02).

15. This circular was issued to:

- bring to the attention of HPSS bodies a pre-action protocol for handling clinical negligence claims which NHS Trusts and Health Authorities in Great Britain were expected to follow from April 1999. This protocol was the first major initiative of The Clinical Dispute's Forum formed in 1997 as a result of Lord Woolf's Access to Justice Inquiry of 1996, a detailed review of the problems of handling clinical medical negligence claims.
- advise that the protocol was to be a model of best practice to improve the pre-action communication between parties leading to an increase in the number of pre-action settlements. Through establishing a timetable for the exchange of information relevant to the dispute, setting standards for the contents of correspondence, the intention was to assist parties in making an informed

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judgement on the merits of their case earlier in the process, leading to an increase in the number of pre-action settlements.

HSS (F) 21/98 [Tab 8] issued on 14 May 1998 (circular is extant)

16. Provided guidance to HPSS bodies on the use of structured settlements, (payment of damages annually as tax free instalments in comparison to lump sum payments covering future loss of earnings and/ or life time care) of £250,000 and above with the aim of reducing the financial impact of clinical negligence on the HPSS while offering security to plaintiffs.

HSS (F) 28/99 [Tab 9] issued on 29 July 1999 (circular is extant)

17. Advised HPSS bodies of the arrangements when requesting approval to settle clinical negligence claims above their £250,000 delegated limit and included details of the information to be submitted to the Department with the application.

Clinical Negligence Policy Since 2000 (Lucy Crawford died 14.4.00)

HSS (F) 28/99 Supplement Number 1 [Tab 10] issued on 9 July 2001- extant

18. Reminds HPSS bodies that all requests for approval to settle claims above £250,000 must be submitted to the Department in advance with all required documentation. It further advises that DFP approval is required in all potential payments in excess of £1 million.

HSS (F) 19/00 [Tab 11] issued on 21 April 2000 - extant

19. Advised HPSS bodies of the expansion of the Clinical Negligence Central Fund from 31 March 2000 to manage the payment of all clinical negligence settlements, both pre and post Trusts. It advised of the revised accounting arrangements for each HPSS body superseding the accounting guidance contained in HSS (F) 19/98.

HSS (F) 17/01 issued on 8 March 2001 (superseded on 12.9.02 by HSS (F) 20/02)

20. Advised HPSS bodies of the revised administrative arrangements for the Clinical Negligence Central Fund following its expansion from 31 March 2000. It stipulated the costs that will be reimbursed by the Central Fund and provided the format for claiming reimbursement in its annexes.

21. Required HPSS bodies to supply CSA and the Department by 30 June each year with details of all potential settlements in the past financial year.

Clinical Negligence Policy Since 2001 (Raychel Ferguson died 7.6.01)

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22. This revision was prompted by the NIAO Report and it advises HPSS bodies on the prevention of claims and claims handling. The guidance reflects the Department's intention of developing an approach that:
- Provides for redress for individuals and their families who have suffered as a result of clinical negligence.
 - Provides value for money for the taxpayer
 - Protects staff from vexatious allegations
 - Ensure that where necessary appropriate action is taken to prevent the occurrence of similar incidents in the future.

This circular in effect:

- Re-issued the Pre-action Protocol contained in HSS(F) 20/98 Supplement Number 1 which it superseded and;
 - Encourages bodies to follow the principles and timescales drawn up by the Lord Chancellor's Department for use in England and Wales. As the protocol was developed in GB, compliance is not mandatory for the legal profession in N Ireland
 - Requires HPSS bodies to carry out a review of all ongoing cases on an annual basis, Chief Executives must sign off the review has been carried out and provide a summary of its main findings to the Department and CSA.
23. At the issue date Sept 2002, the Northern Ireland Court Service were about to begin working with the Law Society of Northern Ireland to introduce a local protocol for Clinical Negligence cases. The Claims and Litigation Steering Group are liaising on this matter.

NIAO Report on Clinical Negligence

24. This study was reported in July 2002 with a subsequent PAC hearing in September 2002. The PAC report has not as yet been published. The Department has identified 27 recommendations of which 18 are considered to have been fully implemented and 7 partially implemented. It is expected that these will be fully implemented during 2005/2006. The remaining two recommendations are subject to ongoing discussion between the Departmental Solicitors Office and the NI Court Service. The position in relation to each recommendation is attached at Tab A.

Comparison with GB and Planned Future Developments

25. The Departmental Claims and Litigation Steering Group was set up in January 2003 to take forward a number of issues and recommendations contained in the Northern Ireland Audit Office report "*Compensation Payments for Clinical Negligence*", published in 2002. A subsequent hearing of the NI Public Accounts Committee on 19 September 2002 sought assurances that the Department and the HPSS were doing everything possible to minimise expenditure and have in place robust information systems to quantify the issues and assist learning.

26. Departmental Board members and Minister have been regularly informed of progress on this issue, including recent developments in other UK countries with regard to clinical negligence. Recent emphasis has focussed on the publication, in July 2003, of "Making Amends". This report, from Professor Sir Liam Donaldson, Chief Medical Officer for England, set out proposals for reforming the approach to clinical negligence in the NHS. As a consequence, the NHS Redress Bill has been prepared and was mentioned in the Queen's speech at the most recent opening of Parliament. This Bill is due to go before Parliament in October 2005. Since the publication of "Making Amends" the Claims and Litigation Steering Group have been considering how to introduce similar reform in Northern Ireland, and have met with colleagues in other UK countries on a regular basis to discuss progress and the subsequent consequences for NI.

Current Position in Other UK Countries and Republic of Ireland

27. The systems and arrangements for management of claims and legal issues have been examined in Southern Ireland, England, Scotland, and Wales. Centralised information systems and "risk pooling" arrangements are well established in other neighbouring countries. Generally, the "pooling arrangements" provide indemnity for organisations whose contributions to central funds are based on various elements including organisational size, claims history, risk arrangements, and type of activity. There are varying arrangements for involvement of organisations in the progression and management of claims and whether it is mandatory or voluntary to participate.
28. In England, the NHS Litigation Authority was established in 1995 to manage and raise the standards of Risk Management in the NHS, to ensure claims were managed consistently and to manage the financial consequences of such claims. There is no equivalent organisation in Northern Ireland.

Current Position in Northern Ireland

29. Northern Ireland is the only region where there is no centralised approach to claims management. At present, the Department plays no active role in the management of claims and litigation cases, with claims management being totally devolved to HSS Boards and Trusts, who have responsibility for the management, processing, settlement and outcome of clinical negligence claims. The only central activity is the regional clinical negligence fund, which is financed by DHSSPS and administered by the Central Services Agency. Boards and Trusts apply to this fund for re-imbursement of costs expended on clinical negligence claims.
30. One of the recommendations contained in the NIAO Report was the creation and regular update of a central database for clinical negligence claims in the HPSS. This database has been set up, and an initial update was provided by HSS Boards and Trusts for March 2004. However, there have been concerns raised about the quality and accuracy of this data. Subsequent to a workshop held in May 2005 with HSS

Feasibility of adopting GB legislation in Northern Ireland

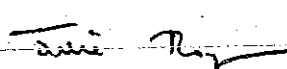
31. It was originally thought that many aspects of "Making Amends" and subsequent legislative changes in England could be reciprocated locally in Northern Ireland. However, following discussion with DoH colleagues, the Claims and Litigation Steering Group now believe this would no longer be a feasible option, for the following reasons:
- The integrated nature of Health and Personal Services in Northern Ireland. The NHS Redress Bill is only designed to deal with claims relating to health care, and will not be directly applicable to integrated organisations;
 - Claims management in Northern Ireland is totally devolved, with each Trust and Board making its own arrangements for managing and progressing claims. As a consequence there is an absence of central knowledge and expertise to ensure equitable application of the Redress Scheme.

Proposed Work Programme for DHSSPS and HPSS

32. It is intended that this work programme will take the form of two separate strands; which are intended to report by December 2005:
- To consider financial pooling and central funding of claims.
 - Processes for claims management.
33. In addition, the Claims and Litigation Steering group will consider improving the quality and management of information across HPSS organisations and the use of information contained in the central database. They will also be liaising on the potential reforms within the clinical negligence area, such as a Redress Scheme.

Trends in Clinical Negligence

34. Some information on trends in clinical negligence in Northern Ireland is contained in Tab B.
35. As requested, I have copied this minute to Ian Carson, Dr Campbell, Andrew Hamilton and Andrew Browne, but without the circular attachments, which have only been included with this correspondence (given the scale).


JULIE THOMPSON
Director of Finance

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Compensation Payments for Clinical Negligence July 02

NIAO Recommendation	Director Responsible	Status Update at 31 March 2005
2.1/2.2 We recommend that the Department ensure that detailed information on outstanding claims is held centrally as well as by the individual HPSS bodies affected. At present there is inconsistent compliance with 1998 guidance on maintenance of clinical negligence database by Trusts, without recourse to legal providers. There is also a need for a central database - details specified in 2.38 and include information for CNCF.	Dr G Mock	Implemented - A database update was provided for March 2004 by Trusts and Boards. A range of issues are being investigated with data providers, and these will be resolved in advance of the update to be provided for March 2005. A database update is to be provided for March 2005 and subsequent 6-monthly updates and reports will be given to the Departmental Board. Liaison will be ongoing with providers to improve the data and to resolve any outstanding issues as they arise.
2.13 We are surprised at the dearth of basic information held centrally on clinical negligence throughout the HPSS, given the significant and substantial increases in the estimated liability since 1990-91. The Dept's guidance, issued in 1998 (see para 2.2) required each Trust to set up and maintain a database with information on all claims for litigation. The Dept has also advised us that it had taken steps to ensure that both Boards and Trusts hold comprehensive information on all outstanding claims. We welcome the Dept's recognition of the need and value of a central database and urge that steps are taken to implement this as soon as possible. 2.15 Between 1994-95 and 2000-01, the number of outstanding cases increased by 86%, with a 7% increase in the most recent year, and we note that those involved in claims handling expect that the burden of litigation will continue to increase. There is a sizeable backlog of unresolved claims. This reinforces the need, for the purposes of monitoring and control, for Trusts and Boards to maintain their own standard databases, as recommended by the Department. 2.16 We recommend that the Dept should ensure that it has access to basic information about claims for clinical negligence, so that it is able to inform itself and disseminate, in summary form, this information throughout the HPSS. 2.38 We strongly recommend that a database be maintained of all cases resolved, including those withdrawn or closed without payment of compensation.	Dr G Mock	Implemented - A database update was provided for March 2004 by Trusts and Boards. A range of issues are being investigated with data providers, and these will be resolved in advance of the update to be provided for March 2005. A database update is to be provided for March 2005 and subsequent 6-monthly updates and reports will be given to the Departmental Board. Liaison will be ongoing with providers to improve the data and to resolve any outstanding issues as they arise.
2.31 We recommend that the Department takes a consistent approach to closure of cases.	Julie Thompson	Implemented - Guidance was issued on maintenance of databases in each HPSS bodies (HSS F 20/2002).
2.32 We recommend that the Department discuss change in approach to valuation of claims with auditors and place greater emphasis on historic trends.	Julie Thompson	Implemented - Revised valuation methodology introduced for 02-03 accounts. (Supplement to HSS (FAU)/6/2003).
2.36 We recommend consistency in the approach to contingent liabilities - some bodies have disclosed where others have not. Also where there is a high probability of payment, HPSS bodies should question whether they should prolong the defence of such difficult cases resulting in additional expenses.	Julie Thompson	Implemented - Guidance was issued which incorporated workload, and defence strategy etc. in each HPSS body (HSS F 20/2002). Revised valuation methodology that incorporated contingent liabilities introduced for 02-03 accounts. (Supplement to HSS (FAU)/6/2003).

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NIAO Recommendation	Director Responsible	Status Update at 31 March 2005
2.37 The Department needs to be aware of the financial costs arising from clinical negligence and it is advised to carry out a more detailed comparison to ensure that a full picture is available of how NI compares with England, Scotland and Wales. SPECIFIC QUESTION FROM NIAO Has the Department carried out a financial comparison of the situation in England, Scotland and Wales?	Julie Thompson	Discussions have been ongoing with all other UK countries on a number of issues regarding the handling of clinical negligence claims. This has included a number of meetings to discuss the "Making Amends" Report into clinical negligence in the NHS in England and Wales, and the implications of this Report on each UK country. A NI specific consultation document is being developed, and will detail how this is to be taken forward locally. A preliminary look at financial costs in England, Scotland and Wales took place, but inconsistencies were discovered, and these need to be further explored before any comparisons will be possible. Ongoing discussions and further developments on Making Amends will facilitate this comparative work between countries.
2.39 We would emphasise the importance of the consistency and regularity of the reviews of cases carried out across all Boards and Trusts.	Dr G Mock	Implemented. The Regional Litigation and Complaints Forum, made up of HPSS Claims Managers, was established in 2002 and meets three times a year to promote consistency, including the sharing of advice and experiences, across HSS organisations.
2.40 We recommend that the Department move away from use of litigation for settlement of smaller cases.	Dr G Mock	Action taken. The NI document prepared in response to Making Amends is about to be issued widely across the HPSS and other interested parties for consultation. Generally all litigation managers would try to deal sensibly with smaller claims rather than litigate. However, there is no process currently in place to stop a patient litigating on a smaller claim if they so desire.
2.48 We recommend consistent approach to compliance with guidance for operation of CNCF and accurate forecasting by Trusts for operation of CNCF.	Julie Thompson	Implemented - Guidance was issued covering this issue in each HPSS bodies (HSS F 20/2002).
2.50 We recommend that the Department could make greater use of structure settlements which are currently voluntary.	Julie Thompson	Implemented - Guidance was issued covering this issue in each HPSS body (HSS F 20/2002).
2.52 We are concerned that the current funding arrangements do not serve to encourage HPSS bodies to minimise exposure to risk. We are aware of the revised arrangements that have been introduced in Scotland and Wales and the longer-standing arrangements through CNST in England. We are conscious that these may not be wholly appropriate for Northern Ireland. However, we believe that the Department and HPSS bodies should be more active in attempting to reduce the projected costs of future negligence.	Dr G Mock	A second meeting with England, Scotland and Wales reps was held on 22nd November in Belfast to discuss the implementation of Making Amends in England and the current situation in the other countries. The NI document has been drafted and Departmental Board members were advised of progress in February 2005. The full consultation document is about to be issued to the HPSS and other interested parties. Further liaison with UK countries is expected on relevant issues and on progress.
2.53 We are of the view that there could be greater use of structured settlements, which are currently voluntary. The Department should be more proactive in promoting these in appropriate cases.	Dr G Mock	Implemented.
2.54/2.55 There remains scope for improving the in-year forecasts of cash requirements and the sharing of information and experience. Mechanisms need to be introduced by, and monitored by, the Department whereby the lessons to be learnt can be shared with other clinicians and administrators elsewhere in the HPSS. Procedures across the Service can then be adjusted and good practice protocols introduced. There is an underlying need to be sure that the staff employed to process clinical negligence cases have the skills and understanding necessary to be able to identify such lessons.	Dr G Mock	A Scoping Exercise on Adverse Incident Reporting in the HPSS has been completed and a Report compiled. The Departmental Board approved the establishment of a formal service level agreement with the National Patient Safety Agency (NPSA). Recommendations in the Report and other proposals are being taken forward by the Safety in Health and Social Care Steering Group.
3.16 We urge the Department to take whatever measures are possible, within its means and recognising the legal rights of all concerned, to promote the earlier resolution of claims.	Dr G Mock	Implemented.
3.18 We recommend that confidentiality clauses should not be inserted into terms of settlements.	Dr G Mock	Implemented.

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NIAO Recommendation	Director Responsible	Status Update at 31 March 2005
3.33/3.34 The Department must assure itself that the quality of medical records being kept in the Northern Ireland Health and Personal Social Services is of a standard which does not compromise the present and future health and well-being of patients. However, we recommend that the Department commissions an early review to establish the extent of the problems identified by this report, particularly with regard to records kept. It should ensure that any recommendations made by the review are implemented without delay, taking into account any recommendations made, and initiatives taken in Great Britain.	Dr G Mook	Implemented. Report of Review issued to HPSS and Agencies in January 2005. Model Records Management Policy Statement issued to HPSS and Agencies 3.11.04. Each organisation was asked to adapt this to its own needs. Publication "Good Management Good Records" was issued on 23.12.04 to the HPSS and Agencies. This document was circulated widely before publication and gives detailed guidance on record management. Control Assurance Standards on Record Management are in final stages of development. Compliance will be measured during 2005/06.
3.36 We recommend that the Department ensures that delays in disclosure of medical records is reduced.	Julie Thompson	Implemented - Guidance was issued covering this issue in each HPSS body (HSS F 20/2002)
3.35 We consider that the other delaying factors are not beyond the capacity of the Department and others to redress. We recommend that good practice is promulgated and monitored by the Department and observed by the HPSS. A number of good practice points were listed in the NIAO report.	Dr G Mook	Implemented
3.36 The Department / HPSS should take appropriate steps, once a claim has been made, to encourage plaintiffs to ensure that: 1) the allegations and effects of negligence are as specific as possible; 2) they choose solicitors who meet a pre-determined standard; 3) there is early and constructive contact between the parties; and 4) there is early involvement of independent medical experts.	Dr G Mook	The tender exercise for the provision of legal services to HSS Boards and Trusts commenced in December 2004 with firms invited, by means of a single advertisement, to tender for the provision of legal services. The response to the advertisement was positive with 32 tender packs being issued on request. A total of 10 completed tenders were returned by the closing date of 3 February 2005, all from local firms. All HSS Boards and Trusts have now reached the final stages of the evaluation process. However issues raised on the assessment of the financial and capacity elements of tenders are delaying completion of the exercise as legal and procurement advice is required to define how these issues should be handled. This is currently being considered by the Department which will provide direction to HSS Boards and Trusts on the way forward.
3.38 The Department should ensure that all HPSS bodies have in place a proper case management system. The Department should also require regular monitoring returns from each HPSS body and should take action to intervene where progress does not appear to be sufficient. A high level report on clinical negligence should always feature as a part of the Department's corporate monitoring system.	Dr G Mook	Implemented A database update was provided for March 2004 by Trusts and Boards. A range of issues are being investigated with data providers, and these will be resolved in advance of the update to be provided for March 2005. A database update is to be provided for March 2005 and subsequent 6-monthly updates and reports will be given to the Departmental Board. Liaison will be ongoing with providers to improve the data and to resolve any outstanding issues as they arise.
4.19 We would urge the Department to follow up the issue of Pre-Action Protocol for the Resolution of Clinical Disputes to ensure that it is being implemented. 4.23 We recommend that the Courts Service fully engage with the Department during the pre-action protocol consultation process and that the Department, in turn, engage in, and contribute to, the reform process.	Dr G Mook	Liaison is ongoing with the NI Courts Service regarding the implementation of the pre-action protocol.

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NIAO Recommendation	Director Responsible	Status Update at 31 March 2005
4.22 The Department, HPSS and many other bodies are deeply interested in, and some are inextricably involved in, the issues surrounding clinical negligence. The Northern Ireland Courts Service told us that it consulted with a wide range of medical interests and included a former Permanent Secretary from the Department of Health and Social Services in the Civil Justice Reform Group. Nevertheless, we think that it was an oversight on the part of the Reform Group that it did not consult the Department or the HPSS on its report on arrangements in Northern Ireland. We also consider that implementation of some of the Group's recommendations is vulnerable to the risk of delay, though we acknowledge the Courts Service's explanation of the reasons for delay. For NIAO, the main issue is how the recommendations, as framed, will achieve a material reduction in the excessive costs and delays in litigation. 5.7 NIAO considers that the survey of risk management was very timely and potentially useful, as it provided an independent view of the steps that had been taken to date by individual HPSS organisations. It was also a major contribution to the identification of the risks faced by the HPSS. We recognise that there are many examples of decisions taken by the HPSS and the Dept, which have been informed by appropriate risk assessments and best practice, ranging from key decisions about the profile of acute services to improvements in the safety of blood products and the operation of individual medical devices. Nevertheless, the survey's findings suggest that there remains scope for further improvements and, given that DFP had issued general guidance in 1994, we would have expected further progress on this front. 5.8 We acknowledge that the Dept intended to conduct a survey and not a detailed audit. Nevertheless, although the consultants identified good progress in a number of areas by some HPSS bodies, the identified gaps in risk management, as illustrated in App 5 will need to be addressed by the Dept and the HPSS to ensure consistent good practice across the service. The consultants' report reinforces, in many places, the findings of NIAO during our examination. 5.9 We expect the Dept to be able to provide positive assurance of substantial progress in risk management within HPSS bodies, by 2003 at the latest. 5.10 The Dept should actively encourage all those organisations which did not achieve full compliance with risk management standards to raise their performance to at least the second highest banding of full compliance, and it should monitor progress towards compliance.	Dr G Mock Noel McCann	There is ongoing liaison between the Departmental Solicitor's Office and the Courts Service on this matter. Implemented. A single model of risk management has been imposed on the HPSS. A risk management standard has been developed and issued with guidance on expected levels of compliance.

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NIAO Recommendation	Director Responsible	Status Update at 31 March 2005
5.17 We recommend that Best practice: best care recommendations are promulgated and new arrangements introduced. 5.19 We consider that the Department needs to clarify how it expects contract monitoring to operate, in relation to quality of care provision. We suggest that the Department should also remind all clinical staff of the importance of clinical audit and its contribution to enhancing standards of care.	Noel McCann	The Clinical and Social Care Governance Support Team has worked throughout 2004/05 to promote clinical and social care governance, including clinical audit, in the HPSS and to assist HPSS bodies to develop their clinical and social care governance arrangements. The Support Team will continue its work in 2005/06. HPSS Regulation and Improvement Authority started its work on a phased basis from 1 April 2005. Generic Quality Standards for Health and Social Care were issued for public consultation on 4 April. The Standards will assist the HPSS by providing a standardised approach to clinical and social care governance and will facilitate the HPSSRIA in the monitoring of the quality of service provision provided by the HPSS. The Steering Group established by the Department to develop new arrangements for the resolution of clinical negligence claims in the HPSS expects to present options for change and proposals for the way forward in 2005/06.
5.31/5.33 We strongly agree that further improvements need to be accompanied by a modernisation of associated processes. It is surprising that any group of professional staff, largely funded by the taxpayer, has not been subject to a system of annual appraisal, particularly when the existing sanctions have been too severe, too legalistic and too prolonged for them to be applied in practice.	Dr G Mock	Implemented.
5.14/5.32 We recommend that the Department encourage consistency across the service and central reporting of incidents. Any arrangements for recording adverse events need to be clear and unambiguous and it is important that the Department is assured that adverse events are disclosed, not just for the purposes of accountability, but also as a means to improve standards in the HPSS and to the avoidance of future error.	Noel McCann	A Scoping Exercise on Adverse Incident Reporting in the HPSS has been completed and a Report has been received by the Safety in Health and Social Care Steering Group. Recommendations in the Report and other proposals are being taken forward by the Steering Group. Among these are the commissioning of a project to standardise data definitions, coding and reporting forms across the HPSS; a process for dealing with serious adverse incidents under interim guidance issued to the HPSS in July 2004; and working towards the establishment of a formal service level agreement with the National Patient Safety Agency in early 2005/06.
5.34 NIAO hopes that there will soon be arrangements to assure the public that, in all cases, they will be treated by a doctor who is well-trained, highly competent and up-to-date in their practice, and that where there are shortcomings, these are promptly addressed by internal mechanisms, or if exceptionally serious, by external intervention.	Dr G Mock	Implemented. The HPSS Regulation and Improvement Authority was established on 1st April 2005 and it will monitor standards of clinical and social care governance. The new consultant contract and disciplinary procedures are in place.

Clinical Negligence Information

1) Payments by year

<i>Year</i>	£m
1991/92	2
1992/93	3
1993/94	6
1994/95	5
1995/96	3
1996/97	4
1997/98	6
1998/99	12
1999/00	5
2000/01	9
2001/02	7
2002/03	14
2003/04	15

2) Number of new claims by year

	Total new claims to Boards	Total new claims to Trusts	Number of new claims lodged
1994/95	350	180	530
1995/96	312	245	557
1996/97	213	365	578
1997/98	167	465	632
1998/99	113	500	613
1999/00	54	501	555
2000/01	70	638	708

3) Movements in provisions 199/00 – 2003/04

	99/00	00/01	01/02	02/03	03/04
AT 1 st April	94,076	100,039	97,959	106,405	84,780
Adjustment				-19,597	
Arising	4,438	21,957	23,501	21,030	24,052
Utilised	-4,081	-8,701	-7,415	-13,550	-15,194
Reverse unused	0	-19,487	-13,046	-13,827	-7,259
Unwinding	5,606	4,151	5,406	4,319	3,241
At 31 March	100,039	97,959	106,405	84,780	89,620

Appendix 1

Circular Number	Date Issued	Reason Issued	Date Superseded	Superseded By	Extant Y/N	Tab Number
HSS(TC8) 14/89	21.12.89	General guidance to Boards to assume responsibility for new and existing claims of medical negligence from medical defence organisations	-	-	Y	1
HSS(F) 1/90	16.1.90	Further to HSS(TC8) 14/89 financial guidance to Boards to assume responsibility for new and existing claims of medical negligence from medical defence organisations	12.9.02	HSS(F)20/02	N	2
HSS(TC8) 12/90	8.11.90	To provide guidance on points arising from HSS(TC8) 14/89 and HSS(F) 1/90	-	-	Y	3
HSS(F) 26/97	20.6.97	To provide interim guidance to newly formed Trusts on the funding of clinical negligence claims and whether they or the Board are responsible for such payments dependent on the date of establishment of the Trust	12.9.02	HSS(F)20/02	N	4
HSS(F) 19/98	15.5.98	Guidance on the funding and administrative arrangements for the Clinical Negligence Central Fund	8.3.01	HSS(F) 19/00	N	5
HSS(F) 20/98	15.5.98	To set out the guidance on handling of clinical negligence claims by Trusts	-	-	Y	6
HSS(F) 20/98 Supplement No. 1	21.1.99	To bring to attention of HPSS bodies pre-action protocol for the resolution of clinical negligence disputes	12.9.02	HSS(F)20/02	N	7
HSS(F) 21/98	14.5.98	Guidance on the use of structured settlements in clinical negligence and personal injury litigation	-	-	Y	8
HSS(F)28/99	29.7.99	Guidance on the arrangements for requesting approval to settle claims above £250,000 limit	-	-	Y	9
HSS(F) 28/99 Supplement Number 1	9.7.01	Reminder of details of HSS(F)28/99 and advising of Department's firm delegated limit	-	-	Y	10
HSS(F) 19/00	21.4.00	Advice to HPSS bodies on the revised accounting arrangements for each body in light of the expansion of the Central Fund from 31.3.00	-	-	Y	11
HSS(F) 17/01	8.3.01	Advice to HPSS bodies on the revised administrative arrangements for each body in light of the expansion of the Central Fund from 31.3.00	12.9.02	HSS(F)20/02	N	12
HSS(F) 20/02	12.9.02	To advise HPSS bodies of developments in the management of clinical negligence claims largely due to NIAO Report of July 2002	-	-	-	13

*The owning branch (Strategic Change) of this circular are checking for the addendum to this circular which was issued in August 1991 to confirm the contents and ascertain whether it supersedes the original guidance however they have been unable to trace a copy yet.