

Governance and Healthcare Assurance Committee Paper GHAC09/013

Legal Services Report

Executive Summary:

This paper provides a Report on the Legal Services position for the Hampshire Primary Care Trust for the six months period at end of Quarter 2, 2008-09.

Actions Requested:

The Governance & Healthcare Assurance Committee is asked to note the Report.

Aims Supported by this Paper:

To support the Hampshire Primary Care Trust by delivering the Corporate Affairs element of its Fitness for Purpose Action Plan and Standards for Better Health, using effective systems for Integrated Governance Board Assurance and Risk Management.

Corporate Citizenship, Equality and Diversity

This paper does not request decisions that impact on corporate citizenship, equality and diversity.

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Date:

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Governance and Healthcare Assurance Committee Legal Services Report

1 Introduction

This report provides information about open and closed litigation and coronial law cases at the end of Quarter 2, 2008-2009. Data is provided for previous periods for comparison. Recommendations and actions taken resulting from the investigation of claims are reported and the current situation regarding Coroner's cases and other investigations is provided.

2 Background

No report was produced for the end of Quarter 1, 2008 – 2009 due to relevant staff being on long-term sick leave. This report therefore covers Quarters 1 + 2 and the next report will cover Quarters 3 and 4 and the year end position. Hampshire Community Health Care will take direct responsibility for managing and reporting claims in Care Services divisions from 1 April 2009. From that date NHS Hampshire will manage and report claims for commissioned services only.

3 Current situation

Table 1 shows the total number of claims opened, closed and ongoing at the end of each Quarter, 2007– 2008 and at the end of Quarters 1 + 2, 2008 – 2009 for comparison. Claims closed during Quarters 1 + 2 are show in **Table 2**.

Table 1 - Total number of claims received, closed and ongoing during 2007/08 and 2008/09

Year	Claims received	Claims closed	Claims ongoing
2007/08 end Q 1	1	4	13
2007/08 end Q 2	3	3	13
2007/08 end Q3	2	2	13
2007/08 end Q4	1	3	11
2008/09 end Qs 1 +2	2	2	11

Table 2 - Closed claims with outcome during Quarter 1 and 2, 2008-09

Claims closed, Employers Liability	Area	Category	Outcome	Cost
HxNH/EL/06/003 (ID 18)	North; Health Centre	Staff injury	Settled July 2008	Damages £27,650.20 Claimant costs £15,167.86 Defence costs £3,862.80 Excess £10K paid
Claims closed, Clinical Negligence	Area	Category	Outcome	Cost
H/CN/06/003 (ID 24)	South; Comm Dental	Clinical negligence	Breach of duty and causation denied. Case closed April 2008 by NHSLA due to inactivity.	No payments made to claimant

The current excesses charged for claims under the NHS Litigation Schemes are as follows:

Employers Liability	£10,000	Public (Occupiers) Liability	£3,000
Clinical Negligence	£0	Property Expenses	£20,000

In addition to excess charges, a handling fee of £200 per claim is charged by the NHS Litigation Authority. The estimated total claim and excess limit by year as at end Quarter 2 2008/09 is shown in **Table 3**.

Table 3 - Estimated total claim value and estimated excess payment by year
(Excluding NHS LA handling charge)

Financial Year	Total Claim (est.)	Excess limit (est.)
2008 – 09	£275,450	£38,000
2009 - 10	£130,000	£0
2010 - 11	£0	£0

4 Impact of Open and Closed Claims

The risk previously reported as ‘ongoing amber’ on the Litigation and Coronial Law Risk Register has been removed on completion of the Action Plan by Adult Services, Care Services Division.

An ongoing issue remains at Lymington New Forest Hospital relating to the flooring material, particularly in the Reception area. The concerns are being addressed by the Hospital managers, Portsmouth City PCT Estates Department which provides Estates servicest for Hampshire PCT and the supplier and manufacturer of the flooring. The most recent impact of this relates to an injury which should be defendable on the facts of the claim but which will result in a settled payment because of the ongoing flooring issues. A commercial settlement will be made as the PCT is unable to say that the flooring issue did not contribute to the fall. This is currently in the hands of the NHS Litigation Authority.

5 Trends

Trips, slips and falls relating to the flooring at Lymington New Forest Hospital (see item 4).

6 Coronial Law Cases

The PCT has received a request for 2 Reports from Hampshire Coroners during Quarters 1 + 2, 2008-2009. Staff were supported through the report writing process and at Inquest. There were no outcomes of note for the Primary Care Trust.

Support has been offered to independent contractors where this can be provided without creating any conflict of interest. Legal advice will continue to be provided to the independent contractors by their own advisors/defence organisations.

Gosport War Memorial Hospital – a Steering Group was formed with membership from 4 local NHS organisations and with legal representation following the announcement that the Coroner, SE area, has opened and adjourned Inquests relating to 10 deaths having sought permission from the Minister of Justice.

All relevant staff are supported by professional organisations and by their current or recent employers. A project administrator was appointed to coordinate the various work streams in preparation for the Inquests which are ongoing. A solicitor was instructed and is working with stakeholders to prepare for the Inquests. Counsel has also been jointly instructed by EMW/GHAC report Qs 1 + 2, 2008-2009 v3

Hampshire PCT and Portsmouth Hospitals NHS Trust. The Inquests are expected to begin on 18th March 2009. The Strategic Health Authority is represented on the Steering Group.

Evidence of completion of the Recommendations from the earlier CHI investigation by the 4 organisations involved has been compiled and assurance will be provided to each Board. The Strategic Health Authority Board will receive individual assurances by report in February 2009.

7 Other Investigations

Gosport War Memorial Hospital - General Medical Council (GMC). The arrangements for a hearing into the actions of a clinician have been put on hold in deference to the Inquests outlined above. The Clinician was invited to attend a GMC Interim Orders Panel in July 2008 and the outcome has been noted and is being monitored by the Primary Care Development and Improvement team. The GMC hearing is expected to take place later in 2009.

Gosport War Memorial Hospital - Nursing and Midwifery Council (NMC). The Council remains silent on its plans to take action against any nursing staff.

8 Assurance and Impact of Recommendations from Claims

- The number of claims year on year
- Coroners cases and other investigations
- Recommendations for practice changes as a result of claims.

9 Recommendations

The Governance and Healthcare Assurance Committee is asked to note the Legal Services Report.