

Auditor Assurances 2021/22

Clinical Negligence and Other Risks Indemnity Scheme



 AUDIT SCOTLAND

Prepared for appointed auditors in the health sector

20 May 2022

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Introduction

Purpose of report

1. The purpose of this report from Audit Scotland's Professional Support to:
 - provide auditors with assurance on the methodology used by the Scottish Government to estimate the total value of the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) national obligation at 31 March 2022 and to apportion the total value to each health board (Section 1)
 - inform auditors' evaluation of the role of the Central Legal Office (CLO) as a management expert in respect of the provision for clinical and medical negligence at 31 March 2022 (Section 2 and Appendices).

Context

2. Health boards may have legal claims in respect of clinical and medical negligence that have not been settled by 31 March 2022. Boards were notified of the progress of all such claims by the CLO under the CNORIS in April 2022. The CLO categorised the level of risk relating to the settlement of each claim. This is intended to inform the judgement of boards as to whether to recognise a provision for each claim or disclose a contingent liability.

3. CNORIS is funded by all health boards contributing a share of the total value of the national obligation. Boards are required to recognise a provision for their expected contribution in line with information provided by the Scottish Government in May 2022.

4. This report satisfies the commitment in Technical Guidance Note 2022/1 ([Module 13](#)) which advised auditors that Professional Support would undertake reviews:

- to evaluate the appropriateness of the methodology adopted by the Scottish Government to estimate the total national obligation for CNORIS as at 31 March 2022
- of the work carried out by the CLO during 2021/22 relating to CNORIS.

Enquiries

5. Auditors should contact Professional Support with any enquiries or requests for advice by sending an email to TechnicalQueries@audit-scotland.gov.uk.

1. Methodology for national obligation

Reasonableness of methodology

Key finding

6. Professional Support identified that, due to the continuing impact of COVID 19, the Scottish Government had adopted a similar simplified methodology for estimating the national CNORIS obligation in 2021/22 as they had in 2019/20 and 2020/21.

7. The methodology used the submissions made by each board in March 2022 as the basis for estimating the total obligation and apportioning each board's individual share as at 31 March 2022.

Conclusion

8. Profession Support considers the methodology to be a reasonable approach in the circumstances.

Application of methodology

Key findings

9. The total national obligation notified to boards by the Scottish Government at 31 March 2022 (with comparatives) is set out in the following table:

Amount of national CNORIS obligation (£000)	As at 31 March 2021	As at 31 March 2022
Clinical & Medical (C&M)	706,323	663,784
Other	10,966	65,647
TOTAL	717,289	729,431

10. Each board was initially notified of the amount of the provision in an email to Directors of Finance dated 24 April 2022. Professional Support confirmed that the proportion of the total obligation allocated to each board, and the apportionment between clinical and non-clinical, was based on a percentage split as notified by the NHS National Services Scotland, which is the scheme manager for CNORIS.

11. Professional Support selected a sample of 8 of the individual board's returns and agreed each of them to the Scottish Government spreadsheet used to calculate the national obligation. It was identified in one case that the figure in the return had been incorrectly entered into the spreadsheet. This resulted in the total national obligation being overstated by £8.696 million.

12. As a result of this error, Professional Support tested a further sample. No other errors or issues were identified in the testing of this extended sample.

13. Following Professional Support communicating the error to the Scottish Government, a further email was issued to health boards on 18 May 2022. This email amended the figures provided to boards to correct the error identified. It also included one small national board that had been omitted in error from the original email.

14. The following table compares the total amount of total national obligation originally advised with the corrected total:

National obligation (£000)	Amount notified on 24 April	Adjustment	Corrected amount on 18 May
C&M	671,696	7,912	663,784
Other	66,431	784	65,647
TOTAL	738,127	8,696	729,431

15. The share of the national obligation for each board is provided at Appendix 1. The appendix also shows the effect of the correction at a board level.

16. Professional Support has not identified any other issues in the application of the methodology by the Scottish Government that require to be brought to auditors' attention.

Conclusion

17. Professional Support did not identify any uncorrected errors in the application of the methodology for allocating the national obligation to health boards.

2. CLO as a management expert

Auditor responsibilities for a management expert

18. Health boards use the CLO as a management expert. ISA (UK) 500 requires auditors to obtain an understanding of the work undertaken by a management expert, and then evaluate that work to conclude whether it is appropriate as audit evidence.

19. The ISA sets out some particular considerations for the auditor, including:

- evaluating the competence, capabilities and objectivity of that expert
- obtaining an understanding of the work of that expert
- evaluating the appropriateness of that expert's work as audit evidence.

Key findings

20. Professional Support evaluated the competence, capabilities, and objectivity of the CLO, and obtained an understanding of the work carried out. The procedures undertaken in the review and the findings from it are set out in detailed working papers at Appendices 2 and 3.

21. The report issued by the CLO to boards in April 2022 included all claims received by the CLO by 31 March 2022. Boards are therefore responsible for confirming the existence and impact of any claims received after that date.

Conclusions

22. On the basis of the review, Professional Support considers that the CLO:

- is objective
- has sufficient expertise
- the capability, time and resources to deliver reliable information.

23. Professional Support has concluded that it is appropriate for auditors to use the work of the CLO as audit evidence.

24. Auditors may want to evaluate the effectiveness of the arrangements that boards have in place for dealing with claims received after 31 March 2022.

Appendix 1. Share of national obligation by health board

	NHS A&A		NHSB		NHSD&G		NHSF		NHSFV		NHSG		NHSGGC	
	£000		£000		£000		£000		£000		£000		£000	
	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other
Original	41,683	4,110	10,237	1,011	11,818	1,259	42,838	4,222	34,861	3,420	52,377	5,144	193,537	19,205
Revised	41,099	4,058	10,127	1,001	11,632	1,203	42,337	4,178	34,485	3,394	51,643	5,086	191,689	18,995
Correction	584	52	110	10	186	56	501	44	376	26	734	58	1848	210
Total Correction	636		120		242		545		402		792		2058	

	NHS High		NHS Lan		NHS Lot		NHS Ork		NHS Shet		NHS T		NHS WI	
	£000		£000		£000		£000		£000		£000		£000	
	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other
Original	30,466	2,989	76,136	7,379	117,306	11,584	1,095	109	1,549	154	48,254	4,738	1,162	136
Revised	30,052	2,958	75,032	7,333	116,041	11,466	1,081	107	1,532	152	47,661	4,694	1,137	125
Correction	414	31	1104	46	1265	118	14	2	17	2	593	44	25	11
Total Correction	445		1150		1383		16		19		637		36	

	HIS		PHS		MWC		NES		NHS 24		NSS		NWTC	
	£000		£000		£000		£000		£000		£000		£000	
	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other	C&M	Other
Original	32	6	34	9	0	0	87	25	1,518	147	107	37	2,079	202
Revised	32	5	34	6	33	1	84	18	1,475	144	107	26	1,991	195
Correction	0	1	0	3	-33	-1	3	7	43	3	0	11	88	7
Total Correction	1		3		-34		10		46		11		95	

	SAS		TSH		Total	
	£000		£000		£000	
	C&M	Other	C&M	Other	C&M	Other
Original	4,407	521	113	26	671696	66431
Revised	4,368	482	111	20	663784	65647
Correction	39	39	2	6	7912	784
Total Correction	78		8		8696	

Appendix 2. Testing schedule

Testing Schedule - Using the Work of an Expert – NHS Central Legal Office

Reference	Procedures / Test of Controls / Tests	Work Performed	Results
1.1	<p>Walkthrough</p> <p>Document how the system for recording and assessing the value of legal claims against NHS Boards operates and any controls or checks that exist and confirm it operates as described.</p>	<p>A full ISR was completed in 2016/17, followed by walkthroughs in 2017/18, 2018/19 and 2019/20 and 2020/21. The 2020/21 walkthoug has been used as a basis to confirm the operation of the system and identify any significant changes from the prior year.</p> <p>Due to COVID-19 suppression measures, I undertook a hybrid approach to auditing the Central Legal Office (CLO).</p> <p>I met in person with Irene Hallet (CNORIS Manager) and then had</p>	<p>Norma Shippin, Michael Stewart and Irene Hallet confirmed there have been no significant changes to the process of assessing legal claims since 2020/21. The main change identified is that litigation claims are now created and retained electronically rather than using paper-based files.</p> <p>A walkthrough of the system for processing legal claims was carried out - see walkthrough document for further details.</p> <p>Conclusion</p> <p>No issues identified as a result of the walkthrough carried out – the system for assessing legal claims operates as expected with the only change being the move to case files being electronic rather than on paper.</p> <p>Satisfactory.</p>

		remote Teams meetings with Norma Shippin (Director of CLO) and Michael Stewart (Head of Litigation, CLO).	
2.1	<p>Understanding</p> <p>Obtain an understanding of the work of the management's expert including the:</p> <ul style="list-style-type: none"> • nature, scope and objectives of that expert's work; • respective roles and responsibilities of management and that expert; and • nature, timing and extent of communication between management and expert, including any report provided by that expert. 	<p>Understanding is based on audit knowledge and experience from prior years, email discussion with CLO officers and a system walkthrough undertaken remotely.</p>	<p>Nature, scope and objectives of that expert's work;</p> <p>The CLO provides legal advice and representation to the NHS in relation to clinical negligence and other claims. The CLO provides Boards with a report which includes a summary of current claims, outstanding claims from previous years, claims settled in the current year and those closed other than settled. This is supported by a detailed listing of each claim which details the Risk Factor, Estimate of Award, Adverse Expenses, CLO fees, settlement date, among others.</p> <p>Respective roles and responsibilities of management and that expert;</p> <p>Health boards rely on the information from the CLO to make the necessary provisions and disclosures in their accounts. Per the 2021/22 Manual for the Annual Report and Accounts of NHS Boards, boards are expected to provide in full for claims assessed by CLO as "Category 3," provide for 50% of the claim for those in 'Category 2' and not provide for those in 'Category 1'. The balance of the value of claims not provided for should disclosed as a contingent liability. Claims should be shown gross of the related debtor.</p> <p>As explained in the NHS Boards Accounts Manual, Health boards also participate in the CNORIS scheme. The scheme allows for risk pooling of legal claims in relation to clinical negligence and other risks and works in a similar manner to an insurance scheme. Participants (health boards)</p>

			<p>contribute to the CNORIS pool each financial year at a pre-agreed contribution rate based on the risks associated with their individual NHS board. As a result of this participation, boards should also recognise that they will be required to make contributions to the scheme in future years. Therefore, a provision that recognises the health board's share of the total CNORIS liability of NHS Scotland is made and will be provided by SGHSCD based on information provided by the boards. Boards are required to submit information in respect of the claims against them as at 31 March with their Month 12 financial performance return. The SGHSCD will then calculate each board's share of the total provision by end of April.</p> <p>The information provided by the CLO is therefore crucial in arriving at an accurate distribution rate for each board.</p> <p>Nature, timing and extent of communication between management and expert, including any report provided by that expert.</p> <p>CLO reports are provided to health boards on a quarterly basis and some large boards require monthly reports. The last quarter's report covering January – March is normally provided in the middle of April. This will include all claims received by CLO as at 31 March. This means that any claims received by CLO post 31 March are not captured in the report and it is up to the individual boards to gather, review and consider the impact of these late claims on their financial statements. Auditors should obtain and review this information and make a judgement on the robustness of the process taken to ensure the information is complete and accurate and that the adjustments have been made to the financial statements where appropriate.</p> <p>Conclusion</p>
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			<p>No issues identified in relation to understanding the CLO's role in determining provisions in relation to legal claims. The roles of the CLO and Health Boards are well established and there have been no major concerns identified in relation to this. Satisfactory.</p>
<p>3.1</p>	<p>Reliability Assess the reliability of information provided by the management expert. Consider:</p> <ul style="list-style-type: none"> • the nature and complexity of the matter • the risks of material misstatement in the matter • the availability of alternative sources of information • the nature, scope and objectives of the management's expert's work • whether the expert is employed by the entity, or is a party engaged by it • extent to which management can exercise control or influence • whether the expert is subject to technical performance standards or professional / industry requirements 	<p>Met with Norma Shippin and Michael Stewart.</p> <p>Considered prior year audit knowledge and reviewed information on CLO's website and other documentation.</p>	<p>Nature and complexity of the matter</p> <p>The role of the CLO in terms of CNORIS disclosures in NHS Board accounts is to assess the risk of settlement and approximate value of legal cases against NHS Boards.</p> <p>While the risk associated with a case is judgemental there are established processes and procedures in place and there are indicators solicitors use to identify risk. For example, an ongoing court case being contested by the CLO is usually be assessed as a 2, where liability has been accepted but the settlement is being negotiated the risk will be a 3.</p> <p>Valuations have previously been discussed with Michael Stewart, Head of Litigation, and he advised then that this is based on previous judgements adjusted for the factors of the case. For example, in the case of a deceased patient there is a relatively set amount awarded to each relative depending on their relationship with the deceased person.</p> <p>Overall, given the experience and expertise of CLO solicitors working on cases the work performed by CLO is of relatively low complexity.</p> <p>The risks of material misstatement in the matter</p> <p>Whether the CNORIS provision is material will vary between boards but for most it will be a material balance. The total provision included in the</p>

	<ul style="list-style-type: none"> • nature and extent of controls within the entity over the expert's work • auditor's knowledge and experience of the expert's field of expertise • auditor's previous experience of the work of that expert. 		<p>Scottish Government Consolidated Accounts in 2020/21 was £817m (£806m 2019/20), which is material.</p> <p>As the balance at national and individual board level is made up of multiple cases (CLO case load in is approximately 1500 cases) the risk of material misstatement is reduced as multiple cases would have to be inaccurate to make a material difference. However, given that some cases can have very high estimated values (eg maternity cases can often have estimates of c£20m) there is a risk of material misstatement associated with the estimates provided by CLO.</p> <p>The availability of alternative sources of information</p> <p>Given the nature of the work performed by CLO (they are the sole providers of legal advice to NHS Boards in relation to clinical negligence claims against them) there are no alternative sources of information.</p> <p>Whether the expert is employed by the entity, or is a party engaged by it</p> <p>The role and status of CLO is somewhat unusual compared to other management experts. The CLO is headed up by Norma Shippin. Her duties include the role of Legal Adviser to NHS Scotland which has a formal status in litigation, acting as the official link between the NHS and the court system. The National Health Service (Scotland) Act 1978 provides the legal basis for the existing functions of the Central Legal Office (CLO) which is a Service within the NHS National Services Scotland (NSS). The CLO is therefore independent of NHS boards. While it is part of NSS, it is a separate and distinct unit from the rest of the NSS. Moreover, generally, NSS's own claims do not involve large sums compared with those of the health boards.</p>
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			<p>Extent to which management can control or influence</p> <p>As discussed above, the CLO are independent of Boards. Norma Shippin advised previously that there are never any issues with Health Boards trying to influence the estimates and risk ratings for cases as they are progressed. She advised that she cannot see that occurring and if it did it would be taken very seriously, and no changes would be made to estimates etc.</p> <p>The role in relation to representing NSS was discussed previously with Norma Shippin. She advised that whilst NSS management is interested in CLO performance overall, they take no role in the legal work undertaken by CLO other than the normal client/ solicitor relationship.</p> <p>The CLO do interact with Health boards and the Scottish Government and take instructions from them when a settlement is proposed. Boards must approve all settlements and the SG have to approve all settlements over £250,000 or £100,000 for cases involving NHS staff.</p> <p>Whether the expert is subject to technical performance standards or professional / industry requirements</p> <p>Per their website, the CLO employs 75 solicitors, of whom 37 are Litigation solicitors. Each solicitor is a member of the Law Society of Scotland and is bound by the Society's code of professional ethics. No solicitor has been disciplined by the Society in the CLO's existence.</p> <p>The only time the law society would inspect cases etc is if there have been complaints. Norma Shippin advised us that this is rare. No CLO solicitor has ever been disciplined by the Law Society of Scotland.</p>
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			<p>The CLO operates a system of internal Quality Assurance (QA) checks. Team leaders perform QAs on their team member's files while the Head of Litigation reviews the Team Leaders' files including the ones of the Director of CLO. Sample claims for QAs are selected by the fee charger who is independent of the litigation teams.</p> <p>Norma Shippin advised that there is no system of external quality checks. This is something they have considered but given the nature and experience of the CLO it is not felt external review from a firm of solicitors would be appropriate as they would not have the expertise of the CLO. External review has been discussed with the CLO's English equivalent, NHS Resolution and they have similar arrangements, although much of their work is undertaken by external solicitors, rather than in-house. Norma advised that the CLO take peer review very seriously and if there are any issues identified they are rectified and she feels the current system is adequate but will keep it under review. Given the nature of the CLO this judgement appears reasonable.</p> <p>The Litigation department holds monthly meetings and the standard agenda includes update from team including discussion of individual cases, training provided and received, experts and counsel and other business (ref WT-13a and 13b). Team leaders provide guidance and support to the members of their team and individual cases are discussed among solicitors on an informal basis. Key performance indicators covering claims are also produced at varying intervals (see attached KPI report ref: WT-11).</p> <p>Nature and extent of controls within the entity over the expert's work</p> <p>As discussed above the CLO is independent from NHS Boards and Boards have limited influence and control over the legal work they carry</p>
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			<p>out on their behalf. Boards do have a role in agreeing to any settlements which would be expected in a normal solicitor/ client relationship.</p> <p>Auditor's knowledge and experience of the expert's field of expertise</p> <p>Auditors will have limited understanding of how a legal case should be run and what the likelihood of settlement and estimated value of settle would be. However, CNORIS is a well-established scheme, and all Boards participate in the scheme. Therefore, in general, there is a good understanding by Board auditors of how the scheme operates and how it is used to inform the provisions in relation to negligence within Board accounts.</p> <p>Auditor's previous experience of the work of that expert.</p> <p>The CLO has many years of specialist knowledge and experience in the public sector setting. Based on our audit knowledge, there have never been any serious concerns raised about the work of the CLO by NHS Board auditors.</p> <p>Conclusion</p> <p>No concerns have been identified regarding the reliability of the CLO as a management expert. The CLO is well established and independent from Boards and all solicitors are regulated by the law society. Satisfactory.</p>
4.1	<p>Professional Competence, Capability and Objectivity</p> <p>Assess the professional competence, capability and objectivity of the expert including the expert's qualifications,</p>	As above	<p>Competence</p> <p>As stated above all solicitors are members of the law society and no solicitor has ever been disciplined by the law society. The CLO are well established and have a unique role in providing legal advice to NHS</p>

	<p>availability of resources to carry out the work and any potential conflicts of interest</p>		<p>Boards. The CLO has some highly experienced solicitors with several having over 30 years' experience.</p> <p>Norma Shippin confirmed that in 2021/22 seven CLO solicitors had accreditation from the Law Society as specialists in clinical negligence. Norma Shippin, Michael Stewart and another team leader are members of court working groups to discuss development of rules and process for managing hearings.</p> <p>National and local seminars and training courses are presented by specialist solicitors from across its Litigation, Employment, Commercial and Property departments, and specialist groups.</p> <p>As recognised experts in their field, the CLO solicitors are also regularly invited to speak at other conferences and events.</p> <p>The Litigation department is organised into 4 geographical teams and each area team is composed of a team leader, 8 – 10 solicitors, the majority of which are senior solicitors, a legal executive and a personal assistant.</p> <p>Due to its fee charging ability (based on actual time and costs incurred), the CLO is able to recruit the number of solicitors it requires as long as it is able to recover its costs. The CLO is not allowed to make profit.</p> <p>The total number of solicitors has grown over the past 30 years. There are 75 solicitors working for the CLO in 2021/22 (per the Law Society of Scotland's website). This reflects the increase in volume, complexity and pressures from Courts requirements. Unlike most public bodies, the CLO has not had to make cutbacks in staffing.</p>
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			<p>Currently, there are c1500 live cases and this level has been relatively stable for some time.</p> <p>Norma Shippin advised that she is happy the CLO has sufficient capacity and the ability to recruit more resources if required. The CLO has little problem recruiting solicitors when required, the work life balance and support they can offer is very attractive to solicitors. She advised the CLO use QAs and other checks such as those carried out by the CNORIS manager to monitor caseload and will assign cases to other solicitors if they feel one solicitors' caseload is too high.</p> <p>Capability</p> <p>The CLO has a case management system which records the details and progress of each claim. An individual solicitor is responsible for the administration of each claim. The estimate of the potential valuation settlement will be made by the solicitor administering the claim based on experience, nature and complexity of case and information available. This will be discussed and reviewed by the team leader. Expert's opinion such as doctors, engineers, actuaries, etc. is also sought if required to arrive at estimates for potential liabilities. The Senior Counsel is also a good source of expertise and provides an important check and balance.</p> <p>There is a CNORIS manager with responsibilities for ensuring the completeness of claim information and reporting regularly to NHS Boards and the Scottish Government.</p> <p>On monthly basis, the CNORIS Manager pulls together all high value claims and claims with risk factors 2 and 3 and sends the reports to the CLO Director and the three Litigation Team leaders for review before forwarding them to the SG.</p>
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			<p>Based on the CLO Customer Survey for 2021/22 the overall CLO customer satisfaction rating was 99% (see WT-12)</p> <p>As discussed above Boards have very little influence over the work of CLO solicitors which enables them to manage cases as they see fit and the experience of the CLO means they are well placed to do this.</p> <p>Objectivity</p> <p>The CLO is not employed by NHS boards and performs independently of NHS NSS. The CLO Director has advised us that she believes that management has no real basis to influence a case as they don't have the necessary information and expertise to do so.</p> <p>As also mentioned above, management at boards and the Scottish Government have a role in discussing the actual settlement with the CLO, as expected. These instances however do not have a direct bearing on the assessment of the risk and award by CLO in terms of the information we use as audit evidence.</p> <p>CLO takes advice from other experts such as actuaries, engineers, doctors, etc. to arrive at schedule of damages. Where counsel (a barrister) is involved in a case they give their own valuation and this provides an important check and balance.</p> <p>If a case has some degree of personal connection with a solicitor, this is re-allocated to another solicitor and there is a section on prescient to record any conflicts of interest. Failure to adhere to this would be a breach of CLO policy and of Law Society regulations</p> <p>Conclusion</p>
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			<p>No issues relating to professional competence, capability and objectivity have been identified. CLO solicitors are regulated by the law society and there are no issues with capacity. The CLO is independent from NHS Boards and they do not exert undue influence on the CLO. Satisfactory.</p>
<p>5.1</p>	<p>Relevance and reasonableness</p> <p>Assess the relevance and reasonableness of the expert's work as audit evidence and determine whether it is properly reflected in the financial statements including:</p> <ul style="list-style-type: none"> the relevance and reasonableness of that expert's findings or conclusions, their consistency with other audit evidence, and whether they have been appropriately reflected in the financial statements; if that expert's work involves use of significant assumptions and methods, the relevance and reasonableness of those assumptions and methods; and if that expert's work involves significant use of source data the relevance, completeness, and accuracy of that source 	<p>Attended the CLO and conducted virtual meetings with Norma Shippin, Michael Stewart and Irene Hallet.</p> <p>Reviewed a sample of two CLO files – one of which settled in 21/22 and one of which was ongoing at 31 March 2022.</p>	<p>The information provided by the CLO is relevant and reasonable as audit evidence in support of Clinical Negligence claims provision and corresponding Debtor and disclosures in the health board's accounts and as basis for calculating their share in the CNORIS liability pool.</p> <p>The CLO uses their acquired experience and expertise in making their assessments of the risk factors and likely settlement awards. The CLO have access to other experts and senior counsel to provide further expertise and challenge in certain cases.</p> <p>The CLO has a case management system which is subject to checks to ensure it produces accurate and reliable reports provided to health boards and Scottish Government.</p> <p>The CLO Director and Team leaders provide supervision and guidance and conduct quality assurance checks over the work of individual solicitors. The Litigation teams are predominantly composed of senior solicitors.</p> <p>We reviewed a sample of two claims this year: one of which settled in 2021/22 and one of which is ongoing. We did not identify any issues with the relevance and reasonableness of the CLO's approach. The Walkthrough performed this year provides us with assurance that there have been no significant changes to this, other than a move to electronic case files, which took place in 2020/21.</p>

	data.		<p>Conclusion</p> <p>No issues identified. Based on previously year's testing and assurance gained from our Walkthrough of the CLO's approach, I am satisfied that the information provided to Boards by the CLO is relevant and reliable and a reasonable basis to calculate provisions in relation to legal claims.</p> <p>Satisfactory.</p>
6.1	<p>Programme Improvements</p> <p>Identify any improvements /amendments/additions to the programme for consideration by Professional Support.</p>		None identified.

	Name	Date
Prepared by	Kevin Boyle	11/05/2022
Reviewed by	Helen Cobb	12/05/2022

Appendix 3. Walkthrough

Walkthrough

Client	Central Legal Office	
Financial year	2021/22	
System	Reliance on an expert	
		CONTROL IDENTIFIED
	Description of Process	YES/NO/n/a

1.	<p>Note – CLO walkthrough undertaken in person and via Microsoft Teams discussions.</p> <p>The CLO Registry Department receives a claim and is stamped with date received. The Registry Department inputs the basic information such as claimant’s name, client hospital, work type (e.g. medical claim), date case was opened (i.e., date it was registered), date of incident, specialty (e.g. Obstetrics), etc. on Prescient (the electronic Case Management System used by CLO) – see WT-01 for screenshots of the financial and CNORIS tabs of Prescient which hold the most relevant details in relation to value and risk assessment of the claim. A unique reference number is assigned to the case.</p> <p>Details of claims normally come to the CLO via Health Boards. Norma Shippin advised that there is a well-developed protocol that any Board which receives a legal claim passes this on to the CLO. Sometimes claims go to the board HQ or sometimes a hospital but Norma is confident all claims are passed on to the CLO and is not aware of any claims not being passed on. Sometimes claims come direct to the CLO - often this is where they are close to being time barred (claims usually need to be made within 3 years for adults and by the age of 19 for children). Normally claims are from solicitors but some come direct from the claimant.</p> <p>Sometimes solicitors will write advising they are looking into the details of a case and asking for further information but they are not actually making a claim at this stage. These cases are recorded on the general database held by CLO but a case will not be created.</p>	n/a
2.	<p>The Registry Department assigns a risk factor of 1 for most cases and 2 if a court action has been started (this is unusual but does occur) upon receipt of a claim. An initial estimate of £1 is assigned on receipt of the claim.</p>	n/a
3.	<p>The Registry Department assigns the case to a solicitor (there is a list of solicitors assigned to different hospitals although more junior solicitors don’t have their own hospital and work with a more senior solicitor). One or two solicitors could be assigned to a case depending on the nature of the case. The Solicitor will amend the risk factor, estimate and estimated settlement date as appropriate when circumstances and evidence surrounding the case become clearer and available.</p> <p>Once the case has been assigned to a solicitor they are sent an email to advise them of this.</p> <p>There are no time limits given to solicitors to review a case and assign an estimate and risk factor as every case is different, but they are encouraged to do this as quickly as possible.</p> <p>Irene Hallett, CNORIS manager, checks estimates on cases regularly. Estimates which have not been revised by solicitors are marked as unconfirmed and if this is the case Irene encourages solicitors to update cases. See WT-02 for emails from Irene reminding solicitors of the importance of updating details. WT-03 is a spreadsheet used by Irene for reviewing claims and querying details with solicitors.</p>	Yes

4.	<p>Since 23 March 2020, litigation claims files have converted to digital-only files. The file is opened by the Registry team on prescient (as described above) but no hard copy file is created as in the past.</p> <p>Once the solicitor receives an e-mail notification that the file is open, the solicitor then deals with and progresses the case and updates Prescient with information received including estimated award, risk of settlement factor, estimated settlement date (see WT-01). In order to ensure that progress on the case is easy to follow for any solicitor who requires to cover the case while the primary solicitor is on leave, there is a Case Progress document at the head of the electronic document register which sets out details of where the case currently sits. Review dates are set by solicitors once they have completed work on a particular file, and the registry team will e-mail the solicitor to alert them to the review date when it arises. The file reviews mentioned below check for a future review date. In addition, there is a review of files on a quarterly basis to check that all claims files have a review date. If any file has no review date, Irene Hallett will contact the solicitor to alert them to that fact.</p> <p>The importance of updating cases regularly and the importance of this in relation to CNORIS is stressed in guidance notes issued to solicitors. (see WT-04 especially last paragraph in bold). There is also detailed Litigation department guidance (WT-04).</p>	Yes
5.	Prescient can only show the current and the last previous estimated risk factor and award. It does not hold history of all the changes made to these fields.	
6.	Once a claim has been closed and settled, the file is passed on to the CNORIS Manager, Irene Hallett. Irene reviews the file and completes a Review Checklist (see WT-05 for an example of a completed checklist). Her review is “clerical” in nature, i.e. ensuring completeness and consistency of information entered in Prescient and that the right boxes have been ticked properly. Irene writes to the health board if settlement award is more than £25k. This is because claims below £25k are outwith the scope of CNORIS.	Yes
7.	Irene Hallett also conducts other checks, e.g. a “sense” check on open files (e.g. if settled, does it look like it or if repudiated, there is no award), review closed or archived files to ensure for example she’s done the review as detailed in No. 3 above and has written to the board if a claim is more than £25k. See WT-06 for a list of checks she carries out.	Yes

8.	<p>Irene Hallett sends out quarterly Claims Report to each health board (for some large HBs this is done monthly) which provides a summary of current claims, outstanding from previous years, settled in current FY and closed other than settled. This is supported by a detailed listing of each claim which details the Risk Factor, Estimate of Award, Adverse Expenses, CLO fees, settlement date, among others. See WT-07 for a sample report (Note that case details have been redacted). A similar report is used by boards as basis for their clinical negligence claims provision at year-end.</p> <p>Reports are sent to solicitors before they are issued and solicitors are encouraged to check all the information is up to date and update if not. Norma Shippin advised that the CLO are aware of the importance of the Q4 report in relation to CNORIS and extra effort is made to ensure this is as accurate as possible.</p>	Yes
9.	<p>Irene Hallett also sends monthly High Value (>£1.0m) and Category Reports (all open Medical / Nursing claims (Type of Loss 1 and 2) that are rated either risk 2 or 3 and that are estimated to settle within 3 years) to the SG. She sends these reports first to the CLO Director and the Litigation Team Leaders for review prior to sending it to the SG. See WT-08 part 1 and 2 for example of the category reports (NB claim details redacted).</p>	Yes
10.	<p>L Flannigan, Financial Analyst in NSS (in collaboration with the SG) gets various reports from CLO to inform the CNORIS pool calculation which takes into account risk profile, estimate, timescale and forecast when the boards are likely to reclaim. (WT-09 – Q3 2021/22 Forecast)</p>	Yes
11.	<p>Nicole Millar, Fee Charger, who is independent of the Litigation teams, selects cases for quality assurance checks. Once every two months, each solicitor would have his/her file randomly selected by Nicole and this is then quality checked usually by a Team Leader. Nicole maintains a listing of QAS checks done (see WT-10a) to ensure sufficient coverage of each solicitor.</p> <p>File reviews were suspended for a few months at the start of the lockdown in 2020. They resumed in the Autumn of 2020. At that time, additional criteria for selecting cases for review was introduced: open cases which had low amounts of fee-earner time recorded over the previous few months.</p> <p>All solicitors who carry out case work have their files reviewed. This includes team leaders and Norma Shippin who maintains a small caseload mainly of NHS Lothian cases.</p> <p>A sample of reviews have been checked (see WT-10b).</p>	Yes
12.	<p>KPI's are also produced by the CLO. (see WT-11)</p>	Yes

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Clinical Negligence and Other Risks Indemnity Scheme

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