THE SCOTTISH OFFICE

Department of Health

NHS
MEL(1996)12

NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG
7 February 1996

Dear Colleague

MEDICAL INDEMNITY: ARRANGEMENTS FOR CENTRAL REIMBURSEMENT OF COSTS FOR LARGE DAMAGES AWARDS

NHS Circular
GEN(1993)12 is updated

Addressees

For action:
General Managers,
Health Boards

General Manager,
Common Services Agency

General Manager,
State Hospitals Board for Scotland

Chief Executives,
NHS Trusts

The Director,
Mental Welfare Commission

For information:
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Summary

1. This letter updates earlier advice on the arrangements for assisting Health Boards and NHS Trusts to meet the costs and expenses of large damages awards arising from successful medical negligence claims.

Background

2. The scheme under which employing health authorities may receive financial assistance towards the costs of relatively large medical negligence awards was introduced in 1990. It is funded from a reserve held on behalf of the Management Executive by the Medical Defence Union (MDU). Access to the funds is dependent on the size of an award relative to the employing authority's HCHS allocation (Health Boards) or annual level of contract income (Trusts).

3. In brief, the terms of the scheme are that employing authorities are responsible for meeting the costs of awards that are less than 0.15% of their allocation/expected annual income or £400,000, whichever is the smaller. Once above that threshold the authority may access the reserve funds, but still remain responsible for meeting the first 25% of the amount claimed against that reserve. Further safety nets exist to protect employing authorities against really large awards or a substantial accumulation of awards in any one financial year. Fuller details are provided in Appendix 1.

4. Past practice has been to adjust the threshold amounts annually to take account of changes in allocations and expected income. However, the method employed for calculating the adjustments in the past was flawed. To continue the method

would result in Health Boards, who still carry the bulk of future award liabilities, having very low financial thresholds which would in turn put the MDU reserve at considerable risk.

5. The issue has been considered by the Joint Working Group on Finance who recommended:

- a fundamental review of the existing arrangements with a view to introducing a new scheme, possibly in 1997-98, that addresses the increasing trend for litigation and the need to consider alternative methods for settling awards, eg structured settlements;

- in the interim, a return to the original method for determining Health Boards' thresholds, ie no longer net of local Trusts' income levels, updated to 1995-96 levels;

- likewise, updating the thresholds for Trusts and adding Trusts established since the last update;

- thresholds to be set on the same basis, duly uprated for new allocation or expected income levels but with a review of the current £400,000 ceiling.

6. The revised thresholds for the remainder of 1995-96, based on the above recommendations, are set out in the attached Appendix 2. Details of the 1996-97 thresholds will issue early in that financial year.

7. The continuing rise in claims of medical or clinical negligence highlights the need for employing authorities to have appropriate risk management procedures in place. Appendix 3 provides a summary check list for clinical risk management standards. It is not definitive and should be regarded as guidance only. It was drawn from the 1993 SCOTMEG/CRAG report 'Medical Claims' and Appendix A of a NHS Executive (England) publication which outlined their clinical negligence scheme for Trusts (CNST). Both are useful sources of reference and advice.

Action

8. Health Boards and NHS Trusts should note (a) the new or revised thresholds above which contributions towards the costs of medical indemnity awards are payable, and (b) the criteria for making claims as set out in Appendix 1.

9. As indicated above, for the time being, most of the financial liability for past medical negligence claims still rests with Health Boards rather than Trusts. In the contracting process for 1996-97, Boards and Trusts should ensure that there is no double accounting for pending awards or expenses.

D Palmer

p.p. **SIMON FEATHERSTONE**
Director of Finance

APPENDIX 1

ARRANGEMENT FOR REIMBURSEMENT OF COST OF LARGE AWARDS FOR MEDICAL NEGLIGENCE

1. Health Boards and NHS Trusts (employing authorities) are responsible for meeting the costs of all awards which are less than 0.15% of their base revenue allocation (Boards) or expected annual income (Trusts), up to a maximum of £400,000.

2. For awards above the calculated sum, employing authorities will additionally pay one quarter (25%) of the amount by which the award exceeds the calculated sum, thereafter the balance will be met centrally. This is subject to maxima rules, ie the employing authority will not be liable to meet the costs:

- for any one award where their contribution exceeds 0.3% of their allocation/ income figure;
- where the total payments by employing authorities on all awards in any one financial year exceeds 0.5% of their allocation/income figure.

The excess in each case will be met centrally.

3. In calculating the cost of an award, the employing authority should include both the payment to the Pursuer and the adverse legal expenses of the Action. Once a settlement is reached, Central Legal Office will advise the employing authority and the Management Executive of the amounts which fall to be paid.

4. Thereafter, the employing authority should notify the Management Executive of the amount it wishes to reclaim, under the above formulae, using the Form attached as an Annex to this Appendix. Once checked and agreed, the Management executive will arrange for the appropriate sum to be transferred from the Medical Defence Reserve to the employing authority.

DoH Finance Directorate

CENTRAL CONTRIBUTION TO DAMAGED AWARDS: 1995-96

APPENDIX 2

Health Authority	1995-96 Estimates for Patients Income	Minimum Award for which Central Contribution Provided (0.15% of Col (2) or £400,000 whichever is smaller)	Award above which additional costs met Centrally (0.3% of Col (2))	Maximum Expenditure on Employing Authority in Financial Year (0.5% of Col (2))
Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Aberdeen Royal Hospitals	103.736	155,600	311,200	518,700
Angus	39.806	59,700	119,400	199,000
Argyll and Bute	29.904	44,900	89,700	149,500
Ayrshire and Arran Community Healthcare	56.575	84,900	169,700	282,900
Borders Community Health Services	24.159	36,200	72,500	120,800
Borders General Hospital	26.089	39,100	78,300	130,400

CENTRAL CONTRIBUTION TO DAMAGES AWARDS:1995/96

HEALTH AUTHORITY	GENERAL REVENUE ALLOCATION	MINIMUM AWARD FOR CENTRAL CONTRIBUTION 0.15% OF Col (2) WITH £400,000 CEILING	AWARD ABOVE WHICH ADDITIONAL COSTS MET CENTRALLY (0.3% OF Col (2))	MAXIMUM EXPENDITURE BY EMPLOYING AUTHORITY IN FINANCIAL YEAR (0.5% OF Col (2))
Col(1)	Col (2)	Col (3)	Col (4)	Col (5)
HEALTH BOARDS	£m	£	£	£
ARGYLL AND CLYDE	218.174	327,261	654,522	1,090,870
AYRSHIRE AND ARRAN	179.859	269,789	539,577	899,295
BORDERS	55.720	83,580	167,160	278,600
DUMFRIES AND GALLOWAY	78.808	118,212	236,424	394,040
FIFE	163.854	245,781	491,562	819,270
FORTH VALLEY	129.435	194,153	388,305	647,175
GRAMPIAN	234.862	352,293	704,586	1,174,310
GREATER GLASGOW	493.744	400,000	1,481,232	2,468,720
HIGHLAND	104.035	156,053	312,105	520,175
LANARKSHIRE	253.381	380,072	760,143	1,266,905
LOTHIAN	356.447	400,000	1,069,341	1,782,235
ORKNEY	10.738	16,107	32,214	53,690
SHETLAND	11.833	17,750	35,499	59,165
TAYSIDE	204.922	307,383	614,766	1,024,610
WESTERN ISLES	19.008	28,512	57,024	95,040
OTHER				
STATE HOSPITAL	12.938	19,407	38,814	64,690
CSA	104.565	156,848	313,695	522,825
MENTAL WELFARE COMMISSION	1.127	1,691	3,381	5,635

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Caithness and Sutherland	14.600	21,900	43,800	73,000
Central Scotland Healthcare	67.270	100,900	201,800	336,300
Dumfries and Galloway Acute and Maternity Hospitals	37.261	55,900	111,800	186,300
Dumfries and Galloway Health Trust	37.828	56,700	113,500	189,100
Dundee Healthcare	51.809	77,700	155,400	259,000
Dundee Teaching Hospitals	85.015	127,500	255,000	425,000
East and Midlothian	52.356	78,500	157,100	261,800
Edinburgh Healthcare	76.394	114,600	229,200	382,000

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Edinburgh Sick Children's	22.941	34,400	68,800	114,700
Falkirk and District Royal Infirmary	32.724	49,100	98,200	163,600
Fife Healthcare	77.506	116,300	232,500	387,500
Glasgow Dental Hospital and School	7.939	11,900	23,800	39,700
Glasgow Royal Infirmary University	105.080	157,600	315,200	525,400
Grampian Healthcare	114.310	171,500	342,900	571,600

CENTRAL CONTRIBUTION TO DAMAGED AWARDS: 1995-96 **APPENDIX 2**

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Greater Glasgow Community and Mental Health Services	138.711	208,000	416,100	693,600
Hairmyres and Stonehouse Hospitals	47.678	71,500	143,000	238,400
Highland Communities	45.300	68,000	135,900	226,500
Inverclyde Royal	31.611	47,400	94,800	158,100
Kirkcaldy Acute Hospitals	40.213	60,300	120,600	201,100

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Lanarkshire Healthcare	82.363	123,500	247,100	411,800
Law Hospital	41.193	61,800	123,600	206,000
Lomond Healthcare	30.268	45,400	90,800	151,300
Monklands and Bellshill Hospitals	52.511	78,800	157,500	262,600
Moray Health services	27.252	40,900	81,800	136,300
North Ayrshire and Arran	70.366	105,500	211,100	351,800
Perth and Kinross Healthcare	55.105	82,700	165,300	275,500

CENTRAL CONTRIBUTION TO DAMAGED AWARDS: 1995-96 APPENDIX 2

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Queen Margaret Hospital	31.419	47,100	94,300	157,100
Raigmore Hospital	49.357	74,000	148,100	246,800
Renfrewshire Healthcare	62.566	93,800	187,700	312,800
Royal Alexandra Hospital	40.283	60,400	120,800	201,400
Royal Infirmary of Edinburgh	124.812	187,200	374,400	624,100

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
Scottish Ambulance Service	72.446	108,700	217,300	362,200
Stobhill	61.289	91,900	183,900	306,400
South Ayrshire Hospitals	44.161	66,200	132,500	220,800
Southern General Hospital	75.908	113,900	227,700	379,500
Stirling Royal Infirmary	35.568	53,400	106,700	177,800
Victoria Infirmary	54.830	82,200	164,500	274,200
West Glasgow Hospital University	103.883	155,800	311,600	519,400

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Col (1)	Col (2)	Col (3)	Col (4)	Col (5)
NHS Trusts	£m	£	£	£
West Lothian	61.966	92,900	185,900	309,800
Western General Hospitals	60.311	90,500	180,900	301,600
Yorkhill	47.808	71,700	143,400	239,000

CLINICAL RISK MANAGEMENT: STANDARDS CHECKLIST

General

Risk management may be defined as a systematic approach to:

- identifying, classifying, evaluating and reducing or eliminating risks, injuries or infections to patients, staff or visitors;

- administering a cost effective method for handling complaints and claims.

This covers all areas of activity within a Trust or hospital, including accident prevention and loss control. Clinical risk management is primarily concerned with risks, injuries or infections sustained by patients as a result of actions carried out by doctors, nurses or paramedical staff.

Providers should be committed to managing clinical risk throughout their organisation, having:

- **a written risk management strategy agreed by managers and endorsed by their Board;**

- **a clinical risk management system, with an action plan for reducing key risks identified for urgent attention;**

- **a Risk Manager.**

The Risk Manager will have access to clinical information and ideally should report to an Executive member of the Board. Responsibilities of the post might include:

- ensuring appropriate training for new staff

- development of clinical guidelines and protocols (in conjunction with clinical directors)

- ensuring adequate communication with patients and relatives

- monitoring adverse occurrence screens

- handling of complaints

- arranging continuing education for clinicians

The Components of Clinical Risk Management

<u>Supervision and Training</u>

⇒ Induction or orientation programmes for all new clinical staff.

⇒ Early experience in straightforward practical procedures for new clinical staff.

⇒ Appropriate degrees of consultant supervision, commensurate with doctor's experience and known capabilities.

Medical Records

⇒ Comprehensive system for the completion, use, storage and retrieval of medical records.

⇒ Record-keeping standards monitored through the clinical audit process.

Communications with Patients and Relatives

⇒ Appropriate information provided on the risks and benefits of proposed treatment or investigation before consent signature sought.

Handling of Complaints

⇒ Agreed system in place with clear identification of clinical complaints, as opposed to more general complaints.

Clinical Incident Reporting System (CIRS)

⇒ Operated in all medical specialties and clinical support departments.

⇒ To record **all** unexpected events occurring during treatment, or unexpected result of treatment which may, or does, cause harm to the patient.

⇒ Essential that all such incidents recorded to form a database.

⇒ Incidents investigated timeously and action taken to limit damage and prevent recurrence.

⇒ Regular review of database, practices and protocols with feedback to staff.

Techniques of Clinical Risk Management

- Complaints Audit
- Adverse Occurrence Screening
- Clinical Guidelines and Protocols
- Regular Review of CIRS database
- Liaison with Central Legal Office

IN CONFIDENCE **ANNEX**

HEALTH BOARD/ NHS TRUST REFERENCE:	DoH REFERENCE: .....

APPLICATION FOR REIMBURSEMENT OF PART OF COSTS INCURRED IN A CASE OF MEDICAL NEGLIGENCE

Name of Health Board/NHS Trust:	
Name(s) of pursuer(s):	

Name(s) of Health Board/NHS Trust employee(s) whose negligence has been established or admitted:	

Nature of Negligence established:	

Cost to Health Board/NHS Trust of award:	£

Adverse legal and associated costs incurred by Health Board/NHS Trust (as certified by Central Legal Office):	£

Amount of reimbursement sought:	£

(Signed):	
(Position):	
(Date):	

Notes:	
1.	This form should be returned to Miss M Duncan, Department of Health, Management Executive, Room 250, St Andrew's House, Edinburgh, EH1 3DE, telephone 0131-244 2271.
2.	If there is likely to be a delay in establishing the legal costs, Health Boards/Trusts may wish to submit an initial application of the cost of an award and a subsequent application for the legal costs; in calculating the final sum due to a Board/Trust, the various costs will be added and the sum to be reimbursed calculated from that total.