SCOTTISH EXECUTIVE

Health Department
Directorate of Performance Management & Finance

Dear Colleague

CLINICAL NEGLIGENCE AND OTHER RISKS INDEMNITY SCHEME (CNORIS)

Purpose

1. This letter provides:

- an update on the financial thresholds above which NHS Boards and NHS Trusts can seek assistance from the Residual Pool;
- a reminder of the instructions on the delegated limit process for settling cases; and
- canvasses interest in the establishment of a Management Forum on the administrative aspects of the CNORIS scheme.

Background

2. The Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) was launched on 1 April 2000 with membership mandatory for all health bodies. The Scheme has two principal aims:

- financial efficiency through cost-effective risk pooling and claims management;
- effective risk management by encouraging a rigorous approach to treatment of risk.

3. The Scheme comprises one financial pool incorporating:

- New Pool – clinical and non-clinical incidents occurring and reported on or after 1 April 2000 and incidents incurred but not reported (IBNRs) as at 1 April 2000 (except for non-clinical claims that are covered by previous commercial insurance cover);

13th October 2003

Addresses

For action
Chief Executives, NHS Trusts

Chief Executives, Health Boards
Common Services Agency
Scottish Ambulance Service
State Hospitals Board for Scotland
Directors of Finance,
Health Boards and NHS Trusts

For information
Chief Executive, NHS Quality Improvement Scotland

The Director, Mental Welfare Commission for Scotland

Chief Executive, NHS Education for Scotland

Medical and Nursing Directors

Enquiries to:

Ross Scott
Directorate of Finance
Health Department
Basement Rear
St Andrew's House
EDINBURGH EH1 3DG

Tel: 0131-244 2363
Fax: 0131-244 2371
Email:
ross.scott@scotland.gsi.gov.uk

- Residuals Pool – clinical incidents which the service knew about on or prior to 31 March 2000.

4. The Residual Pool continues to operate as before under the terms and conditions detailed in MEL(1999)63 with the exception of the individual 'thresholds' (i.e. deductibles) that for 2003-04, are based on the 2002-03 General Revenue Allocation for NHS Boards and for NHS Trusts, the Patient Income figure for 2002-03. The General Revenue Allocation represents the Unified Budget and includes prescribing. To compensate for this change made in 2001-02 and, to ensure that Members are not disadvantaged in any way, the percentages used to calculate the threshold levels have been adjusted so that the increases are consistent with those which would have been applied under the previous system. The new levels, which come into effect from the date of this HDL, are detailed at Annex 1. This Annex supersedes Annex 1 of HDL(2002)65.

5. It should be noted that, unlike the New Pool, the member's own legal costs do not rank for reimbursement calculation purposes in the Residual Pool.

6. Applications for reimbursement from the Residuals Pool should be submitted to the Scheme Manager, Willis Limited in the first instance and not to the Health Department as in the past. Applications for reimbursement from the New Pool should also be submitted to the Scheme Manager.

DELEGATED LIMITS PROCESS

7. Where a Member intends to recover payments from the pool and the award exceeds the delegated limit, prior approval is required from the Scottish Ministers. Further details on the process to be followed is set out in the protocol at Annex 2.

MANAGEMENT FORUM

8. Following the integration of the CNORIS and NHS QIS standards (see paragraph 10 below) the CNORIS Standards Committee has ceased to exists. One of the roles of the Committee had been to advise, and comment on, the management aspects of the CNORIS scheme.

9. We are keen to ensure that NHSScotland continues to be represented and to this end I am seeking nominations to form a small management group to oversee the administrative running of the scheme. If anyone is interested in participating in this forum I should be grateful if nominations could be forwarded to Ian Roxburgh (ian.roxburgh@scotland.gsi.gov.uk) by **Friday 31st October 2003**.

INTEGRATION OF CNORIS AND NHS QIS STANDARDS

10. NHS HDL(2003)29 advised that following the formation of the special Health Board NHS Quality Improvement Scotland (NHS QIS) it was decided to integrate the Healthcare Risk Management Standards established by the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) and the NHS QIS Generic Clinical Governance Standards.

11. The first meeting of a short-life working group took place on 2 September to set in train the development of a set of integrated standards and an accompanying review process

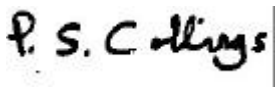
which will support continuous quality improvement and a suitable assurance process, including an assessment system Further information on this work will be issued once the way forward is clearer.

ACTION

12. Chief Executives are requested to:

- circulate copies of this HDL to all staff with CNORIS and/or risk management responsibility;
- note the revised threshold limits (Annex 1) for the Residual Pool (effective from the date of this letter) and the arrangements for dealing with claims against this Pool (paragraphs 4, 5 and 6 refer);
- note the request for nominations for a CNORIS Management Forum; and
- ensure compliance with the revised delegated limit and approval procedures as detailed in Annex 2.

Yours sincerely



PETER COLLINGS
Director of Performance Management and Finance

ANNEX 1

CENTRAL CONTRIBUTION TO DAMAGES AWARDS: 2003-04

HEALTH BODY	GENERAL REVENUE ALLOCATION	THRESHOLD LEVEL 1 0.12% of Col (1) WITH £475,000 CEILING	THRESHOLD LEVEL 2 0.23% of Col (1)	THRESHOLD LEVEL 3 0.39% of Col (1)
	COL (1)	*COL (2)*	*COL (3)*	*COL (4)*
NHS BOARDS	**£m**	**£**	**£**	**£**
Argyll & Clyde	438.1	475,000	1,007,630	1,708,590
Ayrshire & Arran	387.0	464,400	890,100	1,509,300
Borders	109.9	131,880	252,770	428,610
Dumfries & Galloway	159.5	191,400	366,850	622,050
Fife	332.9	399,480	765,670	1,298,310
Forth Valley	264.4	317,280	608,120	1,031,160
Grampian	464.3	475,000	1,067,890	1,810,770
Greater Glasgow	983.7	475,000	2,262,510	3,836,430
Highland	224.7	269,640	516,810	876,330
Lanarkshire	535.3	475,000	1,231,190	2,087,670

HEALTH BODY	GENERAL REVENUE ALLOCATION	THRESHOLD LEVEL 1 0.12% of Col (1) WITH £475,000 CEILING	THRESHOLD LEVEL 2 0.23% of Col (1)	THRESHOLD LEVEL 3 0.39% of Col (1)
	COL (1) **£m**	*COL (2)* **£**	*COL (3)* **£**	*COL (4)* **£**
Lothian	702.0	475,000	1,614,600	2,737,800
Orkney	21.2	25,440	48,760	82,680
Shetland	25.6	30,720	58,880	99,840
Tayside	408.0	475,000	938,400	1,591,200
Western Isles	40.7	48,840	93,610	158,730
OTHER BODIES				
State Hospital	22.7	27,240	52,210	88,530
CSA	161.7	194,040	371,910	630,630
Mental Welfare Commission	2.5	3,000	5,750	9,750
Scottish Ambulance Service	117.2	140,640	269,560	457,080

Threshold level 1 - Level at which individual settlement will receive contribution from the Residuals Pool
Threshold level 2 - Maximum amount that a member will have to contribute for a single settlement
Threshold level 3 - Maximum amount that a member will contribute for all claims settled in any one financial year

CENTRAL CONTRIBUTION TO DAMAGES AWARDS: 2003-04

HEALTH BODY	PATIENT INCOME	THRESHOLD LEVEL 1 0.12% OF Col (1) WITH £475,000 CEILING	THRESHOLD LEVEL 2 0.23% of Col (1)	THRESHOLD LEVEL 3 0.39% of Col (1)
	COL (1)	*COL (2)*	*COL (3)*	*COL (4)*
NHS TRUSTS	**£m**	**£**	**£**	**£**
Ayrshire & Arran Acute Hospitals	166.5	199,800	382,950	649,350
Ayrshire & Arran Primary Care	205.8	246,960	473,340	802,620
Fife Acute Hospitals	123.1	147,720	283,130	480,090
Fife Primary Care	196.6	235,920	452,180	766,740
Forth Valley Acute Hospitals	118.5	142,200	272,550	462,150
Forth Valley Primary Care	128.1	153,720	294,630	499,590
Grampian Primary Care	288.2	345,840	662,860	1,123,980
Grampian University Hospitals	255.0	306,000	586,500	994,500
Greater Glasgow Primary Care	486.8	475,000	1,119,640	1,898,520
Highland Acute	96.1	115,320	221,030	374,790
Highland Primary Care	139.1	166,920	319,930	542,490

HEALTH BOD Y	PATIENT INCOME	THRESHOLD LEVEL 1 0.12% OF Col (1) WITH £475,000 CEILING	THRESHOLD LEVEL 2 0.23% of Col (1)	THRESHOLD LEVEL 3 0.39% of Col (1)
	COL (1) **£m**	*COL (2)* **£**	*COL (3)* **£**	*COL (4)* **£**
Lanarkshire Acute Hospitals	230.0	276,000	529,000	897,000
Lanarkshire Primary Care	314.3	377,160	722,890	1,225,770
Lothian Primary Care	330.1	396,120	759,230	1,287,390
Lothian University Hospitals	422.1	475,000	970,830	1,646,190
North Glasgow University Hospitals	468.1	475,000	1,076,630	1,825,590
South Glasgow University Hospitals	216.2	259,440	497,260	843,180
Tayside Primary Care	266.1	319,320	612,030	1,037,790
Tayside University Hospitals	238.4	286,080	548,320	929,760
Yorkhill	88.5	106,200	203,550	345,150
West Lothian Healthcare	138.5	166,200	318,550	540,150

Threshold level 1 - Level at which individual settlement will receive contribution from the Residuals Pool
Threshold level 2 - Maximum amount that a member will have to contribute for a single settlement
Threshold level 3 - Maximum amount that a member will contribute for all claims settled in any one financial year

ANNEX 2

CLINICAL NEGLIGENCE AND OTHER RISKS INDEMNITY SCHEME (CNORIS): DELEGATED LIMITS PROCESS

Introduction

1. Where a Scheme member intends to recover payments from the CNORIS financial pool, and/or the award involved exceeds the member's delegated limit, the member is required, in terms of regulation 9(2)(b)(i) and 9(5)(a) of the NHS (Clinical Negligence and Other Risks Indemnity Scheme) (Scotland) Regulations 2000 to obtain the prior written approval of the Scottish Ministers. This notice details the current delegated limits for clinical and non-clinical cases and outlines the process by which authority to exceed the limits should be sought and obtained. The current delegated limits and approval process were introduced in August 2001.

Delegated Limits

2. The following Table details the current delegated limits. To qualify for a payment from the CNORIS financial pool, i.e. to obtain a contribution towards a compensation payment, the member must have SEHD's prior approval to making any settlement that is at or above the relevant figure quoted below.

Compensation Payment Category	NEW Clinical	NEW Non-clinical
Under legal obligation	£250,000	£100,000
Under no legal obligation	£250,000	£100,000
Financial Loss	n/a	£25,000

3. The delegated limits apply to both lump sum and **structured settlement cases**. For the latter, the settlement figure is the full value of the award and not just the agreed lump sum component. With effect from 1 August 2001 all structured settlements require SEHD approval before being finalised with the pursuer or their agents. In such cases the member, or their appointed agents, should submit a full business case to support the settlement calculation and evidence best value for money. The address for such submissions is Ross Scott, SEHD Performance Management and Finance Directorate, Basement Rear, St Andrew's House Edinburgh, EH1 3DG (☎ (0131) 244 2363). A short explanatory note on structured settlements is provided in the attached Appendix.

Process

4. As soon as the member concludes that it is appropriate to make an offer to settle a claim at a sum equal to or above the relevant delegated limit the member's solicitor should provide the Office of the Solicitor to the Scottish Executive (OSSE) with the following:

- Clinical Cases and Non-Clinical Cases

  - The Open or Closed Record as appropriate;
  - A note setting out the current position in the case;
  - Note on Line/Merits from Counsel or, if Counsel is not instructed, the solicitor acting in the case; and

- A note of when an OSSE decision is required.

5. In either case OSSE may request additional information from the agent. Such requests should be processed as quickly as possible.

6. Both CLO and Willis (the Scheme Managers) appointed loss adjusters (Cunninghams) are aware of these requirements and will contact OSSE direct in accordance with paragraph 4 above. If members elect to use other agents then they must bring this notice to their attention at the time of appointment.

7. The address for the above required submissions is Mrs Fiona Robertson, OSSE, Division B2, Room G-A21, Victoria Quay, Edinburgh, EH6 6QQ (☎ (0131) 244 0563). A copy of the covering letter (only) should be sent to Ross Scott at the address in paragraph 3.

o Urgent Settlement Cases

8. It is recognised that, occasionally, there will be cases where the need to secure a quick or almost immediate settlement arise. SEHD consider that the need to obtain prior approval if the delegated limit is exceeded should not be allowed to interfere with early settlement where there are strong grounds to suggest that a financially favourable outcome for the defender will only be achieved by immediate action on their part. However, such cases are expected to arise on only very rare occasions and they will require post-settlement scrutiny by OSSE. The documentation listed at paragraph 4 above, together with an note detailing why it was not possible to obtain prior approval should be submitted **within 4 weeks** of the said settlement.

o Financial Loss Cases

9. Prior approval to exceed the delegated limit for financial loss cases must be sought directly from the SEHD Finance Directorate (Ross Scott, address as above). The documentation requirements are the same as those listed for non-clinical cases at paragraph 4 above. OSSE will be consulted where it is considered appropriate. Urgent settlement cases are not expected for this category of compensation.

o Notification of Decisions

10. OSSE undertake to notify their decision to the referring agent within the required timescale specified by the member, so far as this is reasonably practicable. OSSE will advise SEHD Finance Directorate of approved cases and the Directorate will formally notify the member's Director of Finance accordingly. A copy of the notification should be submitted to Willis with the documentation that seeks a contribution from the financial risk pool. Urgent settlement cases should include confirmation that OSSE will be provided with the requisite data within the due timescale. Willis will advise SEHD Finance Directorate of all such cases so that they and OSSE can track the post-settlement scrutiny process.

11. Decisions on financial loss cases will be notified to the agent and appropriate Director of Finance within two weeks of receipt.

Summary of Key Requirements for Members and their Agents

12. Prior approval is required for:

- clinical compensation cases likely to settle at £250,000 or above.
- non-clinical cases (except financial loss) likely to settle at £100,000 or above.
- financial loss cases likely to settle at £25,000 or above.
- Business Cases on structured settlements that exceed above limits.

13. Post-approval requirements exist for urgent clinical and non-clinical settlement cases.

SEHD Performance Management and Finance Directorate
September 2003

APPENDIX

EXPLANATORY NOTE ON STRUCTURED SETTLEMENTS

1. In the normal course of events an award will comprise a lump sum to the pursuer. The pursuer (or their agents) will usually take an element of the sum for immediate needs, e.g. accommodation and specialist care equipment/services, and invest the balance in annuities to give an income stream for the rest of the patient's life. In addition to having to pay a large sum up front, the financial disadvantage (risk) for the NHS is that the patient dies much sooner that estimated (life expectancy influences the size of the award) and thus the financial 'benefit' passes to the patient's relatives or dependants. The risk to the patient is that they live longer than the annuity period and could then suffer financial hardship. It may be that the NHS has to resume provision of healthcare services from then on, which is effectively another financial risk for the NHS.

2. Under a structured settlement the pursuer receives a smaller lump sum but the annual payment from investments are structured and guaranteed to them (and them only) for the rest of their life. Those payments are met by the NHS either by way of a self-funding or a commercial annuity. Before deciding to sign on for a structured settlement, the NHS Trust or NHS Board should prepare a business case to determine which (self-funding or commercial annuity) offers the best value for money for the NHS. For the pursuer, structuring the settlement has another financial benefit in that income payments are not liable to income tax. The advantage to the NHS is that overall the award value (lump sum) can be discounted against the financial benefits gained by the pursuer. Also, if the settlement is self funded, the lump sum is not paid in full up front, the risk of overcompensation due to early death is removed.

3. Neither the NHS nor the pursuer is under any obligation to proceed with a structured settlement following negotiations, i.e. it is entirely voluntary on both sides. The Central Legal Office always recommends their clients pursue one for claims that exceed £250,000.

SEHD Performance Management and Finance Directorate
September 2003