



Department
of Health &
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Shona Dunn

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By email pubaccom@parliament.uk

Meg Hillier MP

Chair, Public Accounts Committee

House of Commons

London SW1A 0AA

Dear Chair

DEPARTMENTAL CONTINGENT LIABILITY NOTIFICATION

I am writing today to notify the committee of the contingent liability HMG proposes to take on in relation to an NHS England (NHSE) non-statutory independent investigation into patient safety incidents and deaths at the former Liverpool Community Health Trust. This has been announced today to Parliament via a Written Ministerial Statement and Departmental Minute.

This investigation follows an Independent Review chaired by Dr Bill Kirkup CBE into widespread failings by Liverpool Community Health NHS Trust. The Review Report, published on 8 February 2018, found that there were significant failings in the Trust from November 2010 to December 2014.

It is important that these failings are investigated, and lessons learnt to improve services. In response to the serious patient safety incidents described in the report the then Secretary of State for Health and Social Care commissioned Dr Kirkup to conduct an Independent Investigation into patient safety incidents at the Trust. The investigation's Terms of Reference cover patient safety incidents that occurred in the same period as the initial Independent Review addressed, namely November 2010 to December 2014. The investigation was originally intended to submit its report at the end of 2021, but a number of factors have come together to delay its work, including challenges related to information governance and electronic document management. We now expect the investigation to have reported by Spring 2024 at the latest.

NHS England is able to obtain indemnity cover from NHS Resolution through the Liabilities to Third Parties Scheme (LTPS). The Scheme applies to any liability which a member of the Scheme owes to any third party in respect of loss, damage or injury arising out of an act or omission in the course of the carrying out of any relevant function of that member which is a qualifying liability.

The NHS Resolution indemnity will cover any sums (including any legal or other associated costs) that members of the investigation team are liable to pay in relation to legal action brought against them by a third party in respect of liabilities arising from any act done, or omission made, honestly and in good faith, when carrying out activities for the purposes of the investigation. The indemnity will apply to any work carried out in accordance with the

investigation's Terms of Reference from the commencement of the investigation to its completion in 2024. The indemnity will cover the contingent liability of any legal action up to and following the publication of the review report.

The liability of the Scheme for any proceedings brought against the Member by virtue of Section 13 of the Data Protection Act 1998 or any subsequent updating or replacement legislation (the "Data Protection Legislation") for all compensation payable to any claimant or any number of claimants in respect of or arising out of any one event or series of events consequent on or attributable to one source or original cause shall not exceed £50,000. Further, the maximum sum payable for such cases in any one Membership Year shall not exceed £500,000.

However, in view of the substantial fines that it is possible for the Information Commissioner's Office (ICO) to impose in the unlikely event of a data breach, NHSE considers it prudent for the £50,000 cover available under the NHS Resolution LTPS scheme to be 'topped up' with a specific NHSE indemnity to £500,000. It is this further indemnity which requires notification to Parliament before NHSE confirms the arrangement with the investigation and enters into the contingent liability.

The Treasury has approved the proposal in principle. If, during the period of fourteen parliamentary sitting days beginning on the date on which this Minute was laid before Parliament, a member signifies an objection by giving notice of a Parliamentary Question or by otherwise raising the matter in Parliament, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.

I am sending a copy of this letter to the Health and Social Care Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Shona Dunn', with a long horizontal flourish extending to the right.

Shona Dunn
Second Permanent Secretary

Department of Health and Social Care