NHS
East London
NHS Foundation Trust

REPORT TO THE QUALITY ASSURANCE COMMITTEE
2 November 2020

Title	Legal Claims annual report – 1st April 2019 to 31st March 2020
Author	Jane Quinn, Associate Director of Legal Affairs
Accountable Executive Director	Paul Gilluley, Chief Medical Officer

Purpose of the Report:

To provide an overview on claims activity under the Clinical Negligence (CNST) and Liability to Third Party (LTPS) schemes and financial implications. The report covers the period between 1st April 2019 and 31st March 2020. This report does not include Employment Tribunals.

Summary of Key Issues:

The number of claims has remained stable in comparison to 2018/19. The top category of clinical negligence claims is deaths by suicide. The top category in liability to third party claims is violence and aggression. This is consistent with previous years.

Strategic priorities this paper supports (Please check box including brief statement)

Improving service user satisfaction	☒	Appropriate management of clinical negligence claims leads to confidence that the Trust is open and transparent and willing to learn from incidents.
Improving staff satisfaction	☒	Appropriate management of claims received from staff leads to confidence that the Trust is open and transparent and willing to learn from incidents.
Maintaining financial viability	☒	Appropriate and timely management of claims minimises the financial impact on the Trust.

Committees/Meetings where this item has been considered:

Date	Committee/Meeting
2nd November 2020	This claims update has been produced for both Quality Assurance Committee and the Quality Committee and will be presented to the latter on 11th November.

Implications:

Equality Analysis	This report has no direct impact on equalities.
Risk and Assurance	Appropriate handling to claims ensures that any financial redress is appropriately managed.
Service User/Carer/Staff	Appropriate handling of claims ensures that anybody who is disadvantaged by the action so of the Trust is appropriately compensated.
Financial	Robust management of claims ensures that financial implications are effectively managed.
Quality	No direct impact on Quality Improvement Programme

1.0 BACKGROUND

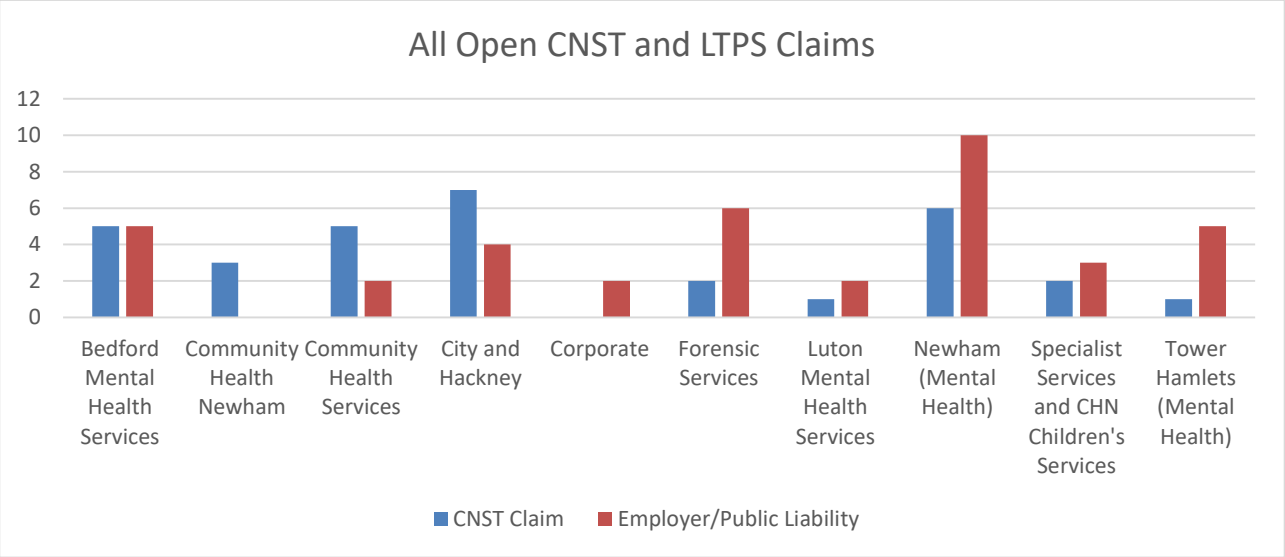
1.1 This report will focus on the claims activity under the Clinical Negligence (CNST) and Liability to Third Party (LTPS) schemes between 1st April 2019 and 31st March 2020.

2.0 CLAIMS OVERVIEW

2.1 As noted above, this report focuses on claims activity between 1st April 2019 and 31st March 2020. However, to provide context this section will provide an overview on the

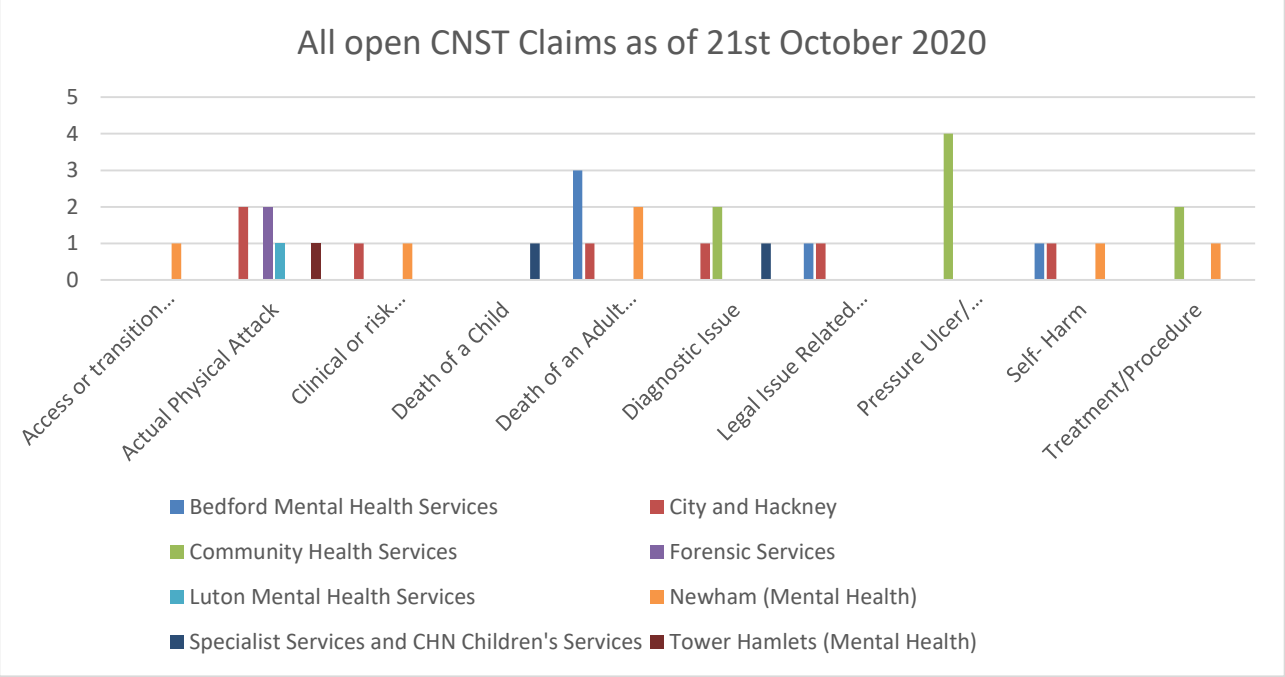
number of claims currently open. There are currently 71 open claims across both schemes which divide into 32 CNST and 39 LTPS claims. This compares with 27 CNST claims and 41 LTPS claims in the previous 12 months.

2.2 The graph below shows the number of currently open claims, both clinical negligence and liability to third parties, split by Directorate.

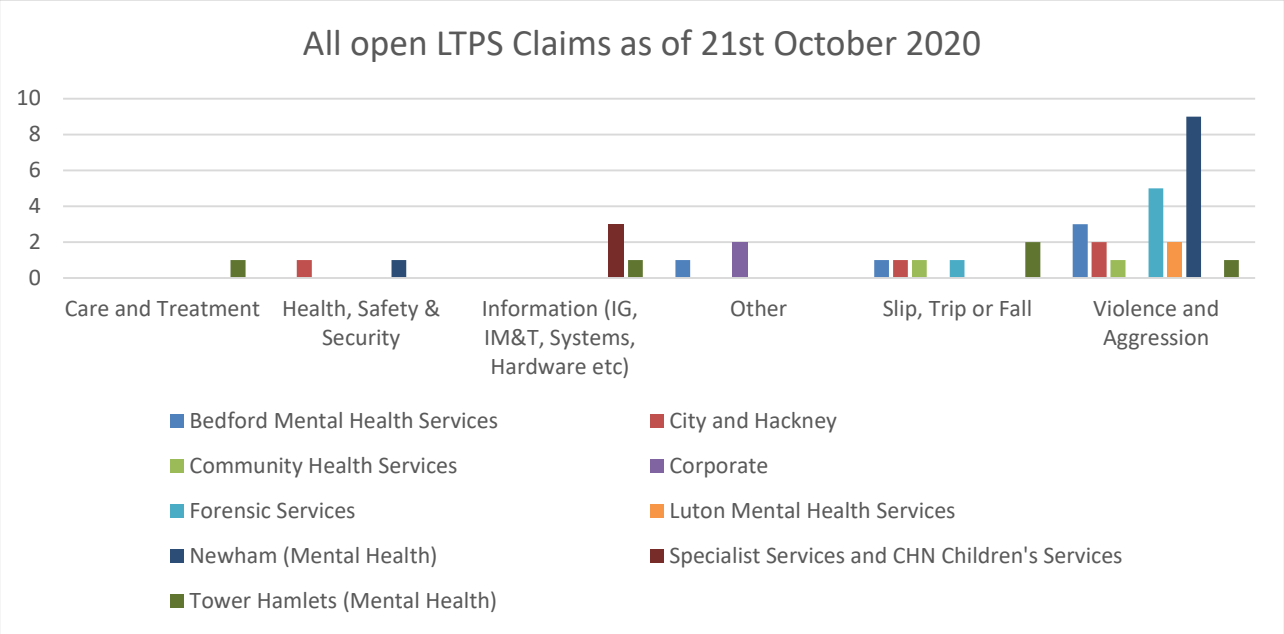


2.3 All claims are categorised on receipt based on the categorisation used in the recording of incidents

2.4 The graph below shows the number of all open CNST Claims as of 21st October 2020.



2.5 The graph below shows the number of all open LTPS Claims as of 21st October 2020.

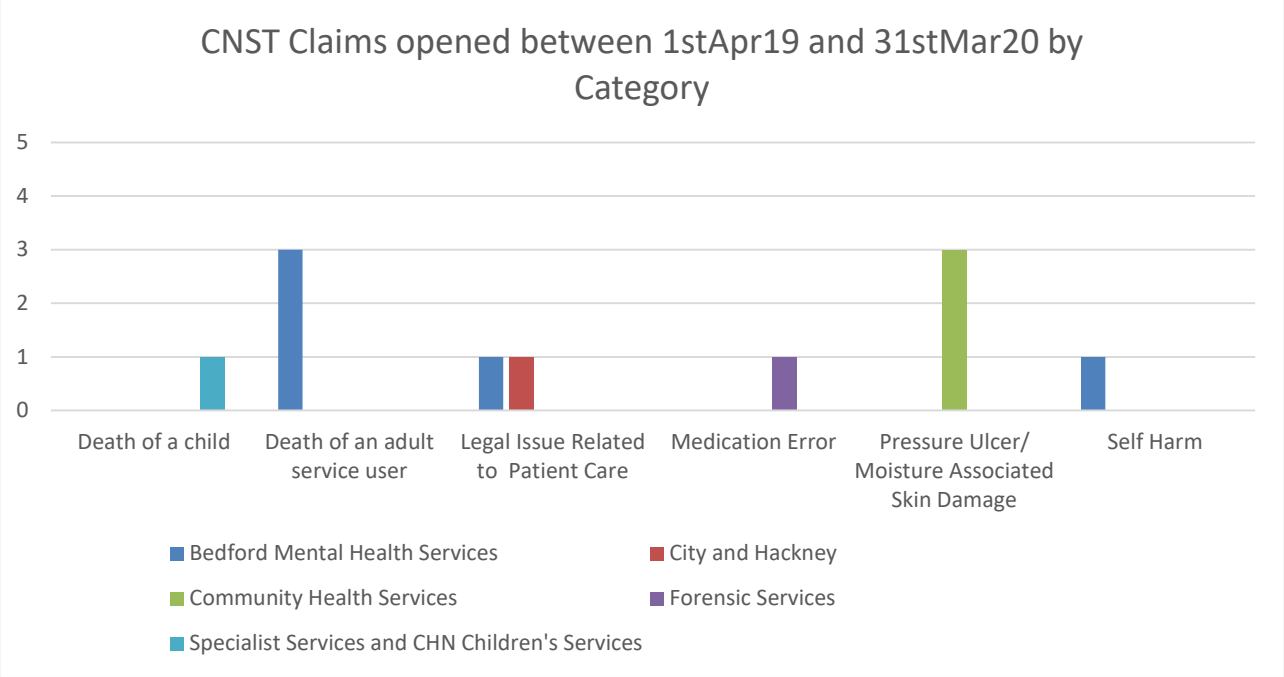


3.0 CLINICAL NEGLIGENCE (CNST)

3.1 CNST Claims received between 1st April 2019 and 31st March 2020

3.2 Between 1st April 2019 and 31st March 2020, 11 new CNST claims were received.

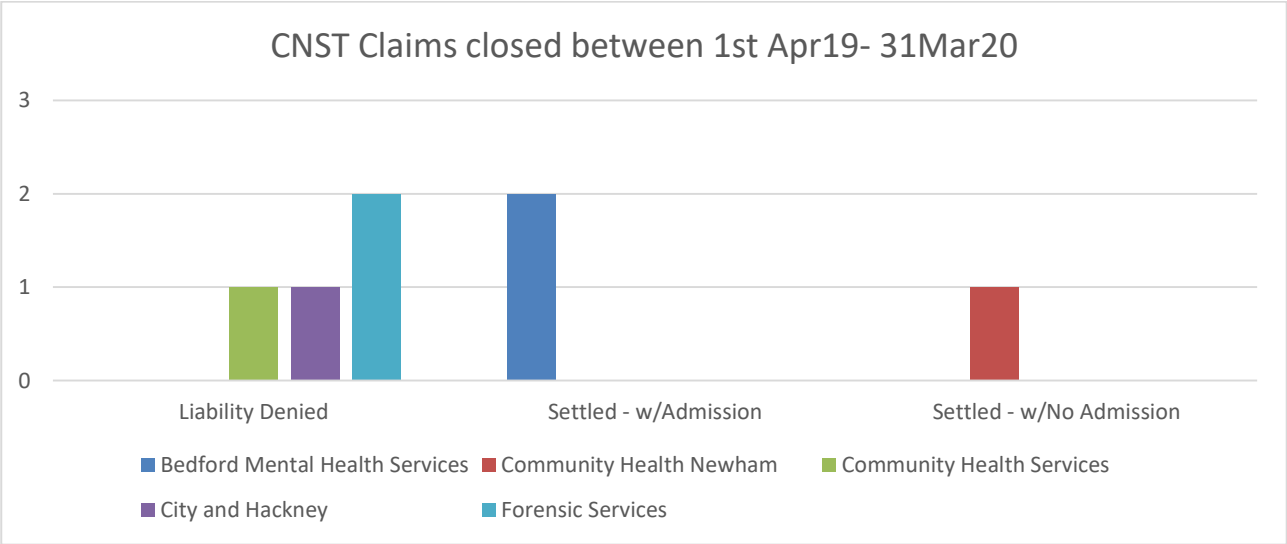
3.3 The graph below shows the number of claims received during this period broken down by category and Directorate.



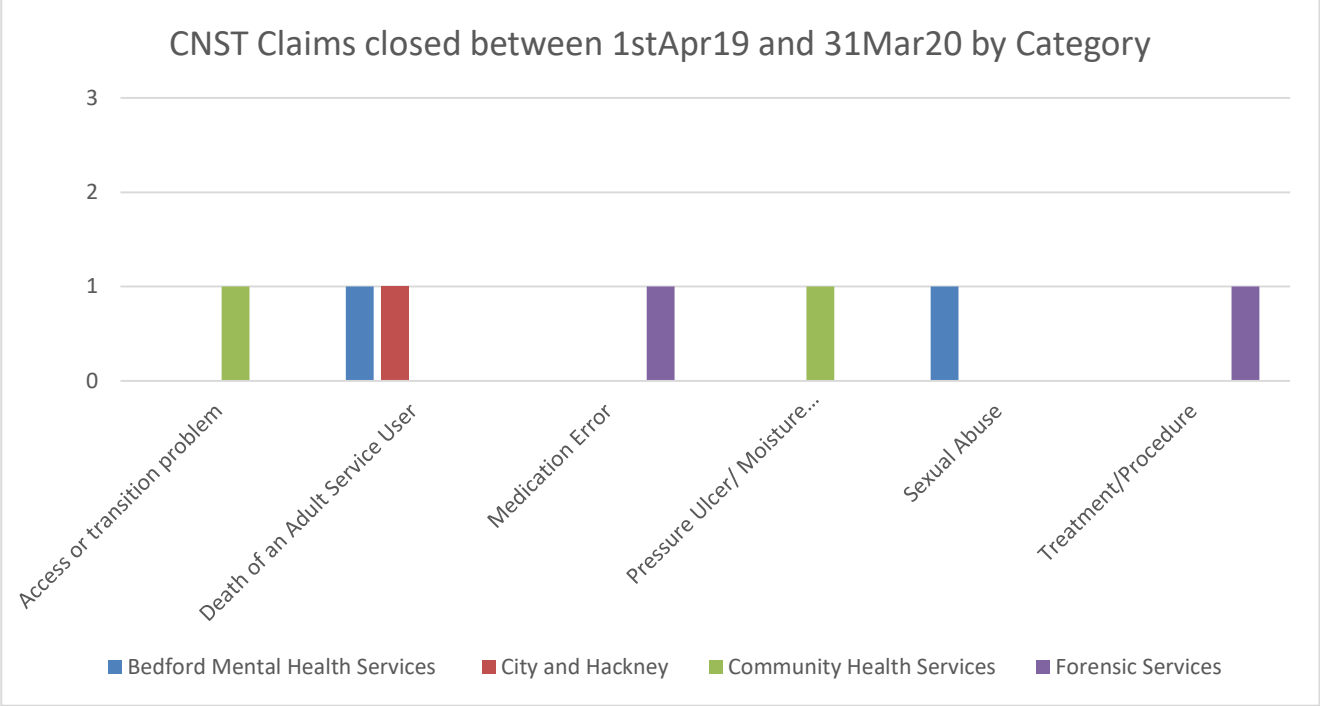
3.4 Outcome of CNST Claims closed between 1st April 2019 and 31st March 2020

3.5 Between 1st April 2019 and 31st March 2020, 7 claims were closed under the CNST scheme.

3.6 The graph below shows number of claims closed during this period broken down by outcome and Directorate.



3.7 The graph below shows the number of claims closed during this period broken down by category and Directorate.



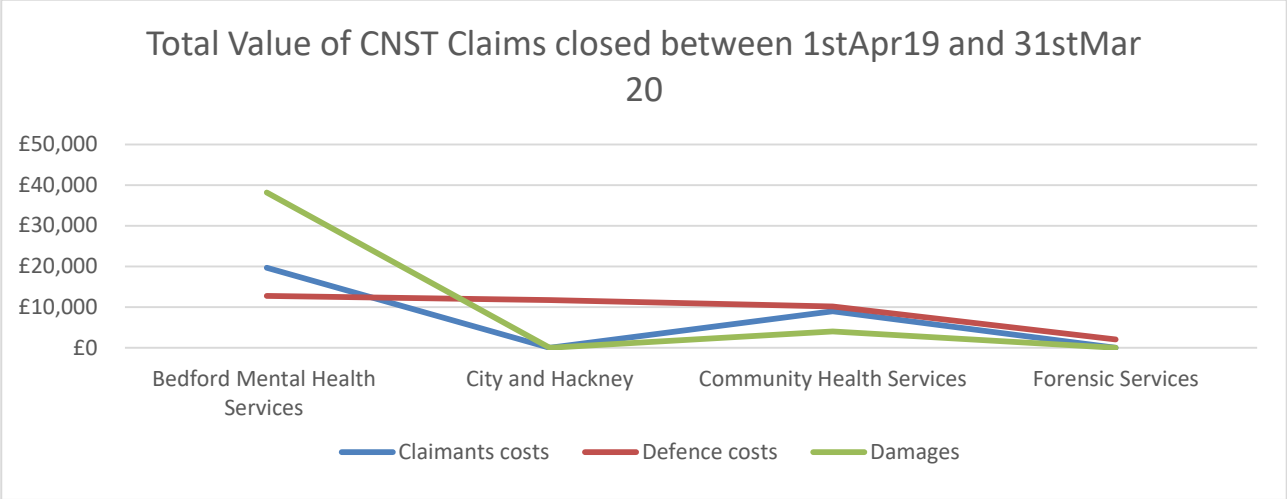
3.8 Of the three claims that were settled during this period, two related to death and the other to sexual abuse of a service user by a member of staff.

3.9 Total value of CNST claims closed between 1st April 2019 and 31st March 2020

3.10 All CNST claims have a nil excess.

3.11 The number and value of claims each year has an impact on the Trust's contribution to NHSR's CNST scheme the following year.

3.12 The graph below shows the total value of claims closed between 1st April 2019 and 31st March 2020.

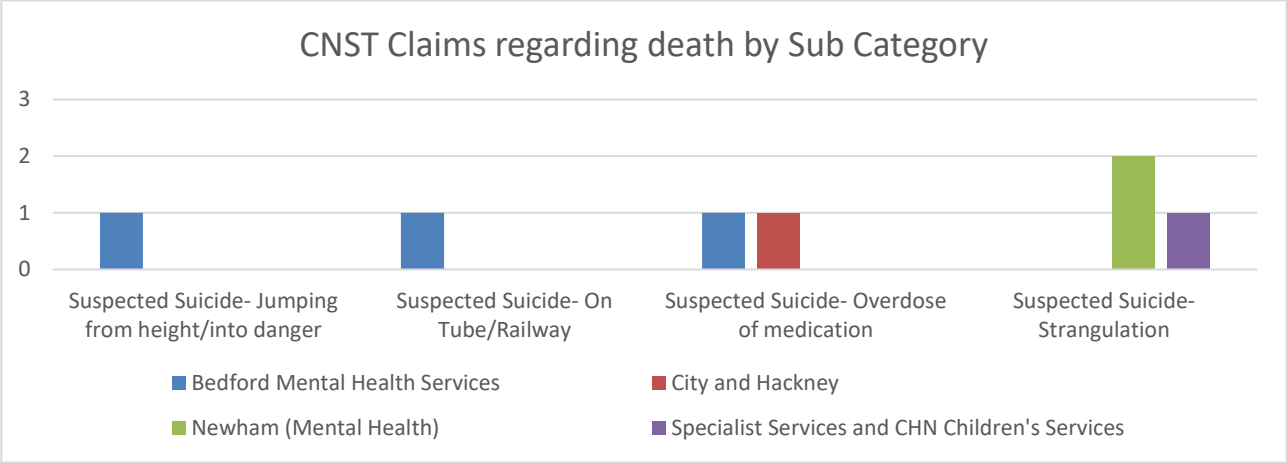


3.13 Qualitative information regarding CNST claims

3.14 For the purposes of this section the top categories have been taken from all open claims. This includes new claims received in 19/20. The top three sub categories of claims are: deaths, actual physical attacks and pressure ulcers. More details are set out below.

3.15 Deaths

3.16 The graph below shows the number of claims relating to the death of a service user by sub category.



3.17 Of the 7 cases, 3 relate to the Bedford Directorate (2 relating to the crisis team and 1 relating to older persons CMHT). The cases span care in 2016 and 2017. We have admitted liability in 2 of these claims with the third remains remaining under investigation.

3.18 In the first crisis team case, areas of concern included: poor communication and a lack of planning between different teams about the patient's transfer/discharge back to the CMHT; the RAG status was downgraded despite the patient still being a high risk to herself and expressing that she felt reassured by daily CRHTT visits; the patient was not informed of the plan to discharge and she did not have an opportunity to express her feelings about this decision; and there were no attempts to involve the family in the care planning or the decision to discharge the patient back to the CMHT. In this case, the Coroner concluded

that the management and communication of the patient's discharge contributed to her death.

3.19 In the second crisis team case, there was a failure on the part of the psychiatric liaison service to review a patient at Bedford Hospital and to assess his risk until the time at which he was medically fit and could be admitted to the mental health ward as an informal patient.

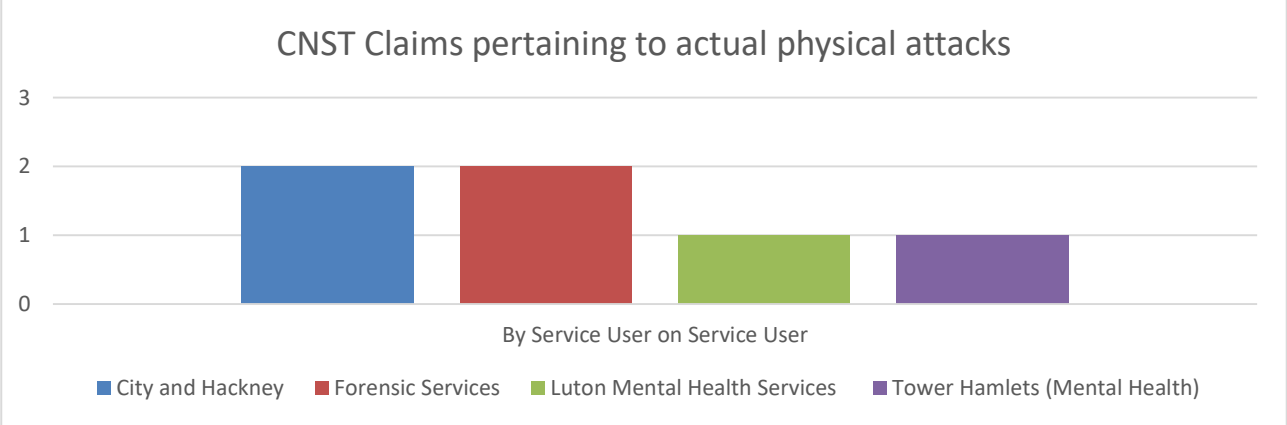
3.20 With regards to the CMHT case, concerns included: clinical documentation of patient contacts were incomplete or absent from December 2015 to September 2016; the patient's mental state was not assessed; the case was not discussed at MDT or raised with Senior Managers; risk assessment was not updated in RiO; the patient should have placed on CPA; and there was a failure to follow-up and monitor the patient who was lost to follow-up on two occasions.

3.21 Serious incident investigations were undertaken in all seven cases; recommendations and action plans were produced so the learning could be identified and shared with the relevant teams.

3.22 A further case in this category relates to treatment provided on Newham Ruby Triage Ward in 2014. We have admitted liability in this case and the claimant has accepted our offer of £200k. The omissions in this case included: the patient did not return to the ward from leave and he was not circulated as missing and no welfare check was completed; the patient was discharged in his absence having not been assessed by the early intervention team for support post discharge (having initially been recommended for intervention by the HTT which was refused); and he did not have his prescribed medication. Again, a serious incident investigation was completed in this case and recommendations and an action plan was produced so learning could be identified and disseminated.

3.23 Actual Physical Attacks

3.24 The graph below shows the number of claims pertaining to actual physical attacks by sub category



3.25 All these claims relate to assaults in inpatient settings.

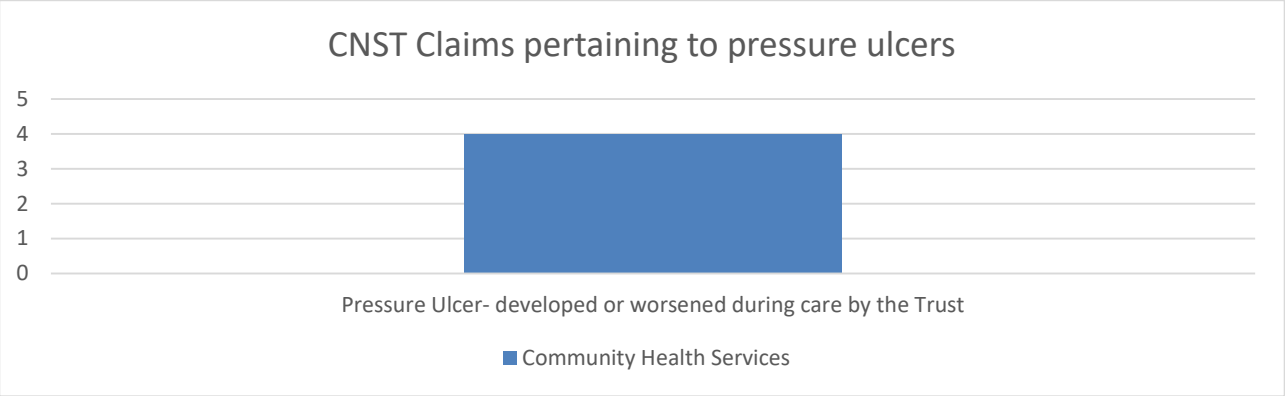
3.26 Of the 6 physical attacks, we have: denied liability in 1 claim; and admitted liability in three. Two claims remain under investigation. In the claims where we have admitted liability, the following omissions were identified:

- Failure to conduct adequate risk assessments;
- Insufficient observation level;
- Failure to make significant attempts to investigate and manage service user's intimidation of the patient subject to the assault;

- Failure of staff to take and action when service user attacked the patient subject to the assault before the incident in question.
- Failure to put proper care plan in place (for the patient subject to the assault).

3.27 Pressure Ulcers

3.28 The graph below shows the number of claims pertaining to pressure ulcers by sub category.



3.29 We have admitted liability in 3 out of the 4 open pressure ulcer cases. Two of the cases related to community services in Newham, and the care in question spanned from 2014-2018. Areas of concern identified included:

- Insufficient assessment and care planning and wound assessment forms not being completed
- SSKIN Bundle pressure ulcer prevention and wound care plan was not completed
- Failure to consistently follow the care plans
- Failure to escalate to a senior nurse
- No evidence that embolic stockings were removed in order to view the skin beneath

3.30 The impact of the deficiencies in care on the patients in question included: a grade 1 sacral pressure ulcer deteriorating to a grade 3 pressure ulcer; and a deterioration of a grade 4 ulcer that necessitated hospital admission and IV antibiotic treatment. In the case where the patient's embolic stockings were not removed, the patient's grade 4 pressure ulcer took 6 months to heal.

3.31 Learning from these cases was shared with the relevant teams at the time of the incident.

3.32 Qualitative information regarding closed CNST claims brought against the Trust

3.33 Of the 7 claims closed in this reporting period, three of these accord with our top three categories of death; physical attack and pressure ulcer. We admitted liability in two of these.

3.34 In relation to the first case where we admitted liability (category, death), the background is that the patient was reviewed daily by the Bedford and Mid Beds crisis team while admitted on a general ward. The discharge plan was for him to be referred to community crisis services once discharged from the general hospital. However, the patient went AWOL from the general hospital and took his life by jumping from a height. Issues of concern that were identified included that: Mr A's family were not informed that he had 'jumped' from a car park on the 30/10/18 (leading to his admission to hospital) until the 06/11/18; the initial assessment and sourcing of collateral information was insufficient to formulate a clear understanding of Mr A and the underlying cause of his anxiety and low mood; there was a delay in Mr A being allocated a care coordinator; Mr A was assessed by both the Luton and Hackney CRHT's but subsequently followed up by Bedford CRHT; and there was a lack of communication between the psychiatric liaison service (PLS) and the CMHT. The PLS

conducted a joint thematic review with Bedford hospital on 07/01/19. This culminated in the PLS commencing bespoke training programmes for Bedford hospital and the PLS management team identifying and implementing a number of learnings to improve their practices including around documentation process following assessments and reviews of patients and handover of patients between the two services. We have settled the claim paying £8,000 in damages (with the total cost of the claim including defence and claimant costs being £23,000).

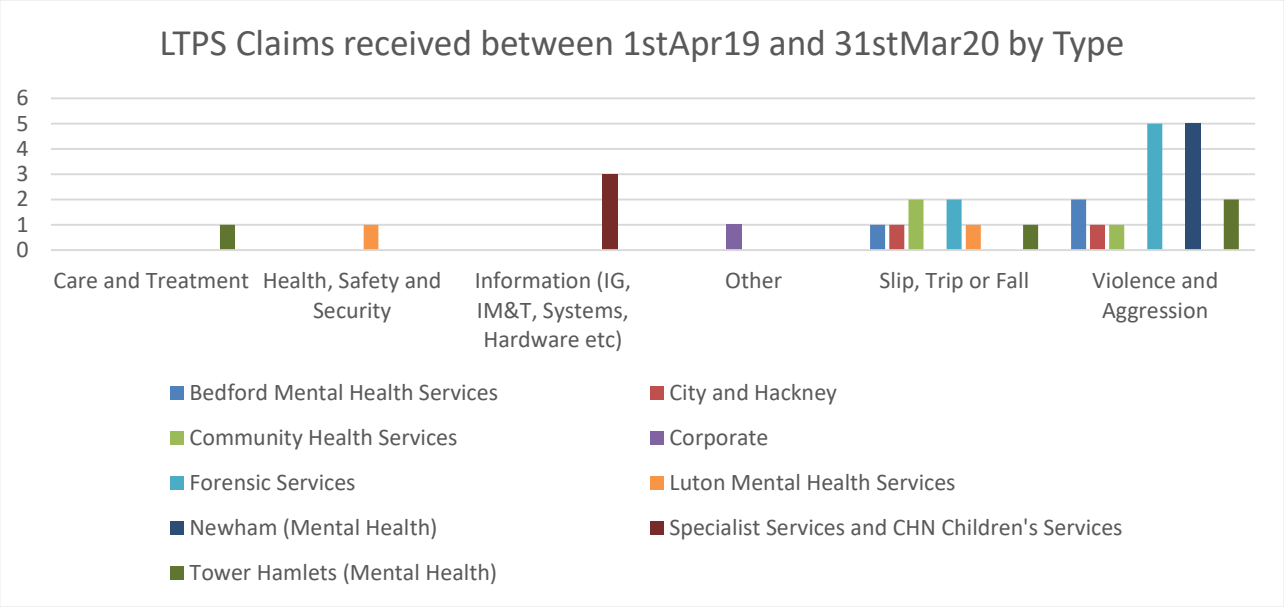
3.35 With regards to the second case where we admitted liability this was a claim about pressure sore management in Newham Community Health in 2011; the case has been settled at £4000. This case pertains to care provided in 2010 and 2011. District Nursing Team was transferred to ELFT in February 2011. There is limited information about the care ELFT provided and 90% of the damages are attributable to the previous provider.

4.0 EMPLOYER LIABILITY AND LIABILITY TO THIRD PARTIES (LTPS)

4.1 LTPS claims received between 1st April 2019 and 31st March 2020

4.2 Between 1st April 2019 and 31st March 2020, 30 claims were received under the LTPS scheme.

4.3 The graph below shows number of claims received during this period broken down by type and Directorate

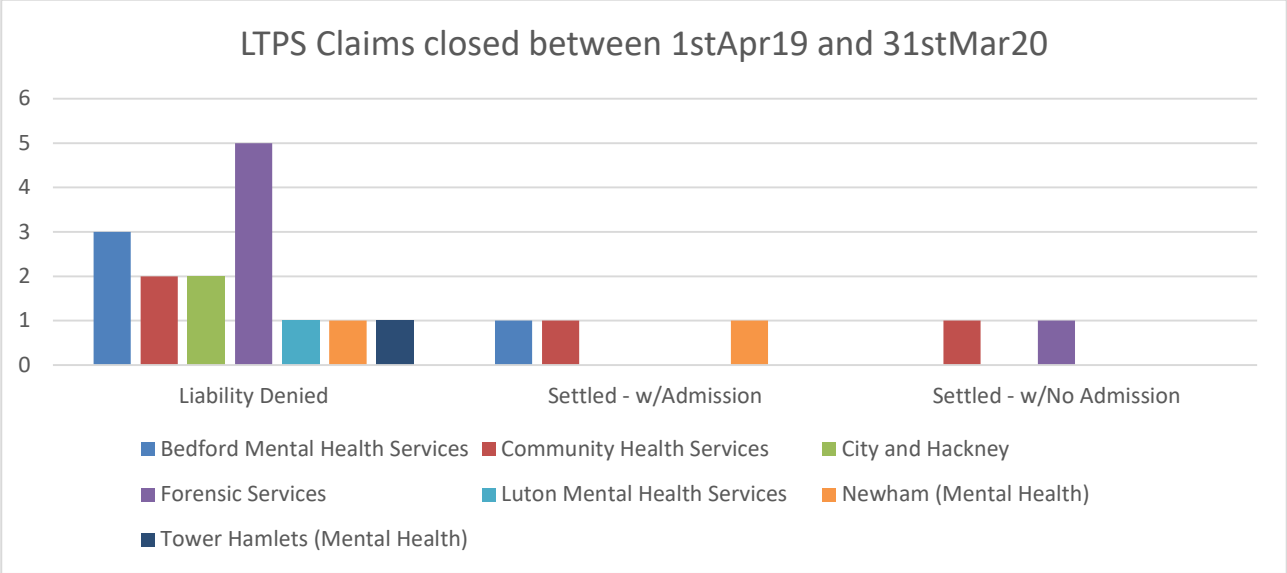


4.4 The highest number of claims received during this period were for slips, trips and falls and violence and aggression.

4.5 Outcome of LTPS claims closed between 1st April 2019 and 31st March 2020.

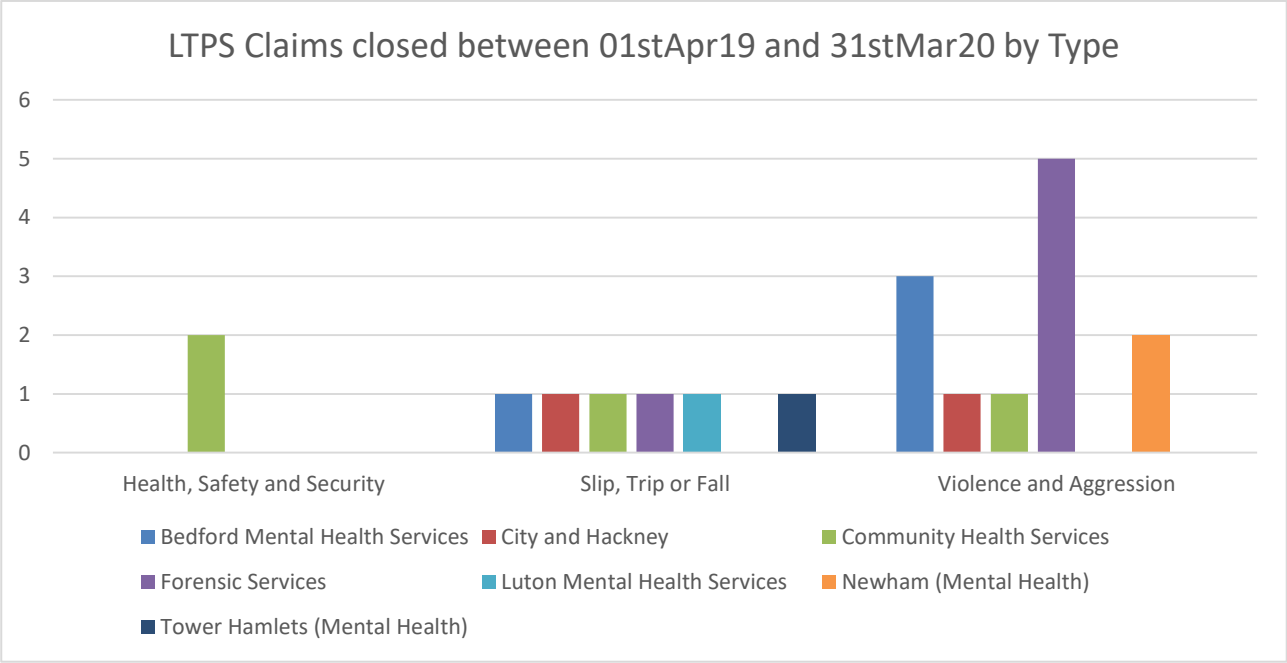
4.6 Between 1st April 2019 and 31st March 2020, 20 claims were closed under the LTPS scheme.

4.7 The graph below shows the number of claims closed during this period split by outcome and Directorate.



4.8 Following the investigation of these cases liability was denied in 75% as investigation showed no breach of duty.

4.9 The graph below shows the number of claims closed during this period broken down by type
and Directorate

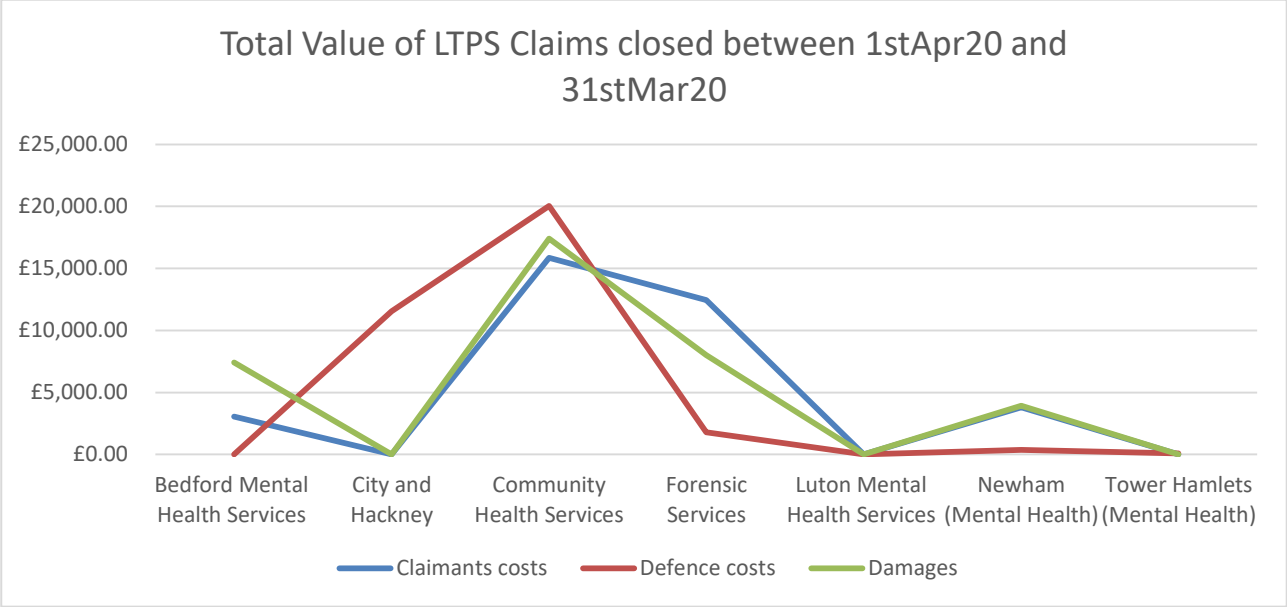


4.10 Total value of LTPS claims closed between 1st April 2019 and 31st March 2020

4.11 The Trust pays an Excess only on LTPS claims. This is £10,000 for staff claims and £3,000 for other LTPS claims.

4.12 The number and value of claims each year has an impact on the Trust's contribution to NHSR's LTPS scheme the following year.

4.13 The graph below shows the total value of the claims closed between 1st April 2019 and 31st March 2020.

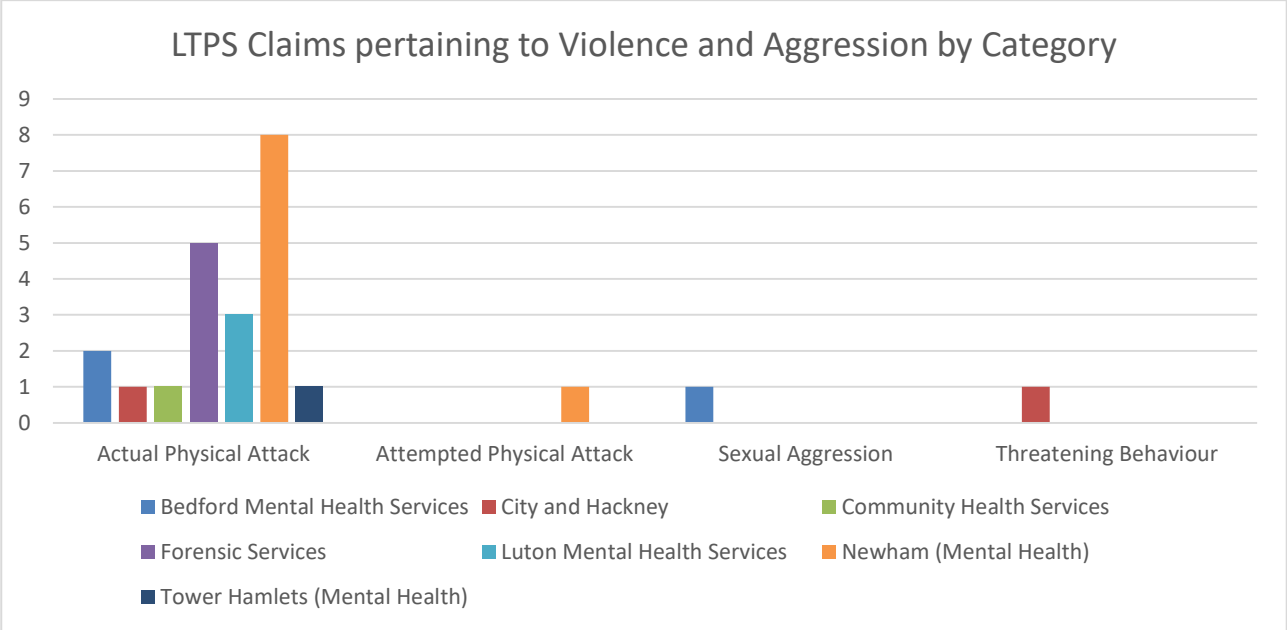


4.14 Qualitative information regarding LTPS claims brought against the Trust.

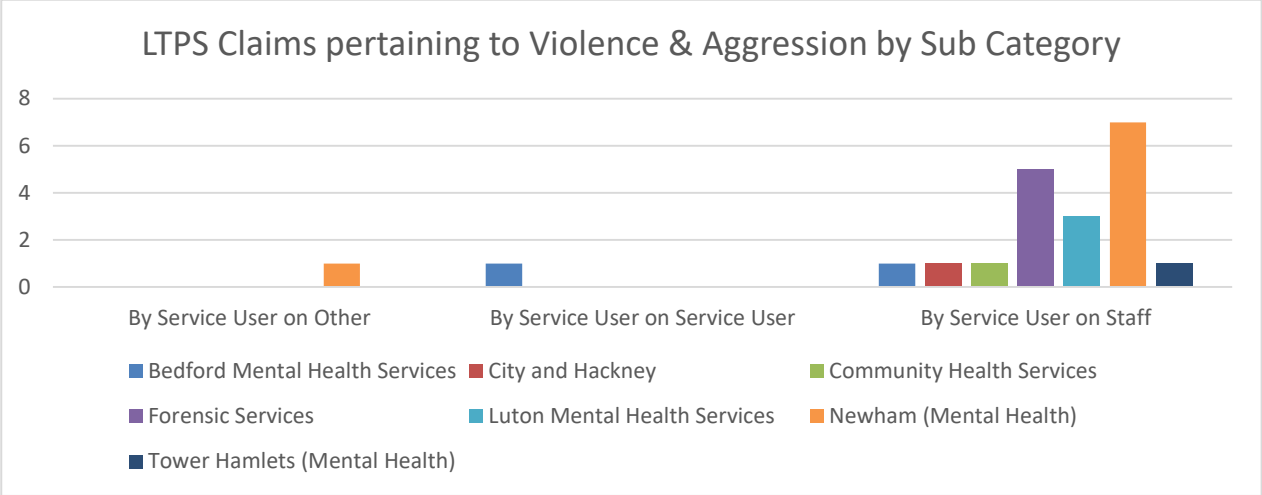
4.15 The top two categories of all open LTPS CNST claims as of 21 October 2020 (set out in the graph at paragraph 2.5) are: violence and aggression; slip and trip and fall claims.

4.16 Violence and Aggression

4.17 The graph below shows the number of open claims pertaining to violence and aggression by category.



4.18 The graph below shows the number of claims regarding violence and aggression by sub category.



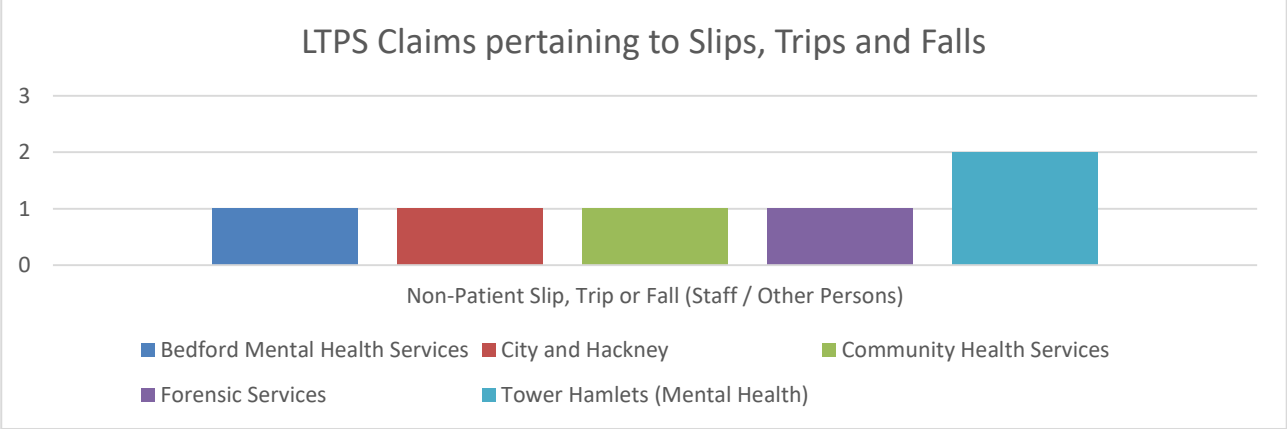
4.19 Following the investigation of these claims**,** liability was denied in 8 as the investigations showed no breach of duty. All of these claims related to assaults on inpatient wards; four are in Newham, two in Forensics and City and Hackney and Bedford have one each. Six of the claims pertained to service users attacking staff, one pertained to a service user attacking his relative and the other was in regards to a service user attacking another service user. More specifically: the assault/immediate risk was not predictable or preventable; appropriate risk assessments were in place; risks were managed appropriately; the patient was on the correct ward; the patient was appropriately secluded and reviewed; there were appropriate staffing levels at the time of the incident; the patient was on the appropriate level of observation.

4.20 We admitted liability in 3 claims which all fall under Newham. Two of the claims related to assaults in an inpatient setting and the other relates to a service user assaulting a member of the public in the community.

4.21 We have received two claims in relation to assaults taking place in reception areas. In the first case we admitted liability as the service user had known risk factors in terms of his risk to others (and there was not an adequate assessment of this risk or plan for managing this). In the second case, the staff member claimed that she was attacked by a service user in the reception area and that no interventions were taken by other staff to prevent or assist during the assault. We admitted liability on the grounds that no one had an alarm in the reception area. An environmental risk assessment had not been completed in either case.

4.22 Slips, Trips and Falls

4.23 The graph below shows the number of claims regarding slip, trip and falls by Sub Category



4.24 Five of the above claims involve staff and one pertains to a member of public who fell in the reception area at the East Ham Care Centre.

4.25 In terms of the claims from staff, precipitating events include slipping on wet floors, an uneven step (resulting in a fractured wrist); and residue from a fire extinguisher; and also a claim following a member of staff sitting on a faulty chair which collapsed (injuring her head and back).

4.26 Following investigations in these claim, liability was denied in 2 of these claims as investigation found that there was no breach of duty.

4.27 Qualitative information regarding closed LTPS claims brought against the Trust

4.28 Of the 20 LTPS claims closed in this reporting period, 18 of these accord with our top two categories of slips and trips and falls and assaults.

4.29 In terms of the 12 violence and aggression claims, we denied liability in 8 of these claims for similar reasons as set out at paragraph 4.18.

4.30 Of the 6 slips and trip claims, 4 were from staff and 2 were from patients. The claims related to incidents such as slipping on a wet floor and tripping over a drain cover. We successfully denied liability in all these cases on grounds including: we were not responsible for the maintenance issue precipitating the claim; the incident precipitating the claim was not predicable or preventable; and no record of the alleged event or injury had been reported at the time of the incident. In one case investigations showed that allegations made by a staff member that he was told to jump off a chair in a training session were false. Having denied liability in this matter, the staff member continued to pursue this matter, which unusually went to trial. The judge dismissed this case in favour of the Trust.

5.0 Action being requested

The Quality Assurance Committee is asked to RECEIVE and DISCUSS the findings of the report.