

Claims Handling Policy & Procedure

[NHS Resolution Clinical Negligence,
Liabilities to Third Parties & Property Expenses Schemes]

Department / Service:	Legal Services	
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Accountable Director:	Kimara Sharpe	Company Secretary
Approved by:	Trust Management Committee	
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	<p>This is the most current document and should be used until a revised version is in place</p>	
Target Organisation(s)	Worcestershire Acute Hospitals NHS Trust	
Target Departments	All	
Target staff categories	All	

Policy Overview:

This document provides a framework for effective claims management including the procedure for handling clinical negligence, employee and public liability personal injury claims and property expenses claims.

Claims monitoring is a fundamental tool of risk management, the aim of which is to collect information about claims that will help to facilitate wider organisational learning. Therefore this policy links with other corporate documents including incident and complaint investigation policies and procedures.

Latest Amendments to this policy:

July 2014	Amendments to reflect changes to the reporting structure of assurance committees and the process for responding to NHSLA	
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October 2016	Document extended for 12 months as per TMC paper approved on 22 nd July 2015	Trust Management Committee
February 2017	Disability Question added to equality impact	
May 2017	Amendments to reflect change from NHS Litigation Authority to NHS Resolution	Head of Legal Services
9 th October 2019	Document extended for one year whilst service review takes place and document is reviewed.	Jane Clavey/Kimara Sharpe

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Quick Reference Guide

Clinical Negligence, Employer and Public Liability claims will be managed in accordance with NHS Resolution guidelines by the Legal Services Department.

Claims covered by NHS Resolution Risk Pooling Scheme will be managed by the Property Manager.

Advice and guidance on any matters relating to claims covered by NHS Resolution Schemes for Trusts should be sought from the Legal Services Department.

1. Introduction

One of the Trust's strategic objectives is to deliver safe, high quality, compassionate patient care. This will be achieved through providing a culture of continuous improvement to optimise quality.

The investigation and response to clinical negligence, employer and public liability personal injury claims is an important measure of the Trust's commitment to achieving its objectives. Changes to clinical practice or service delivery as a result of claims promote learning from the experience of patients, relatives and visitors to ensure the continued improvements in healthcare and services provided by the Trust.

Claims investigations are one aspect of risk management, the aim of which is to collect information that will help to facilitate wider organisational learning

2. Scope of this document

The purpose of this document is to detail the organisation, managers and staff responsibility to the management and investigation of clinical negligence, employer and public liability personal injury claims and property expenses claims in accordance with statutory requirements and NHS guidance.

The document details the procedure to be followed by staff in undertaking claims investigations, identifying actions to avoid recurrence of the matter(s) that gave rise to the claim and monitoring the implementation and progress of change to influence the Trust's risk management process.

The aim of the policy is to set out in detail the actions required by the Trust and individuals in responding to clinical negligence claims relating to a patient's healthcare or employer and public personal injury claims. The policy applies to all employees and covers all services that are the responsibility of the Trust.

The document provides detailed guidance on how claims are to be dealt with by the Trust including the involvement of NHS Resolution, solicitors, claimants and the Coroner. Claims will be investigated and reported in accordance with NHS Resolution claims reporting guidelines for the Clinical Negligence Scheme (CNST & ELS), the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES).

3. General issues surrounding claims handling

3.1 NHS Resolution schemes relevant to the Trust

The Trust is a member of the NHS Resolution Clinical Negligence Scheme for Trusts (CNST); and the Risk Pooling Scheme for Trusts (RPST) which covers non-clinical

claims and is responsible for the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES). All clinical negligence, employer and public liability personal injury claims and property expenses claims will be handled in accordance with the relevant NHS Resolution guidelines.

Contributions to the Schemes are calculated on an annual basis using actuarial techniques. LTPS and PES claims are subject to excesses with the Trust responsible for handling and funding below-excess claims. The excess for LTPS claims is £10,000 for Employers' Liability (EL) Claims, £3,000 for Public Liability (PL) Claims and £20,000 for PES claims (buildings and contents). CNST claims are not subject to an excess.

3.2 Definition of a claim

A claim is an allegation of negligence and/or demand for compensation that is made following an adverse incident resulting in personal injury or any clinical incident that carries a significant litigation risk for the Trust or damage or loss to property or contents. A claim is any demand, however made, for monetary compensation in respect of a qualifying liability. It will usually, but not always be a Letter of Claim, a Claim Form or a Summons.

3.3 Who may make a claim?

A claim can be made by the person directly affected by the matter that is the subject of the claim or their next-of-kin if the person is deceased, is a minor or lacks the mental capacity to pursue the action directly. The person/next-of-kin is known as the claimant and they can either represent themselves as a litigant-in-person or instruct solicitors to act on their behalf.

3.4 Triggers for invoking the claims procedure

This could include:

- Complaints leading to claims.
- Notification of a serious adverse event/serious incident.
- Adverse incident reports generated under the Trust's risk management procedures that indicate a significant litigation risk.
- Requests for access to medical records either by the patient or their representative.
- Concerns raised regarding care and treatment following a Coroner's inquest.
- Theft of contents or physical damage to buildings e.g. fire.

3.5 Involvement of External agencies

At any stage of an investigation the Trust may identify that an external agency needs to be involved in the process, or that a separate investigation is undertaken into any wider issues or concerns identified. These circumstances could include the involvement of the Commissioners of Services, Police, Coroner, Child Protection Agency, Social Services, Professional Bodies e.g. GMC, NMC or the Health and Safety Executive. This list is not exhaustive and consideration of involving specific external organisations should be made on the basis of the individual case. The decision to involve an external agency should be made by the Chief Executive on the evidence of the facts available at that time (Memorandum of Understanding, July 2004).

3.6 Timescales and procedures for the exchange of information with other parties

Timescales for the actions to be taken and exchange of relevant information with claimants will be undertaken in accordance with the Civil Procedure Rules in relation to the Pre-action Protocols for Personal Injury Claims and Professional Negligence. It is important for everyone involved in a claim (claimants, Trust staff, and solicitors for both parties) that claims are resolved as quickly as possible.

The aim of this policy is to reflect the requirements of the justice reforms in the following ways:

- Encourage more pre-action contact with claimants.
- Better and earlier exchange of information.
- Improved investigation.
- Earlier settlement without the need for expensive litigation.
- Court proceedings to run smoothly where there is a need for litigation.

The main timescales that must be adhered to in the pre-action stage are that:

- Information requested under the Data Protection Act 1998 must be disclosed within 40 days.
- Letters of Claim must be acknowledged within 14 days for CNST claims and 21 days for LTPS claims.
- Letters of Response to a Letter of Claim must be served within 4 months.

3.7 Confidentiality

The principles of the Data Protection Act 1998 regarding the disclosure of information will be applied at all times. The claimant's written consent for disclosure of personal data including medical records, personal files and occupational health records is required prior to any information being provided to their legal representatives.

Disclosure of information to the Trust's legal representatives, NHS Resolution and staff involved in the investigation will also comply with the Data Protection Act. Sensitive information will be sent via recorded delivery or secure electronic systems to a named individual with a receipt required where original documents have been provided.

Where reports are provided to Committees the claim reference number only will be used.

3.8 Support mechanisms for claimants

It is recognised that pursuing a claim can be a difficult and anxious time for claimants. The majority of claimants instruct solicitors to act on their behalf in respect of the claim and therefore they will be supported by them throughout the investigation process. Where the claimant is acting as a litigant-in-person they should be kept informed of the progress of the investigation. The principles of Duty of Candour should be applied to all investigations, with particular consideration where the claimant is a litigant-in-person.

If the claim relates to allegations of clinical negligence the claimant should be given the contact details for AvMA (action against medical accidents) who provide confidential advice to people contemplating a claim against the NHS. Helpline number: 0845 123 23 52 or www.avma.org.uk

Where the claim relates to allegations of clinical negligence and the claimant is continuing to receive care and treatment at the Trust, the clinician/health professional

responsible for the claimant's care should ensure that the claimant's action does not affect their on-going clinical management. It is recognised that the claimant may not wish to continue to be treated by a clinician/health professional that was involved in the matters that are the subject of the investigation and in these circumstances the clinician/health professional and/or Divisional / Directorate Manager should make alternative arrangements. Any arrangements should not cause any delays in the claimant's care.

Where the claim relates to an employee liability claim the employee can self-refer to the Occupational Health Department or their Manager can refer them if necessary. The employee can also seek advice and support from their Trade Union or Professional Organisation.

3.9 Support mechanisms for staff

It is recognised that being the subject of a claim or being involved in an investigation into allegations of negligence can be a difficult and anxious time for staff. Managers should ensure that staff are supported during the course of the investigation, including referral to the Occupational Health Department if necessary, in order to avoid undue stress and a defensive response to the matters under investigation. The manager should refer to the Supporting Staff Involved in Traumatic, Stressful Incidents, Complaints and Claims for further guidance. The Head of Legal Services and the Assistant Legal Services Manager will keep staff informed of the progress of the investigation.

Where the claim relates to allegations of clinical negligence it is recognised that the clinician/health professional may not wish to continue to treat or be involved in the care of the claimant. In these circumstances the clinician/health professional and/or Manager should make alternative arrangements. Any arrangements should not cause any delays in the claimant's care.

3.10 Statements from staff

Staff providing statements should ensure their statement is presented in an electronic format and includes:

- Their personal details i.e. name, position and area of work and experience.
- As much detail as is relevant in response to the allegations of negligence, with dates, names, places and witnesses.
- Clinical negligence claims should make reference to the documentation in the medical records and any relevant policies and procedures.
- The signature of the person making the statement and the date signed.

The Legal Services Team will provide guidance on statement writing if required. The template for use in writing statements and guidance notes is available on the Trust intranet or from the Legal Services Department (ext. 43867).

Unless witness statements are prepared for the primary purpose of litigation they are disclosable to the claimant in any subsequent legal proceedings. Further advice on this is available from the Legal Services Department.

3.11 Procedure for accessing Legal advice

This procedure applies to legal advice that is not related to a specific claim, for example matters relating to a patient's mental capacity to consent to treatment; emergency court orders; police requests for access to records and general legal

advice relating to the application of Trust policies and procedures relating to patient care. This list is not exhaustive.

3.11.1 In hours (Monday to Friday 9.00am to 4:30pm, excluding bank holidays)

Staff should discuss their requirements with the appropriate Divisional / Directorate Manager or Consultant. If it is determined that legal advice is required they should in the first instance contact the Head of Legal Services who will determine the level of response required. If necessary the Head of Legal Services will contact the Trust’s solicitors for advice and report back to the Manager or Consultant. If appropriate the Head of Legal Services may authorise the Manager or Consultant to contact the Trust’s solicitors directly. If the Head of Legal Services is not available then the Assistant Legal Services Manager should be contacted for advice.

3.11.2 Out of hours (Evenings, weekends and bank holidays)

The Head of Legal Services should be contacted via Switchboard. If necessary the Head of Legal Services will contact the Trust’s solicitors via the emergency service for advice. The Head of Legal Services will keep a log of all emergency calls made to the Trust’s solicitors. If the Head of Legal Services is not available then the Assistant Legal Services Manager should be contacted via Switchboard.

3.12 PFI – Worcestershire Royal Hospital

Worcestershire Royal Hospital is a PFI facility which is the responsibility of Engie. The building and services are commercially insured by Engie. Any public and employer liability claims in respect of personal injury investigations and settlements for injuries sustained as a result of the services provided by Engie or their sub-contractors will be the responsibility of the appropriate Engie organisation in respect of their areas of responsibility as determined by the agreed contracts. Liability will remain with them at all times. Advice will be sought by the Head of Legal Services from NHS Resolution should any clarification or dispute arise.

All matters of liability relating to the Newtown site at Worcestershire Royal Hospital, excluding facilities and services provided by or on behalf of Worcestershire Health and Care NHS Trust, remain under the auspices of Worcestershire Acute Hospitals NHS Trust.

3.13 Independent sector treatment centre – Kidderminster Hospital

Any investigations and settlements in respect of clinical negligence, employer and public liability personal injury claims for injuries sustained as a result of the services provided by independent organisations or their sub-contractors will be the responsibility of the appropriate organisation in respect of their areas of responsibility as determined by the agreed contracts. Liability will remain with them at all times. Advice will be sought by the Head of Legal Services from NHS Resolution should any clarification or dispute arise.

3.14 Ex-gratia payments

Ex-gratia settlements offered by the Trust are by definition not payments based upon legal liability and are therefore not recoverable under CNST or RPST. Ex-gratia payments should be made in accordance with Trust’s Financial Standing Instructions.

3.15 Risk Management issues

High standards of documentation and record keeping are essential in health records to ensure that the details of the care and treatment provided are available in the event of a claim being made.

Staff must be aware that when they are asked to provide reports, statements or comments in respect of an incident or complaint investigation that these are potentially disclosable in the event of a claim being received.

3.16 Media interest

At any stage a claim (or potential claim) may generate media interest. The Head of Legal Services will liaise with the Head of Communications to agree the information that can be given to the media. NHS Resolution must approve any draft press statement relating to claims already notified to them.

3.17 Apologies and Explanations

3.17.1 Apologies

It is both natural and desirable for those involved in treatment which produces an adverse result, for whatever reason, to sympathise with the patient or the patient's relatives and to express sorrow or regret at the outcome. Such expressions of regret would not normally constitute an admission of liability, either in part or in full. The Compensation Act 2006 s.2 states that "An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty".

3.17.2 Explanations

Patients and their relatives increasingly ask for detailed explanations of what led to an adverse outcome. Care needs to be taken in the dissemination of explanations to avoid future litigation risks however the provision of information constitutes good practice provided that facts as opposed to opinions form the basis of the explanation. Duty of Candour should be applied.

4. Clinical negligence scheme for Trusts (CNST)

The Clinical Negligence Scheme for Trusts (CNST) covers all clinical claims where the allegedly negligent incident took place on or after 1 April 1995.

Clinical Negligence claims will be managed in accordance with the CNST Reporting Guidelines. Claims are reported to NHS Resolution via their extranet claim reporting system and must include the required documentation including Letter of Claim / Proceedings.

5. Liabilities to third party scheme (LTPS)

The Liabilities to Third Party Scheme (LTPS) was effective from 1 April 1999 for claims relating to employer and public liability incidents from this date onwards. Employers' liability covers all incidents relating to employees from straightforward slips and trips to serious manual handling, bullying and stress claims. The scheme also covers public and products liability claims from personal injury claims sustained by visitors to Trust premises to claims arising from breaches in the Human Rights Act (1998), Data Protection Act (1998) and the Defective Premises Act (1972).

Claims received directly by the Trust are reported to NHS Resolution via their extranet claim reporting system. NHS Resolution will notify the Trust of any claims received via the Claims Portal.

The Head of Legal Services will provide the Health and Safety Advisor with information on any risk management recommendations identified as a result of the investigation. The Health and Safety Advisor will include this information in their report to the relevant assurance committee.

6. Property expenses scheme (PES)

The Property Expenses Scheme (PES) was effective from 1 April 1999 for claims relating to incidents from this date onwards. PES provides cover for damage to buildings e.g. fire and theft or damage to contents,

Claims for damage, loss or destruction of Trust property will be investigated and reported to NHS Resolution in accordance with the Property Expenses Scheme. PES claims should be reported to the Property Manager, bearing in mind the scheme excess limit of £20,000 for both building and contents. Any incident that could result in a claim should be reported to the Property Manager as soon as possible after a loss has occurred.

7. Duties within the Trust

The Trust will have an appointed individual or individuals to manage, handle and co-ordinate clinical negligence, employer and public liability personal injury claims and property claims. The individual(s) will have sufficient expertise and knowledge to be able to handle the day-to-day management of claims. In some circumstances it may be appropriate to involve the Trust's solicitors for advice on potential or actual claims against the organisation.

7.1 Trust Board

The Trust Board, along with the Chief Executive, Chief Medical Officer, Chief Nursing Officer, Divisional Medical, Nursing and Operations Directors will be responsible for ensuring that lessons are learnt and the standard of care afforded to patients, the public and employees is improved following the investigation of claims.

The Trust Board will receive reports from the Audit and Assurance Committee.

7.2 Committees with overarching responsibility for claims management

7.2.1 Serious Incident and Learning Review Group

The Serious Incident and Learning Review Group is chaired by the Chief Medical Officer. The Group will receive reports as requested from the Head of Legal Services on new and closed clinical negligence claims.

The Serious Incident and Learning Review Group will receive reports from the Head of Legal Services on actions taken by Divisions in response to NHS Resolution Safety and Learning Initiative for Claims relating to individual claims. The Divisions will report the outcome of claims through their governance and professional group meetings.

7.2.2 The Audit and Assurance Committee

The Audit and Assurance Committee receives an annual claims report. The report will provide brief details of claims received during the year, the outcome of closed claims and details of risk management issues and lessons learnt with the associated changes in practice. The Audit and Assurance Committee will inform the Trust Board that an annual report has been received and highlight areas to the Trust Board.

7.3 Chief Executive

The Chief Executive is required to ensure that the Trust has a clear policy for handling clinical negligence and personal injury claims approved by the Board which conforms to the standards detailed in the directive EL(96)11 – Clinical Negligence and Personal Injury Litigation: Claims Handling and NHS Resolution standards.

7.4 Designated Board Member

The Company Secretary has designated responsibility for the overall management of the Legal Services Team and the handling of clinical negligence, employer and public liability personal injury claims.

The Director of Asset Management and ICT has designated responsibility for property matters and the handling of any PES claims and will report to the Trust Board details of any PES claims and actions taken to avoid recurrence.

7.5 Divisional Medical, Nursing and Operational Directors and Managers

Divisional Medical, Nursing and Operational Directors and Managers are responsible for ensuring that any risk management recommendations and lessons learnt that result in a change in practice are implemented and the effectiveness monitored via the performance management and assurance framework.

7.6 Head of Legal Services

The Head of Legal Services is accountable for ensuring that clinical negligence; employer and public liability personal injury claims have been fully investigated in accordance with the policy and national guidelines.

The Head of Legal Services is the authorised officer for signing Court documents including List of Documents for Disclosure, Counter Schedules and Defences.

The Head of Legal Services will monitor and assess the effectiveness of the claims handling process through regular review of claim files to ensure that they are closed at the earliest opportunity where there is no indication that the claim is proceeding, liaising with solicitors and NHS Resolution as necessary. The database (DATIX) will contain up-to-date information on the stage of each claim. The Head of Legal Services will ensure that staffs involved in a claim are informed of the progress with a claim including the outcome.

7.7 Investigating Manager

The Head of Legal Services and Assistant Legal Services Manager are the investigating managers for clinical negligence and employer and public liability personal injury claims. The Property Manager is the investigating manager for property and expenses claims.

Investigation of a Claim – the investigating manager is the main point of contact for any queries relating to the claim from staff, solicitors or NHS Resolution. They are

responsible for co-ordinating the investigation and ensuring that deadlines for the provision of information are met in accordance with the Pre-action Protocol.

Investigation process – the investigating manager will identify and contact staff relevant to the claim to obtain their statements. If the member of staff is no longer an employee of the Trust then they will liaise with the HR Department to obtain contact details and where necessary make the initial contact to obtain their assistance with the case. The investigating manager will liaise with NHS Resolution and solicitors to ensure that the claim is investigated and progressed in accordance with the Pre-action Protocol and the Court timetable.

Gathering information and statements – on notification of a claim the investigating manager will locate and obtain copies of all the medical records and relevant documents. When a claim is notified the investigating manager will request statements from staff in response to the allegations of negligence to enable a preliminary analysis to be undertaken. Further statements will be obtained as necessary as the claim progresses.

Record Keeping – the investigating manager will keep the claim files and database up-to-date.

Drafting of Letters – the investigating manager will investigate a Letter of Claim and in liaison with NHS Resolution and the solicitors draft the Letter of Response as necessary. The investigating manager will draft letters of apology on behalf of the Chief Executive.

Production of Action Plans – the investigating manager will send the safety and learning initiative reports to the staff involved in the claim, the Manager and Divisional Director for action and development of action plans where necessary. These will be reported by the Manager to the Divisional Governance meetings and to the Serious Incident and Learning Review Group by the Head of Legal Services.

Where a safety and learning initiative report has been considered by the Division and it has been decided that no action is necessary or that no action will be taken the Manager will inform the Head of Legal Services in writing of this decision and the reasons for it. The Head of Legal Services will report this outcome to the Serious Incident and Learning Review Group.

7.8 Role of clinicians/specialist advisers

Employees have a duty to assist fully in any investigation in relation to claims against the Trust. The Head of Legal Services will work closely with employees to ensure that they have access to the information necessary for them to respond to the allegations. Employees will respond to any request from the Legal Services Department for information or assistance in an investigation in a timely manner. Employees will attend case conferences and meetings with legal representatives as necessary.

Occasionally it is necessary to obtain an overview of a clinical negligence claim where the member of staff involved is no longer an employee of the Trust or where there is a conflict of clinical opinion in response to the allegations of negligence. The Head of Legal Services will ask the Divisional Director for the speciality to provide an advisory report. If this is not appropriate the Chief Medical Officer will be asked to provide an

advisory report or provide details of an external specialist adviser who the Head of Legal Services will approach to assist with the investigation.

The Health, Safety & Security Advisor will provide an advisory report in respect of employer and public liability claims.

The Property Manager will obtain specialist advice if necessary to assist with investigations of PES claims.

7.9 Property manager

The Property Manager is accountable for ensuring that PES claims have been fully investigated in accordance with the policy and national guidelines.

8. Liaison with third parties

8.1 NHS Resolution

The role of NHS Resolution is to negotiate outcomes including, where appropriate, instruction of solicitors and full financial responsibility for CNST claims. The Trust remains the legal defendant and therefore no admissions of liability will be made by NHS Resolution without the Trust's agreement.

The Head of Legal Services and the Assistant Legal Services Manager will liaise closely with NHS Resolution Claims Handlers throughout the investigation of a claim.

8.2 Claimants

The majority of claimants instruct solicitors to act on their behalf in respect of their claim against the Trust and therefore there is little direct contact with the claimant in these cases. At the conclusion of a claim or where settlement has been agreed it is on occasions a recommendation or a requisite of the settlement that a formal letter of apology is sent by the Chief Executive. The Head of Legal Services will ensure that this occurs.

In cases where the claimant is a Litigant-in-Person and therefore pursuing the claim by themselves without legal support the Head of Legal Services or the Assistant Legal Services Manager will keep the claimant informed of the progress of the investigation and liaise with them for any information that is required to enable the claim to be investigated

8.3 Solicitors

The Head of Legal Services and the Assistant Legal Services Manager will liaise closely with the solicitor that has conduct of the claim throughout the investigation.

If the Trust wishes to involve solicitors before reporting a claim, a firm that is on NHS Resolution's Panel List should be considered. The cost of this work is not reimbursable under the CNST or RPST Schemes

8.4 Coroner

The Head of Legal Services and the Assistant Legal Services Manager will liaise closely with the Coroner and Coroner's Officers in preparing for any inquest. The Head of Legal Services will consider whether formal legal representation is required at an inquest if there have been or may be allegations of negligence in respect of treatment or services provided by the Trust.

9. Links with risk and complaints management

Some claims will already have been reported and investigated under the Trust's incident investigation process and/or the complaints policy and procedure. Information from these investigations will be included in the preliminary investigations into the claim.

If a complaint investigation is on-going at the time the claim is received the complaints procedure continues as per the Complaints Policy.

If the incident investigation is on-going this will continue and form part of the preliminary investigations for the claim.

Where there is an incident and/or complaint relating to a clinical negligence, employer and public liability personal injury claim that is the subject of a claim these will be linked on the database (DATIX) for reporting purposes.

10. Investigation and root cause analysis

The causes of claims can be complex, sometimes ill-defined and be the result of the interaction of a number of factors. A fair and thorough investigation of the claim to determine root causes and actions to avoid recurrence are a fundamental part of risk management and good business practice. The outcome of a good investigation will increase opportunities for learning and lead to improvements in systems and practices.

The Investigation Policy and Guidance Notes apply to all circumstances where investigations are necessary and employees are required to assist with an investigation should the need arise. Investigating managers should refer to the policy on Supporting Staff Involved in Traumatic, Stressful Incidents, Complaints and Claims and involve individual employee's managers as necessary.

The Head of Legal Services will inform the Chief Executive, Chief Medical Officer and Chief Nursing Officer of any claims where it is identified that external agencies may also be involved in investigating matters that are the subject of a claim, where these agencies have not already been involved prior to the notification of a claim. These would include enforcement agencies e.g. Health & Safety Executive and Police.

11. Claims data collection and analysis

The Trust recognises that claims can lead to a change in services, policies and procedures and therefore it is important that these are reported internally and published externally. Reporting on claims handling can help to motivate staff, promote achievement, drive improvements in service delivery and boost public confidence.

This will be achieved by:

- A central computerised database (DATIX) of all clinical negligence, employer and public liability personal injury claims is maintained by the Legal Services Department.
- A record of any PES claims is retained by the Property Manager.

11.1 Reports to the Board and relevant committees

11.1.1 Clinical Negligence claims

The Head of Legal Services will provide reports to the Divisional and Trust assurance committees as determined by the terms of reference and work programme.

The quantitative information will include:

- The number of claims received, including whether previously investigated as a clinical incident or complaint
- The number of claims closed by outcome (settled/withdrawn)
- The number of claims received by Directorate
- The number of claims received per site

The qualitative information will include:

- Details of the allegations of negligence for new and closed claims
- Changes to practice/service as a result of claims

11.1.2 Property expenses claims

The number of claims received by the Trust that are covered by PES is very small since the removal of commercial insurance. The Trust covers its own risk and treats losses as per loss and compensation claim.

Due to the small number of claims received the Director of Asset Management will provide an exception report to the relevant committee as required.

11.1.13 Annual Reports

The Trust Board shall receive an annual report which includes details of the clinical negligence, employee and public liability personal injury claims.

12. Learning from experience

Claims are one way in which the Trust can learn from the experiences of patients, employees and visitors. Changes to service and practice may be identified as a result of the claims investigation.

The solicitors instructed by NHS Resolution will obtain a report from the expert as part of the Safety and Learning Initiative for Claims. The Head of Legal Services will forward the report to the clinicians involved in the claim, the Manager and Divisional Directors. A copy will also be sent to the Head of Clinical Governance and Risk Services for information. The Directorate will consider the risk management issues identified in the report and provide a response to the Head of Legal Services highlighting changes to practice as an outcome of the claim. The Head of Legal Services will provide a report to the Safer Patient Group.

The Head of Legal Services will include any changes to practice or service as an outcome of claims in the annual report.

N.B. Due to the length of time that can have passed between the incident that is the subject of the claim and the claim being notified, often several years, it is sometimes not possible or relevant to identify any risk management recommendations.

13. Definitions

Claim:	A matter pursued by an individual, or by solicitors acting on behalf of an individual, for financial compensation relating to a personal injury
Clinical Negligence Claim:	A claim relating to medical care
Employer Liability Claim:	A claim relating to an injury sustained in the course of a member of staffs employment
Public Liability Claim:	A claim relating to an injury sustained on Trust premises

14. Implementation

14.1 Plan for implementation

The implementation of the Claims Handling Policy and Procedure has been assessed against the Equality Impact Assessment Tool. The Trust’s policy and procedure for the management of claims does not affect one group less of more favourably than another, however it is recognised that the sensitivity of claims does not exclude the possibility that some individuals may feel unable to access the service. All efforts are taken by the Legal Services staff to advise potential claimants of the process including providing details of external organisations that will be able to assist them. The fact that someone has made a claim against the Trust will not adversely affect their future treatment.

The Managers will be responsible for ensuring that the Policy is adopted in respect of investigating claims about their service and reporting lessons learned and changes to service or practice as a result of claims.

The Head of Legal Services will be responsible for implementing the Policy and Procedure through training via individual and group sessions.

14.2 Dissemination

The Claims Handling Policy and Procedure will be accessible via the Trust’s intranet and website.

14.3 Training and awareness

The Legal Services staff will attend training on managing claims in response to legislative changes and in compliance with NHS Resolution guidelines.

Staff will complete information governance training and mandatory training in accordance with the Trusts Mandatory Training Policy.

15. Monitoring and compliance

Compliance with the policy will be monitored via the assurance reporting framework and will include information on the number and type of claims and changes to service or practice.

Page/ Section of Key Document	Key control	Checks to be carried out to confirm compliance with the Policy:	How often the check will be carried out:	Responsible for carrying out the check:	Results of check reported to: <i>(Responsible for also ensuring actions are developed to address any areas of non-</i>	Frequency of reporting:

					<i>compliance)</i>	
Section 3	Claims managed in accordance with NHSLA guidelines	Audit of 10% of claims closed each year	Annually	Head of Legal Services	Audit and Assurance Committee	1 st meeting after 31 st March

16. Policy Review

This Policy will be reviewed by the Head of Legal Services by June 2019 or earlier if revised legislation requires.

17. References

Policy for Assessing Mental Capacity and Complying with the Mental Capacity Act 2005	WAHT-CG-752
Being Open following a Patient Safety Incident	WAHT-CG-567
Investigation Guidance Notes	WAHT-CG-023
Incident Reporting Policy	WAHT-CG-008
Policy for the Development, Approval and Management of Key Documents	WAHT-CG-001
Supporting Staff involved in Traumatic/Stressful Incidents, Complaints and Claims	WAHT-HR-002
Complaints & PALS Policy & Procedure	WAHT-PS-004
NHS Resolution LTPS Claims Reporting Guidelines	www.resolution.nhs.uk
NHS Resolution Clinical Negligence Reporting Guidelines	www.resolution.nhs.uk
Civil Procedure Rules update 1 October 2010, paragraph 3.25	www.justice.gov.uk
Civil Procedure Rules – Pre-action Protocols for Personal Injury Claims and Professional Negligence	www.justice.gov.uk/civil/procrules_fin/menus/protocol.htm
NHS Redress Act 2006	www.opsi.gov.uk/acts/acts2006
NHS (Complaints) Amendment Regulations 2006 [SI2006 No 2084]	www.opsi.gov.uk/si/si2006/20062084.htm
Compensation Act 2006	www.opsi.gov.uk/acts/acts2006
Memorandum of understanding between the NHS, Police and the Health & Safety Executive for the co-ordination of investigations, July 2004	www.dh.gov.uk
NHS (Complaints) Regulations 2004	www.opsi.gov.uk/si/si2004/20041768.htm
Freedom of Information Act 2000	www.opsi.gov.uk/acts/acts2000
Department for Constitutional Affairs: Pre-action Protocol for Personal Injury Claims 1998	www.dca.gov.uk
Department for Constitutional Affairs: Pre-action Protocols for the Resolution of Clinical Disputes 1998/183	www.dca.gov.uk
Human Rights Act 1998	www.opsi.gov.uk/acts/acts1998
Data Protection Act 1998	www.opsi.gov.uk/acts/acts1998

Clinical Negligence & Personal Injury Litigation: Claims Handling [EL(96)11]	
Defective Premises Act 1972	www.pacii.org/vu/legis/vu_uk_act/dpa1972187
AvMA (action against medical accidents)	www.avma.org.uk

18. Background

18.1 Equality requirements

The implementation of the Policy has been assessed against the Equality Impact Assessment Tool. The Policy does not affect one group less or more favourably than another.

18.2 Financial risk assessment

This policy will be approved by the Trust Management Committee.

18.3 Consultation

Consultation with the Legal Services staff and the Property Manager to ensure that the processes and responsibilities described are reasonable and achievable.

Contribution List

This key document has been circulated to the following individuals for consultation;

Designation
Assistant Legal Services Manager
Property Manager
Company Secretary

This key document has been circulated to the chair(s) of the following committee's / groups for comments;

Committee
n/a

18.4 Approval Process

This policy will be approved by the Trust Management Committee.

18.5 Version Control

This section should contain a list of key amendments made to this document each time it is reviewed.

Date	Amendment	By:
May 2017	Amendments to reflect change from NHS Litigation Authority to NHS Resolution	J Clavey
February 2017	Disability question added to Equality Impact Assessment	
October 2016	Document extended for 12 months as per TMC paper approved on 22 nd July 2015	TMC
July 2014	Amendments to reflect changes to the reporting structure of assurance committees and the process for responding	J Clavey

	to NHSLA	
July 2012	Amendments to reflect changes to the reporting structure of assurance committees, the process for actioning NHSLA risk management reports and changes to the Civil Procedure Rules	J Clavey
July 2010	Amendments to reflect changes to NHSLA template and introduction of NHSLA Solicitors Risk Management Reports	J Clavey
May 2009	Amendments to reflect changes to the Trust's operational management structure from May 2009	J Clavey
May 2009	Amendments to reflect changes to the reporting structure of assurance committees from February 2009	J Clavey
May 2008	Document creation	J Clavey

Supporting Document 1 - Equality Impact Assessment Tool

To be completed by the key document author and attached to key document when submitted to the appropriate committee for consideration and approval

		Yes/No	Comments
1.	Does the Policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	

	<ul style="list-style-type: none"> Religion or belief 	No	
	<ul style="list-style-type: none"> Sexual orientation including lesbian, gay and bisexual people 	No	
	<ul style="list-style-type: none"> Age 	No	
	<ul style="list-style-type: none"> Disability – learning disabilities, physical disability, sensory impairment and mental health problems 	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	n/a	
4.	Is the impact of the Policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?	n/a	
6.	What alternatives are there to achieving the Policy/guidance without the impact?	n/a	
7.	Can we reduce the impact by taking different action?	n/a	

If you have identified a potential discriminatory impact of this key document, please refer it to Assistant Manager of Human Resources, together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact Assistant Manager of Human Resources

Supporting Document 2 – Financial Impact Assessment

To be completed by the key document author and attached to key document when submitted to the appropriate committee for consideration and approval.

	Title of document:	Yes/No
1.	Does the implementation of this document require any additional Capital resources	No
2.	Does the implementation of this document require additional revenue	No
3.	Does the implementation of this document require additional manpower	No
4.	Does the implementation of this document release any	No

Policy

	Title of document:	Yes/No
	manpower costs through a change in practice	
5.	Are there additional staff training costs associated with implementing this document which cannot be delivered through current training programmes or allocated training times for staff	No
	Other comments:	

If the response to any of the above is yes, please complete a business case and which is signed by your Finance Manager and Directorate Manager for consideration by the Accountable Director before progressing to the relevant committee for approval