



# CLAIMS MANAGEMENT

**South Central Ambulance Service NHS Foundation Trust**  
Unit 7 & 8, Talisman Business Centre, Talisman Road,  
Bicester, Oxfordshire, OX26 6HR

## DOCUMENT INFORMATION

|   |   |
|---|---|
| Version:  | 1.0   |
| Policy Lead:                                      | Head of Legal Services                            |
| Executive Lead:                                   | Director of Patient Care & Service Transformation |
| Professional Approving Committee:<br>Review Group | Patient Safety Group                              |
| Approved by Professional Approving Committee:     | 5 <sup>th</sup> August 2021                       |
| Implementation Date:                              | August 2021                                       |
| Review Date:                                      | August 2023                                       |

## CONTENTS

|  |    |
|--|----|
| DOCUMENT INFORMATION .....   | 1  |
| 1. INTRODUCTION .....  | 3  |
| 2. PURPOSE .....   | 3  |
| 3. SCOPE .....   | 3  |
| 4. EQUALITY STATEMENT.....   | 3  |
| 5. DEFINITIONS .....   | 4  |
| 6. ABBREVIATIONS .....   | 5  |
| 7. RESPONSIBILITIES .....  | 5  |
| 8. CLAIMS MANAGEMENT PROCEDURE - RPST, CNST and PES.....   | 6  |
| 9. TIMESCALES AS PRESCRIBED BY PRE-ACTION PROTOCOL FOR THE<br>RESOLUTION OF CLINICAL DISPUTES..... | 7  |
| 10. NHSR SCHEME RULES AND TIMESCALES .....   | 7  |
| 11. DOCUMENTATION .....  | 8  |
| 12. FINANCIAL MANAGEMENT.....  | 8  |
| 13. EXCESSES.....  | 8  |
| 14. COMMUNICATION WITH STAKEHOLDERS.....   | 9  |
| 15. SUPPORTING STAFF .....   | 9  |
| 16. MONITORING POLICY AND MAKING IMPROVEMENTS AS A RESULT OF CLAIMS.....                           | 9  |
| 17. CONSULTATION AND REVIEW .....  | 10 |
| 18. IMPLEMENTATION (INCLUDING RAISING AWARENESS).....  | 10 |
| 19. RELATED DOCUMENTS & REFERENCES.....  | 10 |
| Related Documents.....   | 10 |
| References.....  | 10 |

## **1. INTRODUCTION**

South Central Ambulance Service NHS Foundation Trust (SCAS) prides itself in delivering high quality services to all patients and service users. We recognise, however, that at times things can go wrong and we may not deliver the quality of care or level of service we and our patients expect.

The Trust recognises its responsibility to minimise the exposure of the Trust to legal claims against the organisation, or its staff. This is in order to ensure that staff are practicing safely in line with expected standards and to reduce the amount of contribution the Trust is expected to pay to NHS Resolutions on a yearly basis. This policy relates to employers liability, public liability, clinical negligence and property expenses claims made against the Trust

This policy reflects current best practice and guidance issued by the Department of Health and NHS Resolutions (NHSR).

This policy applies to all Trust employees and anyone providing a service on behalf of the trust and should be considered in conjunction with the Trust Risk Management Strategy, Health and Safety Policy and Adverse Incident Reporting Policy

Service users can be reassured that the claim will not affect their ongoing treatment - no claim correspondence will be filed in their medical records - they will be treated fairly, and that their claim will be managed in the strictest confidence.

## **2. PURPOSE**

This policy should be read by all staff - permanent, temporary, voluntary or contractor acting on behalf of SCAS so they are familiar with the process.

## **3. SCOPE**

This policy explains how litigation claims will be managed by the Trust with the exception of motor claims. These are dealt with separately under different procedures.

This policy also covers any incident that carries significant risk of litigation for the Trust i.e. complaints leading to claims, publicity or media sensitive cases, clinical errors or requests for disclosure of medical records with a view to investigating a potential claim against the Trust

## **4. EQUALITY STATEMENT**

The Trust is committed to promoting positive measures that eliminate all forms of unlawful or unfair discrimination on the grounds of age, marital status, disability, race, nationality, gender, religion, sexual orientation, gender reassignment, ethnic or national origin, beliefs, domestic circumstances, social and employment status, political affiliation or trade union membership, HIV status or any other basis not justified by law or relevant to the requirements of the post.

By committing to a policy encouraging equality of opportunity and diversity, the Trust values differences between members of the community and within its existing workforce, and actively seeks to benefit from their differing skills, knowledge, and experiences in order to provide an exemplary healthcare service. The Trust is committed to promoting equality and diversity best practice both within the workforce and in any other area where it has influence.

The Trust will therefore take every possible step to ensure that this procedure is applied fairly to all employees regardless of race, ethnic or national origin, colour or nationality; gender (including marital status); age; disability; sexual orientation; religion or belief; length of service, whether full or part-time or employed under a permanent or a fixed-term contract or any other irrelevant factor.

Where there are barriers to understanding e.g. an employee has difficulty in reading or writing or where English is not their first language, additional support will be put in place wherever necessary to ensure that the process to be followed is understood and that the employee is not disadvantaged at any stage in the procedure. Further information on the support available can be sought from the Human Resource Department

## **5. DEFINITIONS**

**Claim:** An allegation of negligence and / or demand for monetary compensation made following an adverse incident which carries significant risk of litigation for the Trust

**Claimant:** Any employee, patient, patient's representative or member of the public who alleges negligence by the Trust and / or demands compensation for alleged injuries / losses arising from alleged negligent act(s) or omission(s)

**NHSR:** National Health Service Resolutions; the body which indemnifies the Trust against various risks including employer's liability, public liability, clinical negligence and property expenses.

**CNST - Clinical Negligence Scheme for Trusts:** The scheme operated by NHSR which indemnifies the Trust against clinical negligence claims.

**LTPS - Liability to Third Parties Scheme for Trusts:** The scheme operated by NHSR, which indemnifies the Trust against claims from third parties. This covers employees, patients, patient's relatives, members of the public.

**PES - Property Expenses Scheme:** PES provides cover for "first party" losses such as theft or damage to property.

**RPST - Risk Pooling Scheme for Trusts:** The collective scheme covering both PES and LTPS.

CNSC - Clinical Negligence Scheme for Coronavirus. This scheme has been established by NHSR to meet liabilities arising from the special healthcare arrangements being put in place in response to the coronavirus pandemic.

## 6. ABBREVIATIONS

- CNST - Clinical Negligence Scheme for Trusts
- LTPS - Liability to Third Parties Scheme for Trusts
- PES - Property Expenses Scheme
- RPST - Risk Pooling Scheme for Trusts
- CCGs - Clinical Commissioning Groups
- NHS – National Health Service
- HSE - Health and Safety Executive
- HCPC - Health and Care Professions Council
- MHRA - Medicines and Healthcare products Regulatory Agency
- NHSR – National Health Service Resolutions
- CFSMS - Counter Fraud and Security Management Service

## 7. RESPONSIBILITIES

The **Chief Executive** has overall accountability for the Trust's Governance arrangements and for ensuring that all reasonable measures are in place to minimise the risk arising from legal claims.

The **Executive Director of Patient Care and Service Transformation** is a member of the Quality and Safety Committee and is the Director with overall responsibility for Risk Management within the Trust. The management of claims falls within this responsibility. The Assistant Directors of Quality shall maintain appropriate review procedures for claims and risk management.

The **Assistant Directors of Quality** will be responsible to the Executive Director of Patient Care and Service Transformation for the development of effective Trust wide policies and procedures. Specific responsibilities will include monitoring all areas of risk management performance, maintaining and developing the Trusts risk register and risk database, provide reports to the Quality and Safety Committee and Operational Health, Safety and Risk Group on incident reporting, Serious Incidents, claims and complaints identifying trends and actions.

The **Company Secretary** can be accessed as a source of advice for significant legal claims, where reputation or financial risk is likely to be high, and will ensure that the Board of Directors work programme includes a review of legal claims at appropriate intervals.

The **Head of Legal Services** is responsible for:

- The day to day management of claims in accordance with this policy

- Ensuring evidence related to a claim is obtained and collated e.g. Patient Report form, iCAD log from Emergency Operations Centre, voice recordings, statements from those involved, training records, incident report forms / RIDDOR reports
- Ensuring liaison with NHSR and appointed panel solicitors is timely and effective
- Ensuring new claims are reported to NHSR and the Executive Director of Patient Care and Service Transformation
- Ensuring disclosure of documents to NHSR and Claimant Solicitors is performed in a timely, effective and accessible manner.
- Ensuring the Trusts position, reputation and finances are protected as far as possible

The **Risk Managers** are responsible for assisting the Head of Legal Services in collating all documentation held by the Trust in order to investigate the claim. This may include:

- Risk assessments / policies
- Photographs

The **Trust Board** will receive information relating to current claims and recommendations forwarded by NHSR following the closure of a case. The Quality and Safety Committee will also receive a report twice a year detailing those current claims and the progress on the actions plans for NHSR or Trust identified recommendations. The Quality and Safety Committee reports directly to the Trust Board.

The **Company Secretary** and **Communications Manager** must be notified of any adverse incidents which may lead to a claim i.e. sudden death, serious untoward incident or complaint.

**All staff** have a responsibility to forward any correspondence relating to a claim or request for disclosure in a possible clinical negligence claim to the Head of Legal Services to ensure the appropriate action is taken. All staff are also required to assist with any investigation into a claim as fully as possible i.e. giving statements or interviews..

## 8. CLAIMS MANAGEMENT PROCEDURE - RPST, CNST and PES

The Head of Legal Services is the point of contact for all claims.

All letters of intended claim received by the Trust **MUST** be forwarded immediately to the Head of Legal Services.

On receipt of notification of intended claim the following action will be taken:

- The Head of Legal Services will be responsible for ensuring a claims investigation and correspondence file and an up to date database of claims is maintained for each individual claim
- As soon as a formal letter of claim is received or proceedings have been served upon the Trust, the Head of Legal Services will ensure this is reported to NHSR in accordance with the rules of the relevant scheme.

- The Head of Legal Services will ensure the new claim is recorded into the Legal Services folder on the 'P' Drive.
- The Head of Legal Services will ensure that relevant staff involved in the original incident, together with their respective line managers, are contacted to gather evidence for the case.
- NHSR will appoint a case manager and will instruct panel solicitors where appropriate
- The Head of Legal Services will ensure that the claim is thoroughly investigated so that the appropriate outcome is reached

The Head of Legal Services will be responsible for:

- Desktop conduct of the claim
- Correspondence with Claimant solicitors
- Supporting staff
- The instruction of appropriate experts
- An appropriate formal response to the claim is made
- Negotiating out of court settlements
- Considering the use of Alternative Dispute Resolution (ADR)
- Where a claim is concluded, informing the staff involved of the outcome, if necessary in a de-brief meeting. (See Supporting Staff Involved in Adverse Incidents, Claims and Complaints and Section 8 of the Adverse Incident Reporting and Investigating Policy).

## **9. TIMESCALES AS PRESCRIBED BY PRE-ACTION PROTOCOL FOR THE RESOLUTION OF CLINICAL DISPUTES**

- Requests for disclosure of medical records must be processed within one calendar month, starting from the day they receive the request in line with data protection regulations
- On receipt of a letter of claim, the Trust must
  - Acknowledge all claims within 14 days of receipt
  - Inform the claimant of any other potential defendants to the claim
  - Provide a detailed response to a formal letter of claim within 4 months
  - If the claim is admitted, say so in clear terms
  - If liability is denied provide a reasoned argument to the Claimant making clear which elements are in dispute
  - If supportive expert evidence has been obtained, identify which disciplines of expert evidence have been relied upon and whether they relate to breach of duty and/or causation
  - Provide copies of any additional documents relied upon, e.g. an internal protocol

## **10. NHSR SCHEME RULES AND TIMESCALES**

The Trust must



- Report a claim, part 36 offer or proceedings to NHR within 24 hours of receipt with completed documentation to follow within 2 weeks;
- Report a serious incident where investigations suggest there have been failings in the care provided and there is the possibility of a large-value claim (i.e. damages >£500,000) to NHR as soon as possible but no later than 3 months from when the Trust become aware of the matter;
- Where there is an indication that a claim is likely to be made and internal investigations have identified there is a possibility of significant litigation risk regardless, the case must be reported to NHR as soon as possible but no later than one month after the indication of the claim (e.g. limitation extension request) has been received;
- Report group action and claims from 'serial offenders' to NHS as soon as possible but no later than one month after the Trust become aware of the matter;
- Preserve the necessary notes, records and other key documentation;
- Respond promptly to our requests for instructions and information from NHR;
- Contact NHR to discuss any potential issues as and when they arise;
- Help ensure that any learning from a claim is considered by the relevant internal department
- Fully co-operate with NHR in respect of the conduct of any CNST Claim;

The Head of Legal Services will be responsible for ensuring there are effective measures in place for the Trust to comply with section 10 above.

## 11. DOCUMENTATION

It is important to note that unless a document is produced specifically within litigation it may be disclosable in law. Managers and other staff who may be involved in an investigation or have to compile information should ensure they only produce factual documents within their own knowledge and experience. Personal opinions should not be expressed

## 12. FINANCIAL MANAGEMENT

Responsibility for the financial management of claims settled by the Trust (e.g. small damage to property claims which fall below the excess level) lies with the Executive Director of Patient Care and Service Transformation.

Responsibility for the financial management of all claims falling within the NHR schemes and reported to NHR lies with NHR.

The finance department and Head of Legal Services are responsible for receiving invoices from Claimant and Panel solicitors and NHR and ensuring they are paid appropriately

## 13. EXCESSES

| <b>Scheme</b>                     | <b>Excess Applicable</b>     |
|-----------------------------------|------------------------------|
| Liability to Third Parties Scheme | £10,000 (Employer Liability) |
|                                   | £3,000 (Public Liability)    |

|                            |         |
|----------------------------|---------|
| Clinical Negligence Scheme | Nil     |
| Property Expenses Scheme   | £20,000 |

## **14. COMMUNICATION WITH STAKEHOLDERS**

It is important that patients, their representatives, staff and other relevant stakeholders are aware of how to access the claims process should they require to do so. It is also important that all other healthcare providers are aware of how the Trust deals with claims. To this end the Claims Management Policy will be made available on the Trust Website.

The Trust will also communicate with relevant stakeholders, where appropriate, when dealing with organisations involved with a claim affecting the Trust

To this end, the Trust will communicate with the following:

- Other healthcare providers
- Commissioners
- Solicitors
- Coroners / Police
- CCG's
- NHS England
- HSE
- HCPC
- MHRA
- Third parties
- Trust solicitors
- NHSR
- CFSMS

(This list is not exhaustive)

## **15. SUPPORTING STAFF**

Staff who are subject to a claim can be assured they will be supported whilst taking the opportunity to reflect on the issues raised in the claim.

Where there is a training need identified, training plans will be developed to support the staff member ensuring they have all the relevant training and support to carry out their role whilst meeting the expected standard of the Trust and any applicable regulatory body. Their operational management teams will be responsible for overseeing this process.

Learning from claims will be shared and discussed at relevant forums for example Patient Safety Group, Clinical Review Group, with the Head of Risk.

## **16. MONITORING POLICY AND MAKING IMPROVEMENTS AS A RESULT OF CLAIMS**

Assurance that this policy has been implemented and claims are being managed appropriately is provided by the submission of a bi-monthly report which is presented to the

Trust Executive Board by the Executive Director of Patient Care & Service Transformation as part of the Quality & Safety Board Report.

## **17. CONSULTATION AND REVIEW**

This policy has been reviewed internally via the Patient Safety Group.

## **18. IMPLEMENTATION (INCLUDING RAISING AWARENESS)**

This policy will be made available to all staff on the Trust intranet

## **19. RELATED DOCUMENTS & REFERENCES**

### **Related Documents**

- Adverse Incident Reporting and Investigation Policy (CPP No.4)
- Risk Management Strategy
- Being Open and Duty of Candour policy
- Information Governance Policy (CPP No.7)
- Health and Safety Policy
- SIRI Policy (CPP No.23)
- Patient Experience Policy
- Data Protection Policy (CSPP No.10)

### **References**

- Clinical Negligence Scheme for Trusts (CNST) scheme rules
- Liabilities to Third Parties Scheme (LTPS) rules
- Pre-Action Protocol for the Resolution of Clinical Disputes
- Pre-Action Protocol for Personal Injury Claims
- Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims