



CLAIMS MANAGEMENT

DOCUMENT INFORMATION

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Ratifying committee/group: Patient Safety Group

Date of ratification: 25th July 2019

Date of Issue: 25th July 2019

Review due by: 25th July 2021

Version: 1.1

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1. Introduction

1.1 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.

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

1.3 This policy applies to all Trust employees and should be considered in conjunction with the Trust Risk Management Strategy, Health and Safety Policy and Adverse Incident Reporting Policy.

2. Scope

2.1 This policy deals with the handling of all claims with the exception of motor claims. These are dealt with separately under different procedures.

2.2 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.

3. Aim

3.1 The key objectives of this policy are:

3.1.1 To provide a consistent approach to the handling of Clinical and Non-Clinical Claims

3.1.2 To ensure that the Trust meets its legal obligations

3.1.3 To set out the responsibilities of staff in relation to claims

3.1.4 To ensure that the Trust delivers its strategic objectives

3.1.5 To ensure the appropriate risk management systems are in place and that any losses are minimised

3.1.6 To ensure a risk management approach is applied to claim/litigation prevention - this includes investigation learning outcomes and root cause analysis

3.1.7 To ensure significant risks arising from the claims process are included on the Trust risk register

3.1.8 There are effective systems of communication in place so that Directors and Senior managers are kept informed about all claims which may have implications for the Trust.

4. Roles and Responsibilities

4.1 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.

4.2 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.

4.3 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. Be the point of reference within the Trust for all internal and external contacts in relation to all matters relating to Risk Management, claims, PALs and complaints.

4.4 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.

4.5 The **Legal Services Manager** is responsible for:

- 4.5.1 The day to day management of claims in accordance with this policy
- 4.5.2 Obtaining evidence for the claim e.g. Patient Report form, Incident log from Emergency Operations Centre, voice recordings, statements from those involved, training records, incident report forms / RIDDOR reports
- 4.5.3 The production of a preliminary analysis into the claim
- 4.5.4 The liaison with NHR and appointed panel solicitors
- 4.5.5 Reporting new claims to NHR and the Executive Director of Patient Care and Service Transformation
- 4.5.6 Maintenance and regular update of the Risk Reporting system
- 4.5.7 Providing disclosure documents to NHR and Claimant Solicitors

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

- 4.6.1 Risk assessments / policies
- 4.6.2 Photographs

4.7 The **Trust Board** will receive information relating to current claims and recommendations forwarded by NHR 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.

4.8 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.

4.9 **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 Legal Services Manager 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.

5. **Definitions**

5.1 **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.

5.2 **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).

5.3 **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.

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

5.5 **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.

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

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

6. **Abbreviations**

6.1 **CNST - Clinical Negligence Scheme for Trusts**

6.2 **LTPS - Liability to Third Parties Scheme for Trusts**

6.3 **PES - Property Expenses Scheme**

- 6.4 RPST - Risk Pooling Scheme for Trusts
- 6.5 CCGs - Clinical Commissioning Groups
- 6.6 NHS – National Health Service
- 6.7 HSE - Health and Safety Executives
- 6.8 HCPC - Health and Care Professions Council
- 6.9 MHRA - Medicines and Healthcare products Regulatory Agency
- 6.10 NHR – National Health Service Resolutions
- 6.11 CFSMS - Counter Fraud and Security Management Service

7. Main body

- 7.1 Claims Management Procedure - RPST, CNST and PES
 - 7.1.1 The Legal Services Manager is the point of contact for all claims.
 - 7.1.2 All letters of intended claim received by the Trust MUST be forwarded immediately to the Legal Services Manager.
 - 7.1.3 On receipt of notification of intended claim the following action will be taken:
 - 7.1.4 The Legal Services Manager will maintain a claims investigation and correspondence file for each individual claim and will maintain an up to date database of claims
 - 7.1.5 As soon as a formal letter of claim is received or proceedings have been served upon the Trust, the Legal Services Manager will report this to NHR accordance with the rules of the relevant scheme.
 - 7.1.6 The Legal Services Manager will input the new claim into the Legal Services folder on the 'P' Drive.
 - 7.1.7 The Legal Services Manager will make contact with all staff involved in the original incident, together with their respective line managers.
 - 7.1.8 NHR shall after due consultation with the Trust: Appoint a case manager where necessary
 - 7.1.9 The Legal Services Manager will be responsible for:
 - 7.1.10 desktop conduct of the claim
 - 7.1.11 Correspondence with Claimant solicitors
 - 7.1.12 Supporting staff
 - 7.1.13 Negotiating out of court settlements
 - 7.1.14 Consider the use of Alternative Dispute Resolution (ADR)
 - 7.1.15 Where a claim is concluded the staff involved will be informed 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).

7.2 Timescales as prescribed by CNST

7.2.1 Requests for disclosure of medical records to be processed within one calendar month, starting from the day they receive the request

7.2.2 Acknowledge all claims within 14 days of receipt

7.2.3 Report a claim to NHR within 2 working days

7.2.4 Detailed response due within 3 months

7.2.5 All legal proceedings are to be notified to the Company Secretary immediately

7.2.6 Acknowledge letter of Claim within 21 days

7.2.7 3 months in which to carry out investigation and inform the Claimant of Trust decision on liability

7.2.8 If liability is denied should provide a reasoned argument to the Claimant within 3 months

7.2.9 All managers requested to provide information to assist with the disclosure and liability response should do so within 10 days of receipt of such a request

NOTE: NHR will not accept a claim until a claim form and relevant disclosure documents have been received. Reference should be made to the current NHR Claims Procedures available at <https://resolution.nhs.uk/services/claimsmanagement/>

7.3 Documentation

7.3.1 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.

7.4 Financial Management

7.4.1 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.

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

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

7.5 Excesses

Scheme

Liability to Third Parties Scheme

Clinical Negligence Scheme

Property Expenses Scheme

Excess Applicable:

£10,000 (Emp. Liab.)

£3,000 (Public Liab.)

Nil

£20,000

7.6 Communication with Stakeholders

7.6.1 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.

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

7.6.3 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
- Third parties

(This list is not definitive)

8. Equality and Diversity

8.1 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.

8.2 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.

8.3 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.

8.4 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.

9. Monitoring

9.1 The effectiveness of this policy will be monitored and reviewed as indicated on the front sheet – or sooner subject to legislative change.

9.2 This monitoring will be evidenced by the Legal Services Manager generating reports from the legal services folder which will be sent to the Quality and Safety Committee and the Board on a regular basis.

9.3 This Policy will be reviewed on a biennial basis and in line with recommendations and publications from NHSR and Department of Health. The Assistant Director of Quality will be responsible for this review.

9.4 The Legal Services Manager shall produce a twice-yearly report for the Trust Board, outlining significant claims and their progress and likely outcome. The Executive Director of Patient Care and Service Transformation OR Assistant Director of Quality shall also ensure that major/high risks are placed on the Trust Risk Register and reviewed by the Trust Board on a quarterly basis. This will enable the Trust to identify any trends and ensure learning by way of an action plan.
Implementation (including raising awareness)

10. Consultation and Review

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

11. Implementation (including raising awareness)

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

12. References

N/A

13. Associated documentation

13.1 Risk Management Strategy

13.2 Adverse Incident Reporting and Investigating Policy Health and Safety Policy and all the relevant Appendices Patient and Public Experience Policy

13.3 SIRI Policy

13.4 Information Governance Policy

Appendix 1: Review Table

A full review has been carried out for this policy. A review table is available on request.

Appendix 2: Responsibility Matrix – Policies, Procedures and Strategies

The responsibility for this policy is shared between various Policy Groups, Lead Director/Officers, Working Groups and Committee members.

A full list of all responsible parties can be made available upon request.

Appendix 3: Equality Impact Assessment Form Section One – Screening

Employees exercising their rights and entitlements under the regulations will suffer no detriment as a result.

The Screening element of the 'Equality Impact Assessment' is available on request.

Appendix 4: Equality Impact Assessment Form Section Two – Full Assessment

Employees exercising their rights and entitlements under the regulations will suffer no detriment as a result.

A full 'Equality Impact Assessment' is available on request.

Appendix 5: Ratification Checklist

Policy Title	Claims Management
Author's Name and Job Title	Jennifer Saunders, Legal Services Manager
Review Deadline	
Consultation From – To (dates)	
Comments Received? (Y/N)	
All Comments Incorporated? (Y/N)	Y
If No, please list comments not included along with reasons	
Equality Impact Assessment completed (date)	25th July 2019
Name of Accountable Group	Patient Safety Group
Date of Submission for Ratification	25th July 2019
Template Policy Used (Y/N)	Y
All Sections Completed (Y/N)	Y
Monitoring Section Completed (Y/N)	Y
Date of Ratification	25th July 2019
Date Policy is Active	25th July 2019
Date Next Review Due	25th July 2021
Signature of Accountable Group Chair (or Deputy)	
Name of Accountable Group Chair (or Deputy)	