

Claims Management Policy

Version Number	4.4	Version Date	August 2018
Author and Title	Janet Ebdon – Legal services Manager		
Staff/Groups Consulted and agreed	Deputy Director of Nursing Head of Governance and Assurance Patient Safety Steering Group Trust Risk Manager Patient Experience Team		
Date approved by Approval Group	9 October 2009 Ver 4.1 Policy Group Chair's approval 1 July 2011 Ver 4.3 Patient Safety Steering Group July 2015 Ver 4.4 Patient Safety Steering Group May 2018		
Next Review Due	August 2020		
Equality Impact Assessment	14 August 2009; reviewed July 2015, December 2015 September 2017		

Contents

Section		Page
1	Rationale	3
2	Aims	3
3	Definitions	4
3.1	Definition of a Claim and the NHS LA Schemes	4
3.2	Limitation Period	5
4	Responsibilities	5
4.1	Chief Executive and the Board of Directors	5
4.2	Legal Services Manager	5
4.3	Managers and Heads of Departments	6
4.4	Patient Safety Steering Group	6
4.5	Assurance Committees	7
4.6	All Staff	7
5.	Claims Management	8
5.1	Confidentiality	9
5.2	Support Mechanisms for Patients/Carers and Staff	9
5.3	Indemnity	10
5.4	Schemes under which Claims are Managed	10
5.5	Clinical Negligence Schemes for Trusts (CNST)	10
5.6	Liabilities to Third Parties Schemes (LTPS)	10
5.7	Property Expenses Scheme (PES)	11
5.8	The Existing Liabilities Scheme	11
5.9	Patient and Staff Property / Losses Procedure	11
6.	Stakeholders in the Claims Process	11
6.1	NHS Resolution (NHSR)	11
6.2	Solicitors	11
6.3	Coroner's Office	11
6.4	Claimants	11
6.5	Documenting Claims and Contact with Stakeholders	11
7.	Investigation and Root Cause Analysis	12
7.1	Identifying the Need for Action	12
7.2	Monitoring the Completion of Agreed Actions	12
7.3	Process of Ensuring Continual Risk Reduction Following Action	12
8.	Learning From Experience	12
8.1	Sharing of Learning Across the Wider Health Economy	13
9.	Implementation, Monitoring and Evaluation	13
10	Applicability	13
11.	Equality Impact Assessment	14
Annex A	Management of the Claims Process	15
Annex B	Inquests – Guidance for Staff	17
Annex C	Procedure for Obtaining legal Advice	19
Annex D	Equality Impact Assessment	20

1. RATIONALE

Yeovil District Hospital NHS Foundation Trust (YDH) recognises that any litigation or potential litigation claim may create anxiety amongst the staff involved. It is therefore essential to provide education, guidance and support to all staff who may be involved in the process.

This policy applies to all litigation claims, in particular clinical negligence, employer or third party liability and property expenses claims.

The Trust recognises the need to work closely with NHS Resolution formally known as the National Health Service Litigation Authority (NHS LA) and this policy reflects their reporting guidelines. The principles of the following documents are also recognised and endorsed:

- An Organisation with a Memory, Department of Health, 2000
- Shifting the balance of Power, Department of health, 2001
- Building a Safer NHS for Patients, Department of Health, 2001
- HSC 1998/183 Handling Clinical Negligence Claims. Pre-action protocols for personal injuries and the resolution of clinical disputes.
- NHS Resolution. The Pre-Action Protocol for the resolution of Clinical Disputes and the Pre-Action Protocol for the management of Personal Injury Claims. Available at: www.nhsla.com
- Duty of Candour - Regulation 20, Health and Social Care Act 2008 (Regulated Activities) Regulations 2014:

The Trust acknowledges that the monitoring of claims is fundamental to risk management and recognises the need to assess the potential and actual risk posed by all litigation claims including assessment of the financial loss, loss of reputation and perceived or actual damage to individuals involved.

The Legal Services Manager and Clinical Governance department handle all claims received by the Trust in relation to Clinical Negligence and Personal Injury. In addition to handling claims the department identifies untoward incidents, complaints and bereavement concerns which may lead to claims and seeks to promote learning as a result of untoward incidents.

2. AIMS

This policy aims to set out how clinical negligence, personal injury claims and property expenses schemes are handled within the Trust. It describes how patients, staff and carers who are involved in claims are supported. It outlines the schemes operated by NHS Resolution (NHSR) who provide insurance cover for claims, and gives details of the duties involved. In addition the policy also aims to:

- Reassure staff by describing what to expect during the claims process, and the support networks available to them.
- Ensure that all allegations of negligence against the Trust are thoroughly investigated using a standard approach.
- Together with the Incident Reporting and Investigation Policy and other Clinical Governance and patient experience processes, this policy is designed to facilitate the gathering of aggregated data about incidents, complaints and claims so that lessons are learnt and practice changed in order to reduce the risk of recurrence.

- Ensure that the Trust complies with the requirements for membership of NHSR's risk pooling schemes and also with the requirements of the Pre-action Protocol for the Resolution of Clinical Disputes and the Pre-action Protocol for Personal Injury, so avoiding the cost penalties associated with non-compliance.

3. DEFINITIONS

3.1 Definition of a Claim and the NHS Resolution Schemes

The Trust notes that NHSR defines a clinical claim as *"allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident which carries significant litigation risk for the Trust"*.

The event or situation in which loss or damage is alleged to have occurred is referred to in this policy as an "adverse event".

Various kinds of claims are covered in this policy:

3.1.1 Clinical Negligence

- Claims for clinical negligence arise when it is alleged that a patient, or a witness to patient care, has been harmed due to some breach of the duty of care on the part of Trust staff.
- Clinical negligence claims may be brought against the Trust by the patient, legal representative or, following their death, by their next of kin, and may arise as a result of many circumstances.

3.1.2 Employers' Liability Claims

The Trust may be liable for injury or harm affecting employees as a result of any failure of the Trust in its duties as an employer.

This includes claims relating to, but not exclusively:

- Injury from slips, trips and falls
- Manual handling injuries
- Injuries as a result of assault by patients or visitors
- Work-related or bullying-related stress claims
- Industrial injuries due to exposure to substances, fire incidents, plant failure

Employers' liability claims may be made by any person employed by the Trust at the time when the alleged adverse incident occurred.

3.1.3 Public and Products Liability Claims

The Trust is liable for injury, harm or loss affecting members of the public or visitors to the Trust, which may occur as a result of omissions or actions on the part of the Trust. These claims may relate to a wide range of situations, including but not exclusively:

- Personal injury sustained by visitors to NHS premises
- Breach of the Human Rights Act
- Breach of the General Data Protection Regulations
- Breach of the Defective Premises Act
- Defamation
- Professional negligence by employees

Public and products liability claims may be made by any member of the public who has been harmed under any of the circumstances covered above.

3.1.4 Property Expenses Claims

The Property Expenses Scheme was established by the Regulations made pursuant to Section 21 of the National Health Service and Community Care Act 1990.

(a) arising from any loss or damage to its property; and

(b) is not an expense arising from a liability which is a qualifying liability for the purposes of the NHS CNST Regulations 1996, the NHS ELS Regulations 1996, NHS LTPS Regulations 1999.

“Qualifying Expense” means, in respect of a member, an expense which falls within the definition thereof at Regulation 4(2), and which is either a Property Damage Expense, a Business Interruption Expense, a Money Expense, a Goods in Transit Expense, an Engineering Expense, a Fidelity Guarantee Expense or a Contract Works Expense save where in each case a General Exception applies

3.2 Period within which a Claim may be brought (‘Limitation Period’)

For personal injury and clinical negligence claims the Claimant must issue a Claim Form through the Court, usually via a solicitor acting on their behalf, within a period of 3 years of the date of incident which allegedly caused them harm or within 3 years of their ‘date of knowledge’ if this can be proven to be later. The two main exceptions to this are: children (their 3 year period does not commence until they reach the age of 18), or people under a ‘disability’ i.e.: ‘of unsound mind’ who are incapable of managing their own affairs (such people may bring an action at anytime whilst the disability exists).

4. RESPONSIBILITIES

4.1 Chief Executive and Board of Directors

The Chief Executive is ultimately responsible for the accountability of the Trust’s management of claims procedures effectively and efficiently.

The Board of Directors has a duty to assure itself that appropriate mechanisms are in place for management of the Trust’s litigation claims to ensure:

- The claims management system is working effectively, and
- Effective systems are in place to promote learning as a result of claims.

The Board of Directors will review aggregated Incident, Complaints & Claims/Litigation reports which identify trends and monitor actions taken to reduce the impact on the Trust.

The Director of Nursing has Board level responsibility for clinical negligence and personal injuries issues, and will keep the Board of Directors informed of major developments in relation to claims and progress made.

4.2 Legal Services Manager

The Legal Services Manager will support staff whenever claims arise. This could be following incident investigations and Root Cause Analysis (RCA) for patient safety incidents and Serious Untoward Incidents (SUI’s), complaint investigations or as the first point of knowledge of the incident giving rise to the claim.

The Legal Services Manager is responsible for managing claims on behalf of the Trust. This includes liaison with NHS Resolution, panel solicitors, claimants’ solicitors and other stakeholders.

The Legal Services Manager will:

- Ensure that all claims are dealt with efficiently and that those claims that are directed to NHR are made in accordance with the appropriate Pre Action Protocols and NHR requirements.
- Provide support for staff involved in a claim including the preparation of statements required as a result of the processing of a claim and when attending mediation meetings or a court of Law.
- Maintain a database of claims past and present.
- Provide detailed reports to NHR as part of the notification process to using their Claims Notification Portal to upload relevant documents.
- On behalf of the Trust Sign the “Statement of Truth” at any stage in any legal proceedings to confirm that the content of any defence is true.
- Agree and provide a formal written apology from the Trust in respect of all upheld claims when settlement has been agreed.
- Provide feedback to NHR on actions taken and changes as a result of all claims to enable identification of themes and dissemination good practices and learning to their members.
- Liaise closely with the Trust Risk Manager, Patient Experience Manager, Quality Improvement leads and Governance Team with respect to incidents, complaints and claims to identify trends and aggregate information with a view to learning from experience, reducing future claims and in accordance with the ethos of “An Organisation with a Memory”.
- Ensure that lessons learned and actions taken are reported through the Integrated Learning Forum to enable themes from Incidents, complaint, litigation and patient feedback are identified and acted on.
- Share the learning generated from NHR’s analysis of claims throughout the Trust.
- Produce a bi-annual report to the Board of Directors and information for discussion at departmental Rolling Governance meetings.
- Instruct defence solicitors on matters not covered by NHR, for example a claim under the Disability Discrimination Act or Judicial review.

4.3 Managers & Heads of Departments

Managers and Heads of Departments are responsible for investigating incidents in line with the Trust’s Incident Reporting Policy and for providing information in respect of individual incidents / claims to Clinical Governance.

4.4 Patient Safety Steering Group

The Patient Safety Steering Group will review new and existing claims through reporting mechanisms. The committee will review incidents, complaints and claims/litigation to identify trends and identify actions required to be reported to the Hospital Management Team.

4.5 Assurance Committees

The Quality Committee will review assurances around claims and litigation, and advise the Board of Directors of the effectiveness of systems and processes in place.

4.6 All Staff

All staff are responsible for maintaining the following standards:

- It is appropriate for all staff to be open and honest with patients and their families and to deliver treatment and care and ensure their safety at all times. This is in accordance with the National Patient Safety Agency guidance on Being Open, For more guidance on apologies and explanations please refer to Yeovil District Hospital “Duty of Candour” policy via Y-Cloud.
- Maintaining accurate, up to date and legible health records in accordance with the YDH Health Records Management policy.
- In cases where an incident has occurred or a complaint may be made staff should not express an opinion about whether such actions are justified and especially should avoid making an indication that compensation might be due to them. Any admission of liability is the responsibility of NHR. However saying sorry is **not** an admission of liability. <http://www.nhsla.com/claims/Documents/Saying%20Sorry%20-%20Leaflet.pdf>
- Reporting any untoward incident using the Trust Incident Reporting system and with reference to the Trust Incident Reporting policy.
- Where appropriate a Reporting of Injuries, Diseases and Dangerous Occurrences Regulations, 1995, (RIDDOR) form should also be completed.
- Staff should not be openly critical of the work of their colleagues verbally or in writing especially when there has not been an opportunity for an objective discussion about the issues.
- Staff must advise the Legal Services Manager as soon as possible when there is any possibility of a claim being made against the Trust whether clinical, non-clinical or in relation to Trust property.
- All current and former employees must provide information, comments or statements promptly as requested during an investigation.
- Staff must inform the Legal Services Manager of any request made directly to them for medical records regarding a claim or potential claim.
- Staff should recognise that being involved in the claims process is a potentially stressful situation and if affected to any degree should seek support from the support networks within the Trust as identified in the Incident Reporting Policy.
- Staff are responsible for identifying and managing any risks highlighted by an incident and for implementing any changes to Trust policies that result from the monitoring of incidents, complaints and claims.

5. CLAIMS MANAGEMENT

It is important for all involved that reported claims are resolved as quickly as possible. This may be achieved by:

- Encouraging pre-action contact with claimants;
- Better and earlier exchange of information;
- Improved investigation;
- Earlier settlement without the need for expensive litigation; and
- Smooth running court proceedings where there is a need for litigation.

The following timescales reflect statutory requirements and the requirement of NHSR's schemes, and represent the maximum period which may be taken in relation to particular aspect of the claims process.

Situation	Action Required	Timescale
Serious incidents where the 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)	Report to NHSR irrespective of whether a claim has been notified or a disclosure request received	As soon as possible but no later than 3 months from becoming aware of the matter
Disclosure request (or some other indication that a claim is being considered – e.g. Limitation extension request) received; and Internal investigation (e.g. complaint review or incident investigation) reveals possibility of a claim with a significant litigation risk regardless of value.	Report to NHSR	As soon as possible but no later than 1 month from receipt of the disclosure request
Letter of Claim served; and/or Part 36 offer received; and/or Proceedings received.	Report to NHSR using Claim Report Form	Within 24 hours of receipt with completed documentation to follow within 2 weeks
Group Action – i.e. any adverse issue which has the potential to involve a number of patients (e.g. failure of a screening service)	Report to NHSR irrespective of whether or not claim(s) are notified	As soon as possible but no later than 1 month from becoming aware of the matter
Serial offender claims – i.e. claims arising from the alleged negligence and/or serious professional misconduct of a staff member affecting a number of patients	Report to NHSR irrespective of whether or not claim(s) are notified	As soon as possible
Claim Notification Form received by defendant; and The covering letter confirms that NHSR have not been made aware of the claim via the Portal	Report to NHSR	Within 24 hours of receipt
Claim Notification Form received from the Claimant solicitor; and No NHSR contact received within 3 working days	Contact NHSR to discuss whether or not to report the claim to them	No more than 3 working days after receipt of the notification form

Situation	Action Required	Timescale
<p>Notification of inquest received; and Civil claim is or is likely to be pursued based on the subject matter of the inquest; and External representation at inquest is justified; and You wish to apply to the NHS Resolution for inquest funding.</p>	<p>Report to NHS Resolution using a completed Inquest Funding Request form</p>	<p>No less than 1 month from the inquest hearing date</p>
<p>Maternity Incident – Early Notification; all maternity incidents with incident date on or after 01.04.17 meeting the following criteria: Eligible babies include those born at term (≥37 completed weeks of gestation), following labour, that had a severe brain injury diagnosed in the first seven days of life These are any babies that had one or more of the following:</p> <ul style="list-style-type: none"> • Diagnosed with grade III hypoxic ischaemic encephalopathy (HIE) • Actively therapeutically cooled • Had all three of the following signs: decreased central tone; comatose; seizures of any kind. 	<p>Report to Legal Services Manager. Report to NHS Resolution using Early Notification Report Form</p>	<p>As soon as possible and within 30 days of incident</p>

5.1 Confidentiality

Patient confidentiality is paramount in dealing with all claims, and proper regard must be paid to the confidentiality and security of data relating to individuals, in accordance with the General Data Protection Regulations 2018. No information relating to patients or staff involved in any claim may be disclosed to any third party unless there is lawful authority, and a need to do so.

5.2 Support mechanisms for Patients / Carers and Staff

5.2.1 Information and Advice to Staff and the Trust

- **Within normal working hours:** - Within the Trust, claims are handled by the Legal Services Manager, Associate Director of Quality and Patient Safety or Head of Governance and Assurance. These staff members are available from 09:00 to 17:00, Monday to Friday on extension 4590/3117. They will advise Trust staff on any matter relating to claims or potential claims. They can also provide advice in relation to legal issues relating to patient care, and on matters relating to the Coroner's Court.
- **Outside normal working hours:** - Legal advice out of hours, can be obtained through the Clinical Site Manager. The clinical site managers will be supported by the on call manager who have the ability to contact solicitors who work on behalf of the Trust for advice.

5.2.2 Support for Patients and Carers

Patients who use the Trust's services and their carers are encouraged to report any concerns to the Trust as soon as is reasonably possible, and to consider the full range of resolution options available, including use of the Patient Advice and Liaison Service (PALS), a meeting, a complaint, alternative dispute resolution, mediation and negotiation, or litigation.

When a claim is submitted the Trust seeks to support the patient or carer, with courtesy and sensitivity, and in a timely way.

Whether or not an adverse incident gives rise to a claim, the Trust is committed to the principle of openness, and seeks to meet the needs of those who are affected. The process for communication of this kind is outlined in the incident and reporting and investigation procedure outlined in the Trust's 'Being Open' policy and linked to the Duty of Candour.

5.2.3 Support for Staff

It is recognised that staff involved in claims may need support. Any such allegation will be investigated, but the situation will be handled with sensitivity, and in line with the Trust's open and learning approach.

It is the duty of the line manager of any staff member involved in a legal claim to support that staff member and to ensure that they are aware of other sources of support which they may access, such as through the Trust's Occupational Health department.

The Legal Services Manager or Associate Director of Patient Safety and Quality, or Trust Risk Manager will support staff by providing information about the claims process and its implications for individuals, by advising on the preparation of statements and reports, (Guidance on the preparation of statements is also included in the Trust Incident Reporting and Investigations Policy). Attending court with the individual where required, ensuring that information is given about the progress of the claim and have sight of any response letter.

Where a claim is made by a patient with ongoing treatment needs the Trust will facilitate appropriate ongoing care and management and will not discriminate against service users.

Reference: NHS Litigation Authority. CNST. Clinical Negligence Litigation. [A brief guide for clinicians.](#) June 2003. Available at: www.nhs.uk

5.3 Indemnity

NHS employees are covered by NHS Indemnity for incidents which occur during the course of their contracted employment. The exceptions are in the case of so called "Samaritan acts" of care delivered outside their employment and when working in private practice. Staff are advised to consider ensuring that they have sufficient personal insurance cover for their chosen practice.

Legal representation and support may also be offered by membership of professional bodies such as The Royal College of Nursing and the British Medical Association.

5.4 Schemes under which Claims are Managed

The Trust is a member of following schemes operated by NHSR. Further information on all schemes can be found on the NHSR website www.nhs.uk

5.5 Clinical Negligence Scheme for Trusts (CNST)

The Clinical Negligence Scheme for Trusts (CNST) is a membership scheme, to which all NHS Trusts and Primary Care Trusts (PCTs) in England currently belong.

Claims relating to possible clinical negligence are dealt with in accordance with the Clinical Negligence Reporting Guidelines, Fifth Edition (as amended), published by NHR.

5.6 Liabilities to Third Parties Scheme (LTPS)

The Liabilities to Third Parties Scheme (LTPS) is a voluntary membership scheme covering non-clinical claims where the incident occurred on or after 1 April 1999.

LTPS claims reporting guidelines 2014, (from the National Health Service Liabilities to Third Parties Scheme (Amendment) Regulations 2014) provides current guidance which can be accessed through www.nhs.uk

5.7 Property Expenses Scheme (PES)

The Property Expenses Scheme (PES) is a membership scheme covering loss or damage to Trust property where the incident occurred on or after 1 April 1999. Claims under the PES are handled in line with the Risk Pooling Schemes for Trusts.

Management of the claims processes can be found at Annex A.

5.8 The Existing Liabilities Scheme

The Existing Liabilities Scheme (ELS) is centrally funded by the Department of Health and covers clinical claims against NHS bodies where the incident took place before April 1995.

5.9 Patient Losses Procedure

Small claims such as lost or stolen property are not covered under the LTPS and any compensation award in respect of staff or patient losses are met from the Trust's financial resources. Details are covered in the Patients Property Policy.

6. STAKEHOLDERS IN THE CLAIMS PROCESS

6.1 NHS Resolution (NHR)

The Legal Services Manager will liaise with NHR as required throughout the process of the claim, and also liaise with SBU leads to ensure that all other relevant stakeholders have been notified of the adverse event in line with the incident reporting and investigation policy. They will liaise with NHR during the management of a claim including seeking their approval in respect of proposed press releases.

6.2 Solicitors

The Clinical Governance Department will liaise with the solicitors appointed by the claimant and with the defence solicitors as appointed by NHR throughout the processing of any claim. The Trust has a contract with a firm of solicitors for the provision of legal advice; refer to **Annex C** for more information.

6.3 Coroner's Office

In the event that a death is notified to the Coroner the Legal Services Manager or Associate Director of Patient Safety and Quality will work as a link between the Trust and the Coroner's office. Deaths in the Hospital may be or may become the subject of a claim. Staff have a duty to provide a witness statement on request and in a timely manner for the Coroner. Guidance for staff in inquest cases can be found at **Annex B**.

6.4 Claimants

Claimants who choose to act for themselves without solicitor representation will deal directly with the Legal Services Manager or NHSR directly.

6.5 Documenting Claims and Contact with Stakeholders

In all cases documentation of claims and contact with stakeholders will be recorded through the Trust's integrated software system 'Safeguard' with case files and paper/electronic records maintained for clinical and non-clinical claims. Transfer of documentation between the Trust and NHSR will be managed through their Document Transfer System (DTS)

7. INVESTIGATION AND ROOT CAUSE ANALYSIS

This section describes the process adopted by the Trust to ensure that appropriate action and learning takes place as a result of the investigation and analysis of claims.

7.1 Identifying the Need for Action

In many though not all cases, the incident leading to a claim already may have been investigated through the incident reporting and investigation or complaints procedure, and the necessary action will have been taken in response to that investigation. In other cases, the need for action as a result of claims may be evident from:

- The Trust's preliminary investigation of the claim
- Other evidence emerging in the course of the claims process
- The outcome of the claim
- Identification of trends within aggregated data.

The Legal Services Manager will liaise with the Clinical Directors where issues of concern are raised as a result of any claim or claim investigation. Agreed actions will be managed by the appropriate lead and information provided to the Legal Services Manager for inclusion in the case file.

7.2 Monitoring the Completion of Agreed Actions

Information about claims will be included in reports from Clinical Governance and identified learning and themes reported to the Integrated Learning Forum. The Legal Services Manager will produce an annual negligence report which is presented to the Board of Directors and the Hospital Management Team.

7.3 Process of Ensuring Continual Risk Reduction Following Action

Actions taken following claims and investigations are intended to reduce risks and prevent recurrence of adverse events. It is important to ensure that actions taken are effective and target the root causes. The effectiveness of actions taken is therefore assessed through ongoing monitoring of adverse event trends.

The effectiveness of risk reduction measures is monitored through the Patient Safety Committee who review actions arising from RCA's and SUI's. If an investigation or the analysis of data identifies 'Significant' or 'High' risks remain after completion of the action, a risk assessment is undertaken and managed through the Trust Risk Register.

8. LEARNING FROM EXPERIENCE

Lessons learnt from claims/litigation in relation to the practice of particular individuals and teams are shared with the individuals and teams concerned.

Where a claims investigation raises issues of wider concern, summary and anonymised details should be presented at the quarterly Trust-wide rolling governance meetings.

Where appropriate (e.g. where major resource or policy issues will be involved in addressing a concern), learning issues from claims investigations are escalated via the Hospital Management Team.

8.1 Sharing of Learning across the Wider Health Economy

The Trust will co-operate with the investigation and management of claims involving more than one organisation, liaising with the case manager at NHR

Any patient safety issues arising from the investigation of a claim may be discussed with the Trust's NPSA representative, so that it may inform the wider patient safety agenda, and if necessary be passed on to other Trusts.

The Trust shares patient safety issues and safety concerns from claims/litigation and serious incident investigations with the CCG through representative attendance on committees and through sharing minutes of meetings. Reporting of serious incidents will be through the Strategic Executive Information System (STEIS).

Learning from claims and local actions taken will be fed back to the NHR team for wider dissemination throughout their member Trusts.

Reconciliation exercises take place annually with solicitors' risk management reports on clinical claims being produced on behalf of NHR. The Trust will be expected to receive case reports and submit annually a response to actions taken against learning from claims. The purpose of this is to demonstrate evidence of learning and improvement against claims. NHR will use this information to produce an annual report on the lessons to be learned from claims.

9. IMPLEMENTATION, MONITORING AND EVALUATION

Individual and service specific reports are produced and are presented to each division for review at monthly departmental rolling governance meetings against incidents, complaints and claims. Learning from Litigation claims are fed back through the Strategic Business Units with local actions incorporated into the Ward Work Plans.

An aggregated data report is presented annually to the Board of Directors based on the NHR Annual Score Card publication. This report is intended to provide a comprehensive overview of risk and related issues with trends analysis. It will outline how the Trust is managing these including claims to minimise recurrence and ensure organisational learning including stakeholder involvement.

The Integrated Learning Group reviews information from Serious Untoward Incidents (SUIs), complaints and claims reports to ensure that recurrent themes are adequately addressed.

The annual scorecard generated from claims reported to NHR provides data relating to high value, high volume claims and allows benchmarking against national trends.

This policy will be implemented, monitored and evaluated in line with the Policy for the Development and Management of Procedural Documents.

10. APPLICABILITY

This policy applies to all staff employed by the Trust, whether on a permanent or temporary basis.

A failure to follow the requirements of the policy may result in investigation and management action being taken in line with the Disciplinary Policy.

The Trust is vicariously liable for the acts/omissions of its employees both past and present, and as such all staff have a duty to co-operate fully in the investigation and management of any claim.

11. EQUALITY IMPACT ASSESMENT

This policy has been assessed and implemented in line with the policy on procedural documents and an equality impact has been carried out to ensure the policy is fair and does not discriminate any staff groups. A completed Equality Impact Assessment can be found at **Annex D**.

ANNEX A – CLAIMS MANAGEMENT POLICY

MANGEMENT OF THE CLAIMS PROCESS

Clinical Negligence Scheme for Trusts (CNST)

The Legal Services Manager will be responsible for communicating with the solicitors acting for the claimant and also with the defence solicitor as appointed by NHS Resolution (NHSR).

The Legal Services Manager will handle all clinical negligence claims made under NHSR's Clinical Negligence Scheme for Trusts (CNST) and will ensure target timescales are met:

- Requests for the disclosure of records to be processed within 30 days of receiving a properly authorised request in accordance with the General Data Protection Regulations 2018 (GDPR) and NHSR's Pre-Action Protocol for the Resolution of Clinical Disputes. In the case of deceased patients the records will be made available within 21 days in accordance with the Access to Health Records Act 1990 and if the patient's records have been added to in the 40 days prior to the receipt of the request.
- Acknowledge receipt of all letters of claim within 14 days.
- Potential clinical negligence claims must be reported to NHSR within 2 months of receiving an indication of a claim where there is significant litigation risk.
- Letters of claim, claim forms and formal proceedings to settle a claim out of court (detailed in part 36 of the Civil Procedures Rules) are to be notified to NHSR immediately.
- The Legal Services Manager will also ensure that sufficient information has been provided by the patient's solicitor, review all the records, obtain clinician comments and produce a clinical claim summary form prior to reporting. A detailed response is due via the Trust solicitors within 3 months.

Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES)

The Legal Services Manager is responsible for reporting potential Employer/Public Liability/Property Expenses claims to NHSR under the Risk Pooling Scheme for Trusts (RPST) in line with the following timescales:

- A potential Employer Liability Claim is to be notified to NHSR as soon as possible or within one week. Claims can also be notified from NHSR to the Trust.
- When a letter of claim is received from the claimant's solicitor, the type of claim will be assessed and the relevant documents identified in NHSR's Disclosure List will be assembled.
- Included in the detail sent to NHSR will be a signed letter detailing the type of claim and a statement in effect of the liability and background to the claim. A Liabilities to Third Parties Scheme (LTPS) report form including all the key information available and the relevant disclosure checklist is sent to NHSR. The LPTS report form will be signed by the Director of Nursing or another Executive Director. All relevant information to the case requested in the disclosure list should be assembled and sent to the NHSR. When documents cannot be sent immediately they are to be followed up as detailed below.

- An acknowledgement letter should be sent to the Claimant's solicitor within 21 days after receipt of the Letter of Claim.
- A defendant (Trust) has a maximum of 3 months from the acknowledgement of the Letter of Claim to carry out an investigation. A formal decision on liability is provided by NHSR in a Letter of Response (LOR) also within this 3 month period, to the claimant's solicitors. Any admission of liability is the responsibility of NHSR.
- If liability is denied the Defendant must enclose with the letter of response all documents available that are relevant to the issues. Note: Where a claim is being made under a scheme, NHSR authorisation is required.
- NHSR will acknowledge the notification of claim to the Trust and assign a case number and claims handling officer from NHSR.
- From therein all correspondence will be made with the relevant claims handler and solicitors appointed by NHSR.
- In order to reduce the incidence of Costs Orders NHSR will not receive claims into the scheme without the relevant documents. Where no list or documents are attached there will be a holding period of 1 month pending the receipt of the papers required. NHSR reserves the right to reject the claim if the documents are not forthcoming within this time.

Formal Proceedings in either CNST or LTPS claims:

- The Legal Services or Risk Manager will acknowledge the service of formal proceedings from the claimant's solicitor / representative within 14 days from receipt.
- The Trust will report receipt of these proceedings immediately (within 48hrs of a working day) to NHSR direct or to the panel Solicitors.
- Serving a defence: Within 28 days of receipt of proceedings. An extension may be applied for if the proceedings are incomplete or if the claimant's solicitor has not complied with the Pre-action protocol. The Defence will be served by the defendant's solicitors once approved by NHSR and the Trust and with a Statement of Truth signed by the Trust.
- Time frames for serving witness statements and documents to claimant's solicitors and the court will be advised by the solicitors on behalf of NHSR.
- All correspondence from these cases will be maintained in files (or electronically) kept in Clinical Governance and the integrated software system 'Safeguard' will be used to document claims and provide up to date reports with information relating to all claims.

ANNEX B – CLAIMS MANAGEMENT POLICY

CORONER’S INQUESTS – GUIDANCE FOR STAFF

Introduction

The Legal Services Manager is responsible for assisting HM Coroner in gathering statements from staff when a reportable death has occurred within the Trust. A death is “reportable” when it is sudden or unexpected, when cause of death is unknown, when it is violent or it is a death following surgery. A death can be reported to the Coroner by any member of staff or the deceased's family.

The purpose of an inquest is to determine:

- Who the person was
- When they died
- Where they died
- How and in what circumstances they died
- An inquest is a factual inquiry; its purpose is not to apportion blame

Providing a report for the Coroner

The Coroner may request a statement from any member of the healthcare team involved in the care and treatment of the deceased. (Guidance on the preparation of Statements is given in the Trust’s Investigations Protocol document).

If you are approached by the Clinical Governance team for a statement for the Coroner:

- You will be sent a letter briefly summarising the deceased's medical condition and results of a post mortem, if known.
- You will be asked to provide a factual report based on your involvement with the treatment and care of the deceased patient.
- You will have access to the original medical records which will be retained in the Clinical Governance Office.
- You will be asked to respond within a certain time period.
- All statements are reviewed by the Legal Services Manager and Medical Director/Director of Nursing before being released to the coroner.
- Any investigation, RCA or complaint report will also be forwarded to the coroner.

All reports given to the Coroner may be released by the Coroner to the deceased's next of kin. In the event of the family deciding to bring a clinical negligence claim, please note that the report can be disclosed to the family's solicitors and therefore it should contain only facts and not opinion.

Attending an inquest as a witness

Following the provision of your statement the Coroner may decide to call you as a witness at the inquest. If this is the case;

- You will be asked for dates of availability following request of statements.
- You will be supported throughout by the Legal Services Manager.
- A pre-meeting will be held with all staff called to the inquest a representative from Clinical Governance and the Medical Director or their Deputy
- You will have access to the original medical records and your statement at the inquest.
- The Legal Services Manager and/or a Senior Clinician will attend the inquest to provide support for staff and also to represent the Trust

If the inquest involves issues that are complex or if the family instruct legal representation, the Trust will also provide legal representation. If the Trust is legally represented the pre-inquest meeting will include the Trust solicitors to give the staff an opportunity meet with the Trust's legal representatives and to ask questions.

Giving evidence

When giving evidence at the hearing:

- You will be asked to give your evidence on oath (or to affirm) and your evidence will be recorded.
- You will be asked questions by the Coroner that relates only to the care that you provided for the deceased patient.
- You may refer to the patient's records or your statement throughout.
- The deceased's relatives are given the opportunity to ask questions of you.
- You can ask to be excused by the Coroner once you have given evidence if you have clinical commitments to attend to.

The Coroner will usually give a verdict at the end of the hearing; some examples of a likely verdict are death by natural causes, accidental death or death by misadventure, or the Coroner may give a narrative verdict.

If you have any questions relating to providing a report or attending Coroner's court as a witness please contact the Legal Services Manager on 4590.

ANNEX C – CLAIMS MANAGEMENT POLICY

PROCEDURE FOR OBTAINING LEGAL ADVICE

This procedure should be read in conjunction with the following documents:

- Annex A - Management of the Claims Process
- Incident Reporting Policy and Incident Investigation Protocol
- Safeguarding policies
- Being Open policy

The Trust has a contract with a firm of solicitors for the provision of legal advice (panel solicitors).

Under the terms of this contract the Trust is entitled to a maximum of 20 minutes free telephone advice on any single topic. However, the Trust will be charged for all time spent by the solicitors over and above this 20 minutes, and it is essential that the Trust is able to ensure all the advice provided is retained for future use as required. The purpose of this procedure is to ensure the most cost effective and efficient use of solicitors' time, and to develop a portfolio of information and advice for continued use within the Trust.

Any request for legal advice or information relating to clinical matters will be directed through the Legal services Manager or Associate Director of Patient Safety and Quality.

Any request for advice about risk management issues will be directed through the Trust's Risk Manager.

Details of the request for advice and the response provided by the panel solicitor will be sent to the Legal Services Manager, and a portfolio of useful information will be maintained.

All invoices for clinical advice will be initially directed to the legal services manager via the trust's company secretary, who will ensure that they are processed ensuring all invoices are paid in a timely manner.

Any urgent request for advice out-of-hours will be made through the Clinical Site Manager or on-call Manager who should advise the Legal Services Manager of the situation.

All non-urgent requests for legal advice require authorisation from a Director who may contact the panel solicitors directly.

<http://ycloud/teams/Management/SiteAssets/SitePages/Legal%20Services%20Requests/Legal%20Services%20Request%20Form.pdf>

The emergency contact details of the panel solicitors will be retained in the Clinical Site Managers' and On-Call Managers' handbook

ANNEX D – CLAIMS MANAGEMENT POLICY

EQUALITY IMPACT ASSESSMENT TOOL

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Name of Document: **Claims Management Policy**

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	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability	No	
2.	Is there any evidence that some groups are affected differently?	None	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	None Identified	
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?	Not Applicable	
6.	What alternatives are there to achieving the policy/guidance without the impact?	Not Applicable	
7.	Can we reduce the impact by taking different action?	Not Applicable	

For advice or if you have identified a potential discriminatory impact of this procedural document, please refer it to The Equality & Diversity Lead, Yeovil Academy, together with any suggestions as to the action required to avoid/reduce this impact.

Signed: **Janet Ebdon** (Legal services and Governance Manager) Date: **03.08.2017**