

CONTROLLED DOCUMENT

Claims Handling Policy

CATEGORY:	Policy
CLASSIFICATION:	Governance
PURPOSE	To set out the principles and framework for the handling of claims against the Trust
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1. Policy Statement

- 1.1 University Hospitals Birmingham NHS Foundation Trust (“the ‘Trust’) is a member of the Clinical Negligence Scheme for Trusts (CNST) & Liabilities to Third Parties Scheme (LTPS which deals with Employers’ liability and Public Liability Claims, as well as the Property Expenses Scheme (PES)). These are run by NHS Resolution (NHSR), formerly the NHS Litigation Authority (NHSLA).
- 1.2 The purpose of this Policy is to ensure that all clinical negligence, and third party claims involving the Trust are managed efficiently and appropriately, in accordance with the terms of the appropriate NHSR scheme and having regard to the recommendations of the Care Quality Commission, the National Clinical Assessment Service (NCAS), the National Patient Safety Agency (NPSA) and the National Institute for Health and Care Excellence (NICE).
- 1.3 The aims of this policy are to ensure:
 - 1.3.1 All claims are investigated and responded to within the appropriate timescales;
 - 1.3.2 all claims are, if appropriate, settled within the appropriate delegated limits;
 - 1.3.3 staff involved in a claim are supported appropriately;
 - 1.3.4 where possible lessons are learned from claims; and
 - 1.3.5 all relevant parties within the Trust are aware of the process for handling clinical negligence claims and who has responsibility for ensuring those processes are complied with.

2. Scope

- 2.1 This policy applies to all Clinical Negligence and Third Party claims made or contemplated against the Trust. It applies to all staff within the Trust involved in the handling and investigation of such claims.
- 2.2 It does not apply to any claims involving the Trust’s motor vehicles, property top-up insurance, Director and Officers Liability as these are covered by the respective insurance policy between the Trust and the relevant insurer.

3. Framework

- 3.1 This section describes the broad framework for the Claims Handling Policy. Detailed instructions are provided in the associated procedural documents.
- 3.2 The Director of Corporate Affairs shall approve all procedural documents associated with this policy, and any amendments to such documents, and is responsible for ensuring that such documents are compliant with this policy.

3.3 Definitions

- 3.3.1 **A claim** is defined as: 'allegations of negligence and/or a demand for compensation made following an (alleged) adverse incident resulting in personal injury or any other loss, or any incident which carries significant litigation risk for the Trust'.

The following are collectively known as the Risk Pooling scheme

- 3.3.2 **Clinical Negligence Scheme for Trusts (CNST)** – It covers all clinical claims where the allegedly negligent incident took place on or after 1 April 1995.
- 3.3.3 **Liability to Third parties Scheme (LTPS)** – It covers employers' liability claims, from straightforward slips and trips in the workplace to serious manual handling, bullying and stress claims. In addition, LTPS covers public and products liability claims, from personal injury sustained by visitors to NHS premises to claims arising from breaches of the *Human Rights Act*, the *Data Protection Act* and the *Defective Premises Act*. There is also cover for defamation, professional negligence by employees and liabilities of directors. For the applicable level of excess see section 3.7.3 below.
- 3.3.4 **Property Expenses Scheme (PES)** – It provides cover for damage to Trust buildings, plant, machinery and contents for losses such as theft or damage to property.

3.4 Notification of Claims

- 3.4.1 All staff must immediately notify the Legal Services Department if they receive a letter regarding a claim.
- 3.4.2 The claims process will normally be triggered when a letter is received from a firm of Solicitors representing the Claimant or from a Litigant in Person (an individual representing themselves) requesting disclosure of Hospital records and providing a brief outline of the likely allegations against the Trust.

3.4.3 When a reported incident is identified as having potential litigation risk, the Risk and Compliance Unit must notify the Legal Services Department immediately following the Incident Form's receipt.

3.5 Management of Claims

- 3.5.1 The Legal Services Department will ensure that all reported claims are resolved as quickly, efficiently and professionally as possible.
- 3.5.2 All reportable clinical negligence claims shall be reported to NHSR in line with the CNST Reporting Guidelines (2017) as set out in the Claims Handling Procedure.
- 3.5.3 All third party claims shall be reported to NHSR in line with the LTPS Reporting Guidelines (2014) as set out in the Claims Handling Procedure.
- 3.5.4 The Head of Legal Services will establish and maintain a database of all claims relating to the Trust including information about the basis of each claim, financial data and other information.
- 3.5.5 All claims will be investigated appropriately and within the relevant timescales in accordance with the Claims Handling Procedure.
- 3.5.6 Risk scoring for claims will be undertaken on every occasion. As outlined within the Claims Handling Procedure, all claims will be graded within 7 days of receipt of clinician comments/reports on the initial pre-action correspondence/claim documentation. This grading will be reviewed once detailed investigations have been undertaken.
- 3.5.7 Wherever possible, front-line staff will be involved in the handling of claims and clinicians against whom allegations have been made will be contacted early in the claims investigation process for their detailed reports and views as to whether or not the claim has merit.
- 3.5.8 Specialist advisors/medical experts will be appointed by NHSR or the Trust's Solicitors when it is felt appropriate following discussion between relevant senior clinicians (including the Trust's Medical Director) and the Head of Legal Services.

3.6 Liaison With Relevant Stakeholders/External Agencies

- 3.6.1 If contact with the Coroner is required the Inquests Policy must be adhered to.
- 3.6.2 Advice must be sought from the Health and Safety Department regarding any Health and Safety issue and the associated legislation. This includes providing advice on HSE legislation and also reporting matters to RIDDOR when appropriate. (The Trust's Health and Safety Policy refers).

3.7 Settling Claims

- 3.7.1 For all claims under NHSR Risk Pooling Schemes, NHSR has responsibility for settling the cost of these claims having liaised with the Trust on liability and the merits of the claim. However, claims falling outside the remit of the Trust's insurance with NHSR will require appropriate authority to be sought in line with Annex 4 of the Claims Handling Procedure
- 3.7.2 Whilst it is recognised that the ultimate decision making authority regarding the settlement or defence of claims rests with NHSR, all attempts will be made to keep operational managers and clinicians informed of the progress and outcome of Third Party claims, particularly when NHSR admits or is proposing to admit liability on the Trust's behalf.
- 3.7.3 The Trust will pay an excess of £10,000 for employer liability claims and £3,000 for public liability claims. NHSR has responsibility for making financial payments on all clinical negligence cases. An excess of £20,000 applies to the Trust's PES claims.

3.8 Being Open

Throughout the claims process the Being Open Policy and the Claims Handling Procedure will be adhered to.

3.9 Confidentiality

- 3.9.1 Confidentiality must be maintained at all times during the claims handling procedure
- 3.9.2 All legal files will be securely stored within the Legal Services Department, within a lockable room.
- 3.9.3 Disclosure of patient sensitive information will be undertaken in accordance with the Data Protection Act 1998 and the Access to Health Records Act 1990 as set out in the associated Medical Records Procedures.

3.10 Supporting staff

3.10.1 The Legal Services Department will provide appropriate support and information at all key stages of the claim to members of staff involved in the claim in accordance with the Claims Handling Procedure.

3.11 Lessons Learnt

3.11.1 The Legal Services Department will inform the organisation by sharing themes around claims in accordance with the Claims Handling Procedure. Any learning from individual incidents or groups of claims must be shared with the Deputy Director and Director of Corporate Affairs as part of the quarterly Quality and Assurance report and the quality report to Divisional Quality Clinical Groups.

3.11.2 The Head of Legal Services will work closely with the Head of Clinical Risk and Compliance and also the Patient Services Manager, to ensure that there is a clear identification of organisational or clinical risks which may need to be added to the Risk Register.

3.11.3 All external Trust solicitors' risk management recommendations will be entered onto the Risk and Compliance Unit Database, which will record any actions the Trust feels are necessary and the Database will be available for Audit from NHSR on an Annual basis. Any solicitor's risk management recommendations will be raised at the Patient Safety Group to further inform organisational learning.

4. Duties

4.1 Director of Corporate Affairs

The Director of Corporate Affairs will ensure that the Board of Directors and all other relevant Trust Committees are informed of major developments on claims related issues as appropriate.

4.2 Head of Legal Services

The Head of Legal Services is responsible for ensuring that:

4.2.1 all claims are processed in accordance with the Trust's Claims Handling Procedure;

- 4.2.2 trends in claims and emerging patterns are identified and brought to the attention of the Director of Corporate Affairs and the Risk and Compliance Unit;
- 4.2.3 the effectiveness of claims handling within the Trust is monitored and demonstrated by way of the Departmental Quality and Compliance Register (as set out in Appendix A);
- 4.2.4 Where appropriate, assist with detailed investigations of claims, in conjunction with the Risk and Compliance Unit.
- 4.2.5 Supporting any staff involved in claims and advising them of the Trust and external services which may offer appropriate support if required

4.3 Risk and Compliance Unit

Members of the Risk and Compliance Unit are responsible for monitoring remedial action throughout the Trust. Specific issues in relation to claims management/governance may also be presented to the Patient Safety Group.

4.4 All Staff

All staff involved in a claim have a duty to provide assistance to the Trust, its Legal Services Department and any NHSR appointed solicitors in the investigation and defence of a claim. In particular, reports and requests for information must be dealt with diligently and promptly and in accordance with the timescales set out in the Clinical Negligence Claims Handling Procedure.

5. Implementation and Monitoring

5.1 Implementation

The Head of Legal Services, Director of Corporate Affairs and Deputy Director Corporate Affairs will provide advice and support to relevant clinicians, nurses, departmental and management staff regarding the implementation of this policy.

5.2 Monitoring

Appendix A provides full details on how the policy will be monitored by the Trust. It will be noted that the Legal Services Department's Quality and Assurance Report will record and monitor any breaches of the targets set out within the CNST Reporting Guidelines 2014. Examples of the set targets include reporting of Letters of Claim and Court Proceedings within the timeframes set down by NHSR. Any breaches of those targets will be identified in the report. The report will also

record risk management recommendations raised by the Legal Department with the Risk and Compliance Unit. This report will be shared with the Deputy Director and Director of Corporate Affairs and also the Risk and Compliance Unit. The claims portfolio will also be monitored by way of the half yearly reports going to the Board of Directors with full trends analysis. The claims Department will also produce quarterly Divisional Clinical Quality Group reports, analysing claims and Inquests for the Division concerned and present those reports at the quarterly Divisional meetings..

6. References

- Access to Health Records Act 1990 Available from www.legislation.gov.uk
CNST Reporting Guidelines (June 2017), Available from NHSR website www.NHSR.com
Civil Procedure Rules (Available from the Ministry of Justice website www.justice.gov.uk)
Data Protection Act 1998 Available from Office for Public Sector Information website, www.opsi.gov.uk
Department of Health Guidance on Confidentiality (Available from DoH website www.dh.gov.uk)
Pre-action Protocols for the Resolution of Clinical Disputes 1998/183 [online]. London: The Stationery Office. Available from: www.dcs.gov.uk
The NHS Litigation Authority Framework Document. Available from NHSR website www.NHSR.com

7. Associated Controlled Documents

- Being Open Policy
Being Open Procedure
Claims Handling Procedure
Complaints Policy Inquests Procedure
Complaints Procedure
Health Records Procedure
Policy for reporting and Management of Incidents including Serious Incidents Requiring Investigation

Procedure for reporting and Management of Incidents including Serious Incidents Requiring Investigation

Training Catalogue

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Clinical Negligence Claims Handling Policy

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Appendix A – Monitoring Matrix

MONITORING OF IMPLEMENTATION	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
Adherence to this policy and its associated procedures/ Investigations and analysis undertaken appropriately	Head of Legal Services	Board of Directors	<p>The litigation and insurance report will include information on:</p> <ul style="list-style-type: none"> • The overall number of ongoing claims and details of any major claims; • The number of new, settled and closed (withdrawn) claims; • Any identified trends or patterns in the Trust's claims portfolio; • Any proposed remedial action arising out of particular claims; • Where remedial action has been suggested, confirmation that the feedback loop has been completed and improvements made • 	Half yearly
Monitoring and audit of the Quality and Assurance Register, UHB claims lists and Claims Databases (DATIX) – for analysis and improvement of the claims handling processes	Legal Services Department	Director of Corporate Affairs /Board of Directors/Governance Department	<p>A Quality and Assurance report will be submitted to the Director of Corporate Affairs (and by exception to the Board of Directors) and also to the Risk and Compliance Unit. The report will detail:</p> <ul style="list-style-type: none"> • any key quality targets that have not been met during the quarter, particularly those set out within section four of the CNST Reporting Guidelines 2014.. • risk Management recommendations sent to the Risk and Compliance Unit .If key quality targets and deadlines have not been met, then full reporting will be undertaken by the Head of Legal Services, detailing any remedial actions undertaken and what lessons have been learned. These actions will be reviewed 	Quarterly

			<p>within the following quarter's report.</p> <ul style="list-style-type: none"> • any potential learning from incidents (both individual or groups of claims). • Any claims trends or themes identified, together with recommendations as to how to respond to the identified trends/themes. • Any high value cases settled during the quarter • Any trials held in the quarter • Any forthcoming trials/significant settlement meetings 	
Organisational lessons are learnt from claims	Head of Legal Services	Patient Safety Group	The Risk and Compliance Unit will feed back any lessons learned from claims to the group who will in turn feedback throughout the Trust and take action as appropriate under the direction of the Deputy Medical Director and Director of Corporate Affairs. The Group will become aware of any issues involving patient safety across the Trust.	Quarterly
Organisational lessons are learnt from claims	Legal Services Staff	Divisional Quality Group Meetings	Divisional Quality Reports will be produced analysing the claims and Inquests relating to each Division. Feedback will take place at the Divisional Quality Group Meetings to key operational staff to identify any trends or themes emerging from claims and Inquests to ensure that change is embedded within the organisation.	Quarterly

The Trust has adhered to the principles of being open	Legal Services Department	Director of Corporate Affairs	The Quality and Assurance Report (see above) will record letters of apology sent to claimants and whether these have met the timescales set out within the claims policy and procedure. The Q&A report will also record that the LSD have advised staff when claims are closed or settled within agreed timescales.	Quarterly
Appropriate support has been offered to staff	Legal Services Department	Director of Corporate Affairs	<p>Meetings held with clinicians to offer support will be recorded with the legal claims files and feedback sought when appropriate.</p> <p>Annual audit to be undertaken by the Head of Legal Services to determine whether appropriate support is being offered to clinical and nursing staff in terms of claims and Inquests, by way of seeking feedback from Divisional Directors and Associate Directors of Nursing.</p>	Quarterly
Claims investigations undertaken fully and all actions on claims up-to-date	Legal Services Department	Head of Legal Services	Review will be undertaken of the UHB open claims lists and Quality and Assurance Database on at least a quarterly basis.	Quarterly
Claims checklists (outlining key evidence required for compliance with NHSR reporting guidelines and NHSR Assessments) to be used to review departmental progress, with both checklists and evidence stored on NHSR database	Head of Legal Services	Director of Corporate Affairs	Evidence will be collected and stored to monitor progress on the NHSR database, with checklist also saved there to facilitate careful audit and review of minimum requirements.	Quarterly