

Legal Advice and Services Policy

CATEGORY:	Policy
CLASSIFICATION:	Governance
PURPOSE	To set out the framework for the provision of legal support and advice throughout the Trust
Controlled Document Number:	538
Version Number:	2.1
Controlled Document Sponsor:	Director of Corporate Affairs
Controlled Document Lead:	Deputy Director of Corporate Affairs
Approved By:	Chief Executive
On:	July 2017
Review Date:	July 2020
Distribution:	
<ul style="list-style-type: none"> • Essential Reading for: • Information for: 	<p>All consultants, senior nurses and senior managers</p> <p>Clinicians</p> <p>Operational and corporate managers</p>

- *Before instructing solicitors, check whether in-house advice can meet your requirements*
- *Any unauthorised person **must** obtain authority from an authorised individual to seek legal advice.*
- *Out of hours advice – refer to section 5.3 of the procedure*

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1. Policy Statement

- 1.1 The objective of this policy is to set out the framework for the provision of legal support and advice on behalf of University Hospitals Birmingham NHS Foundation Trust (the 'Trust') in order to ensure that:
 - 1.1.1 staff are aware of the process that must be followed when they need legal support and advice;
 - 1.1.2 the Trust receives excellent advice at a reasonable cost;
 - 1.1.3 expenditure is kept within budgetary constraints;
 - 1.1.4 advice received is held centrally to avoid unnecessary duplication and ensure accessibility and benefit to the Trust as a whole;
 - 1.1.5 requests are appropriate and the advice is not already available elsewhere;
 - 1.1.6 the Board of Directors is aware of the level of involvement of solicitors and, in particular, the level of risk of legal cases to incur a cost in settlement; and
 - 1.1.7 there is an opportunity to review external solicitors' performance and the quality of the legal advice provided.
- 1.2 Save for staff who are the subject of a Trust employment tribunal case, legal advice and support is available internally. Please see section 2 of the associated 'Procedure for Obtaining Legal Advice' for further details.
- 1.3 However, there may be exceptional cases where it is necessary to obtain legal services from external solicitors in connection with patient-related issues and/or other aspects of the Trust business, including, but not limited to, inquests, commercial contracts and partnering arrangements, land matters, and employment law. External legal services may only be used where the internal Trust provision is insufficient and only where prior agreement of an Authorising Person has been obtained (see section 1 of the associated 'Procedure for Obtaining Legal Advice').
- 1.4 As demand for legal services cannot be accurately anticipated, it is difficult to set a realistic budget and therefore expenditure on such advice and services must be properly controlled. Nevertheless, a budget will be set at the start of each financial year which may have to be revised following discussions with the Director of Corporate Affairs (DCA).

2. Scope

This policy applies to all areas of the Trust with the exception of those legal claims made against the Trust in relation to clinical negligence, employer liability and third party liability covered by the Trust's arrangements with NHS Resolution, which are handled in line with the associated Claims Handling Policy and Procedure. In relation to legal claims, solicitors will be instructed directly by NHS Resolution, when this is deemed appropriate. All costs in relation to such instruction will be met directly by NHS Resolution.

3. Framework

- 3.1 This section describes the broad framework for the Legal Advice and Services Policy. Detailed instructions are provided in the associated Procedure for Obtaining Legal Advice.
- 3.2 The DCA 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 The DCA will ensure that the Trust has suitable arrangements with one or more firms of solicitors for the provision of legal advice and services across the business of the Trust. These arrangements will include access to legal advice for clinicians outside normal office hours.
- 3.4 Any issues relating to Coroner's Inquests must be directed initially to the Head of Legal Services (HoLS) or Deputy Director of Corporate Affairs (DDCA), who will provide advice and guidance. The Trust has a detailed Inquests procedure, which provides a full explanation regarding the Inquests process and the Trust's role in this. With the majority of Inquests, support for witnesses will be provided 'in-house' by the Head of Legal Services, DCA or DDCA.
- 3.5 With Inquests where the family of the deceased patient have instructed solicitors, or where the Inquest is of a serious or repercussive nature, the DCA, the DDCA, Legal and Risk or the Head of Legal Services may instruct the Trust's Solicitors to provide legal support.
- 3.6 Appendix A of the associated Procedure sets out the details of those firms currently engaged by the Trust and the areas in which they advise.
- 3.7 Law firms normally charge by reference to the amount of time spent on a matter, the hourly rate being either a blended hourly rate or an hourly rate for the level of the solicitors/legal executives working on the matter. Alternative fee arrangements may be available for certain

types of work and these will be negotiated by the DCA as required. The DCA is the designated budget holder for legal services.

- 3.8 The DCA or DDCA will advise which of the firms engaged would be best suited to advise on a particular matter. During normal office hours (NOH), the DCA, DDCA, HoLS or Medical Director must be contacted prior to solicitors being instructed in order to ensure that the advice required is not already available or cannot be obtained elsewhere free of charge. A different process applies to legal advice to be obtained during out of hours (OOH) (see section 5 of the associated Procedure).
- 3.9 Legal advice must not be sought from any firm other than those identified within the Procedure unless prior authorisation has been given by the DCA/DDCA. Use of other legal advisors on an ad hoc basis will be in accordance with the Trust's Standing Financial Instructions and only if authorised in writing by the DCA/DDCA.
- 3.10 Those members of staff specified in the Procedure may instruct the Trust's solicitors subject to Standing Orders and the Scheme of Delegation. A copy of the list of authorised persons will also be held by the Trust's solicitors, who will not accept instructions from anyone not listed.
- 3.11 Estimates for all instructions must be obtained in writing from solicitors before authorising them to commence work, save in urgent cases, where an estimate must be sought and agreed as soon as possible. The Trust's solicitors are not authorised to incur costs in excess of agreed estimates without express authorisation of the revised estimate by either the DCA or DDCA, save in urgent cases where costs up to £1,500 per matter may be incurred (emergency out-of-hours legal services).
- 3.12 Certain firms of solicitors (as indicated in the Procedure) will provide a specified amount of free telephone advice on a specific matter.
- 3.13 No invoice for work undertaken in excess of an authorised estimate or revised estimate will be paid by the Trust. For further advice on how to deal with invoices please refer to section 6 of the associated Procedure for Obtaining Legal Advice.
- 3.14 The DCA and/or DDCA will require regular narrative updates in relation to instructed matters.
- 3.15 Market testing of legal services will be undertaken periodically to review legal services provision and cost and to ensure value for money. Currently external legal services are provided by a Panel consisting of 6 firms of solicitors (see Procedure). This Panel was

established in November 2014 and will be reviewed on a 3 yearly basis.

- 3.16 The DCA and DDCA will be the primary point of contact with the Trust's appointed legal advisors regarding terms of engagement and will oversee the resolution of any issues surrounding the quality of legal services.
- 3.17 The Director of Finance shall have access to the Schedule of Legal Matters to enable an appropriate accrual to be made in the accounts at the close of each accounting period.
- 3.18 The DCA will review the legal work undertaken each quarter, alongside the budget statement and make a retrospective judgement as to whether all legal advice has been beneficial in terms of mitigating risk. Any questions arising from this review shall be raised with the appropriate Director and the criteria for call off of legal advice and the risk assessment process reviewed if necessary.

4. Duties

4.1. Director of Corporate Affairs

The Director of Corporate Affairs has delegated responsibility for ensuring that the officers and staff of the Trust have access to legal support and advice when necessary. The Director of Corporate Affairs will:

- 4.1.1. oversee the service provided by the Legal Services Department;
- 4.1.2. lead procurement processes for legal advice;
- 4.1.3. advise officers and staff on the necessity and appropriateness of particular solicitors;
- 4.1.4. authorise requests to instruct solicitors;
- 4.1.5. determine the procedure for instructing solicitors;
- 4.1.6. determine, and maintain a list of, Trust staff authorised to instruct the Trust's solicitors;
- 4.1.7. liaise with the Finance department and other Directors on budget management issues;
- 4.1.8. liaise with the Trust's legal advisors on a regular basis regarding performance;

4.1.9. be responsible for maintaining an overview of the use of the Trust's solicitors and for undertaking regular reviews of their contracts; and

4.1.10. where appropriate, provide legal advice and assistance to the Trust.

4.2. Deputy Director of Corporate Affairs, Legal and Risk

The Deputy Director of Corporate Affairs will:

4.2.1. where appropriate, provide legal advice and services to the Trust;

4.2.2. advise officers and staff on the necessity and appropriateness of particular solicitors;

4.2.3. authorise requests to instruct solicitors within authorised limits (see section 1 of the associated procedure);

4.2.4. analyse the feedback provided by Trust staff at the closure of each matter in relation to the quality and performance of the solicitor/firm concerned and brief the Director Corporate Affairs on the findings;

4.2.5. review the legal services received against the associated fees to ensure value for money is received;

4.2.6. where necessary, deputise for the Director of Corporate Affairs in his exercise of functions listed at paragraphs 4.1 above.

4.3. Head of Legal Services

The Head of Legal Services will:

4.3.1. Provide a legal support service to staff with regard to medico-legal matters;

4.3.2. authorise requests to instruct solicitors on medico-legal matters within authorised limits (see section 1 of the associated procedure);

4.3.3. advise officers and staff on the necessity and appropriateness of instructing external solicitors;

4.3.4. Support the DCA in monitoring expenditure on legal services, receiving invoices and cost narratives where external solicitors are instructed; and

4.3.5. highlight with the DCA any concerns arising from legal services expenditure.

4.4. Deputy Foundation Trust Secretary

The Deputy Foundation Secretary will:

4.4.1. Where appropriate, provide legal advice and services to the Trust;

4.4.2. authorise requests to instruct solicitors within authorised limits (see section 1 of the associated procedure);

4.4.3. advise officers and staff on the necessity and appropriateness of instructing external solicitors; and

4.4.4. Maintain an on-going record of solicitors' fees and review invoices against purchase orders to ensure they are within previously provided estimates and highlight with the DCA any concerns arising from legal services expenditure.

4.5. Authorised Staff

All staff will ensure, if it is felt legal advice is required, that they comply with this policy and the procedure for instructing solicitors.

5. Implementation and Monitoring

5.1. Implementation

This policy will be available on the Trust's Intranet site, and will also be disseminated through the management structure within the Trust.

5.2. Monitoring

Appendix A provides full details on how the Trust will monitor the policy.

6. Associated Policy and Procedural Documentation

Claims Handling Policy

Claims Handling Procedure

Inquest Procedure

Procedure for Obtaining Legal Advice

Scheme of Delegation

Standing Financial Instructions

Standing Orders

Appendix A

Monitoring Matrix

MONITORING OF IMPLEMENTATION	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
Monitoring of legal advice requests and review of bill summaries	Deputy Foundation Secretary	Director of Corporate Affairs	Maintain an on-going record of solicitors' fees and review invoices against purchase orders to ensure they are within previously provided estimates and escalate any concerns to the Director of Corporate Affairs.	Annually
Breach of policy and associated procedure	Deputy Director of Corporate Affairs/Head of Legal Services/Deputy Foundation Secretary	Director of Corporate Affairs	Advise the Director of Corporate Affairs if it appears that the Policy and/or Procedure has not been followed.	By exception
Quality and performance of supplier services	Deputy Director of Corporate Affairs	Director of Corporate Affairs	Undertake analysis of the feedback provided by Trust staff at the closure of each matter in relation to the quality and performance of the solicitor/firm concerned and brief the Director of Corporate Affairs on the findings.	Annually
Market testing of legal services	Deputy Director of Corporate Affairs	Director of Corporate Affairs	Review of legal services provision and associated fees to ensure value for money is received.	Every three years

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