

Claims Management and Legal Advice Policy – CRM004
(Clinical Negligence, Liabilities to Third Parties and Property Expenses Scheme Claims)

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Why we need this Policy

This policy applies to all Trust employees. All employees will be treated in a supportive, fair and equitable manner recognising any special needs of individuals where adjustments need to be made. No member of staff will suffer any form of discrimination, inequality, victimisation, harassment or bullying as a result of implementing this policy.

The Trust is committed to the timely and effective investigation and response to any claim that includes allegations of clinical negligence or personal injury. The Trust will follow the requirements of, and note the recommendations made by, the National Health Service Litigation Authority (NHSLA) in the management of all claims.

The NHSLA is a Special Health Authority set up under the NHS Act 1977. The principal task of the Authority is to govern the financial pooling schemes which enable Trusts to pool the costs of any loss of or damage to property and liabilities to third parties for loss, damage or injury arising out of the carrying out of their functions.

As part of its Risk Management programme, the Trust is a member (membership number T585) of the **Clinical Negligence Scheme for Trusts (CNST)** for clinical negligence claims, **Liabilities to Third Parties Scheme (LTPS)** and **Property Expenses Scheme (PES)** for non-clinical claims to provide indemnity cover for employers and public liability claims and property damage claims. Membership of these schemes requires the Trust to have a rigorous risk management process that covers risk and complies with the NHSLA Risk Management Standards, requiring agreed processes to be in place for reporting, managing, analysing and learning from claims. The Trust will follow the requirements and note the recommendations of the NHSLA in the management of all claims.

A central requirement of membership of the Schemes is the promotion and development of good risk management practices within Trusts. In addition, the NHSLA requires Trusts to comply with CNST and RPST reporting guidelines which detail good practice in claims management and reflect and underpin the timescales and requirements of the Civil Procedure Rules and Clinical Governance.

The Trust and NHSLA ensures that claims made against the NHS are handled fairly and consistently, with due regard to the interests of both patients and the NHS. The NHSLA seek to settle justified claims efficiently and defend unjustified claims robustly.

This document also provides guidance on how staff can access legal advice and support for matters in connection with carrying out their duties or general legal advice to the Trust. This covers support and advice in attending Inquests, communications with H M Coroner and attendance at Courts, such as the Crown Court as a Witness.

What the Policy is trying to do

The purpose of this document is to provide assurance to the Trust Board that appropriate systems are in place for the handling of claims and that any learning from the events giving rise to those claims is appropriately disseminated.

This policy and the attached Procedure (**Appendix 1**) also provides guidance to staff on the process to be followed and their role and responsibilities within that process for the management of CNST, LTPS and PES.

Which stakeholders have been involved in the creation of this Policy

- Corporate Affairs
- Legal Affairs Facilitator

Any required definitions/explanations

- **Claim**

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. This includes complaints leading to claims, notification of any serious incidents, incident reports generated by the Trust' risk management processes which represent a significant litigation risk and requests for the disclosure of medical records where an allegation of negligence giving rise to a personal injury has been intimated.

- **Clinical Negligence**

A breach of duty of care by a member of staff employed by Northamptonshire Healthcare NHS Foundation Trust in the course of employment which is admitted as negligent by the employer or is determined through the legal process. Northamptonshire Healthcare NHS Foundation Trust is liable at law for the negligent acts and omissions of their staff in the course of their NHS employment.

- **Employer's Liability**

The Trust is under a common law duty and a statutory duty to take reasonable care to provide competent staff, safe plant and equipment, safe premises and safe working systems. The Trust may be liable to pay compensation to any employee for any injury or loss suffered as a result of a breach of their responsibilities.

- **Public Liability**

A claim from a member of the public who has suffered a wrong or injury linked to Trust's services.

- **Property Expenses Scheme**

Non-clinical claims which the Trust may make against its insurers for losses incurred with property and contents.

- **Tort**

A term used in law for a civil wrong or injury for which damages may be claimed.

- **NHFT**

Northamptonshire Healthcare NHS Foundation Trust

Key duties

- **Trust Board of Directors**

The Trust Board of Directors is responsible for ensuring that the Trust is managing its affairs efficiently and effectively through the implementation of internal controls to manage risk. The Board of Directors receives information on claims through the Serious Incident Assurance report presented on a six monthly basis.

- **Chief Executive**

The Chief Executive has overall responsibility for ensuring that all claims are dealt with effectively and efficiently in line with the Trust Policy.

- **Director of Human Resources and Organisational Development**

The Trust Board of Directors member with responsibility for claims is the Director of Human Resources and Organisational Development and it is their responsibility to keep the Board informed of major developments on claims related issues and to provide assurance around the effectiveness of the claims management system.

- **Legal Affairs Facilitator**

The Legal Affairs Facilitator is responsible for ensuring that the system for claims and legal advice, supporting and training staff who are called to as court witnesses, conducting investigations, reporting and learning lessons are reviewed on an annual basis and implemented in line with this policy. Further duties include:

- Processing claims against the Trust.
- Reporting all claims to the NHSLA in accordance with the NHSLA reporting guidelines and timescales, including monitoring compliance with such requirements.
- Requesting any necessary documentation regarding the claim.
- Ensuring reports are prepared including progress on claims for the Trust Board of Directors on a six monthly basis.
- Liaising with the NHSLA, ensuring communication with other key stakeholders and relevant staff at appropriate stages of claim;
- Liaising with the Communications Lead as necessary where there is the possibility of publicity occurring.
- Training and supporting staff called to inquests as witnesses (see **Appendix 2**) including deciding on instruction of legal advisers and by attending all inquests on behalf of the Trust.
- Manage access to legal advice required by the Trust on general clinical risk legal issues and potential claims.
- Assess the potential litigation risk to the Trust where it is suspected that an incident may result in a claim and report internally and externally as required.

- **Investigating Managers**

It is the responsibility of clinicians/senior managers, when allocated the task of investigating and providing an investigation report or information on a claim, to ensure they follow the requirements of this policy on both reporting and management of claims and on investigations (also refer to Investigation Policy). Investigating managers must follow the Being Open and Supporting Staff Policies as part of investigating claims and these policies should also be referred to.

Statements must be obtained from staff in investigations and the format to be used is shown at **appendix 4**. Further guidance is shown at **appendix 5**.

- **Clinicians/Specialist Advisors**

Arrangements will be made to ensure that adequate advice can be obtained at all times, e.g. via NHSLA or Trust solicitors, particularly when deciding when to involve clinical staff or specialist advisors.

In the preliminary analysis of claims, clinicians not directly involved in the incident will be asked to provide a professional opinion of the incident and management thereof.

- **Trust Staff**

All staff are responsible for referring immediately all claims and potential claims to the Legal Affairs Facilitator who must be informed about all claims correspondence within 24 hours. Staff will participate fully in the management of claims, providing relevant records, incident reports, complaint files, together with supporting documentation and complying with all notified deadlines. Guidance for staff is shown at **appendix 3**. When legal advice is required, all Trust staff are responsible for ensuring that contact with legal advisers is arranged via the Legal Affairs Facilitator.

Policy detail

- **Access to advice**

Staff who require legal advice in relation with delivery of services and associated risks should first contact the Legal Affairs Facilitator who may provide advice or authorise contact with the Trust's solicitor.

No contact may be made with the Trust's solicitor without prior agreement from either a Director or the Legal Affairs Facilitator.

- **Matters Excluded From This Policy**

This policy does not:

- Provide legal advice to staff on personal legal matters or grievances.
- Cover losses and compensation sought from staff for the loss or damage of personal belongings.

- **Who may make a Claim**

The Trust, as an employer is vicariously liable for any tort committed by an employee in the course of his or her employment. The Trust has a Duty of Care in law, and a claim can be made if that Duty is breached, and if the claimant has suffered an injury, provided that breach has caused the injury. Any patient, member of staff or the public or their personal representative in the case of a death, who has suffered an injury or loss in accordance with the above definition, has the right to make a claim for damages.

- **Triggers for Invoking the Claims Procedure**

The Claims Procedure will be invoked when a 'Letter of Claim' is received in the Trust outlining a claim under the Pre Action Protocol (see Claims Handling Procedure at **Appendix 1**).

- **Delegation Limits**

With effect from 1 April 2002, the NHSLA meets all/any demands for compensation as a result of clinical negligence. The Legal Affairs Facilitator will work in conjunction with the NHSLA to determine the conduct of individual cases, reporting appropriate cases and at an appropriate stage, in line with the CNST Reporting Guidelines.

It is therefore normally inappropriate for payments to be made by the Trust; the only exceptions may be small ex-gratia payments, caused by administrative failures, involving loss of out-of-pocket expenses. These may be made in appropriate circumstances, subject to them not compromising NHSLA responsibilities in relation to liability. Guidance on this is also covered in the Trust's Complaints and Concerns Policy.

Similarly, LTPS claims will be reported to the NHSLA in line with the LTPS Reporting Guidelines, with the Chief Operating Officer having responsibility to agree settlements up to the corresponding level of the LTPS cover excess i.e. Employers Liability (EL): £10,000 and Public Liability (PL): £3,000, in conjunction with the NHSLA. PES cover and excess is determined in relation to the Trust's annual income.

- **Timescales and Procedures for the Exchange of Information**

Timescales for the actions to be taken and exchange of relevant information with claimants and the NHSLA in accordance with Civil Procedure Rules 1999 and NHSLA Reporting Guidelines are described in the Claims Handling Procedure at **Appendix 1**. It is important for all involved that where possible reported claims are resolved as quickly as possible and that claims handling in the Trust reflects the requirements of justice reforms in the following ways:

- Encouraging more pre-action contact with claimants;
- Better and earlier exchange of information;
- Improved investigation;
- Earlier settlement without the need for expensive litigation;
- Court procedures to run smoothly where there is a need for litigation.

The Claims Handling Procedure will operate in accordance with the Civil Procedure Rules 1999 and NHSLA Reporting Guidelines. For example, records should be provided within 40 days of the request; a preliminary analysis of the case should be completed within 40 days of receipt of the request for disclosure (CNST Reporting Guidelines); an acknowledgement of a Letter of Claim within 21 days of receipt (LTPS Reporting Guidelines).

- **Timescales for reporting CNST claims**

- **Clinical records**

The patient and/or legal adviser may request copies of the patient's clinical records. The

records must be provided within 40 days of the request being received by the Trust. This is the responsibility of the Senior Information Governance Specialist. When copy records are requested the Senior Information Governance Specialist must notify the Legal Affairs Facilitator within 2 days of receipt of the request so that the potential claim can be assessed and notified (where appropriate) to the NHSLA.

Assessing the risk of a claim

Where there is a risk of a claim assessed, The Legal Affairs Facilitator will notify the NHSLA of this within 2 months of the request for records. Where the risk of a claim being received is significant, the Legal Affairs Facilitator will notify the NHSLA of this within 14 days after liaising with the relevant Director.

Acknowledgement and reporting of letters of claim and Part 36 offers

The Legal Affairs Facilitator will acknowledge letters of claim and Part 36 offers within 14 days of receipt. Letters of claim and Part 36 offers will be reported to the NHSLA by the Legal Affairs Facilitator as soon as these are received and within the next working day.

Reporting claims to Directors and Senior Managers

On receipt of a claim or identification of a potential claim, the Legal Affairs Facilitator will report this to the relevant Director and Senior Manager of the Service, together with notifying the Chief Executive. Settled claims will be reported to the relevant Director, Senior Service Manager within 24 hours of receipt of any information from the NHSLA.

Preliminary Analysis Reporting/Investigation Reporting

The Legal Affairs Facilitator will undertake a preliminary analysis of the claim and this will involve liaison with the Director and Senior Manager of the service involved. The preliminary analysis may take the form of submission of any previous internal investigation report already prepared and this may be a complaint or incident (including serious incident) report together with an internal opinion of any breach of duty from a senior clinician in the Trust. This will be provided to the NHSLA within 2 months of receipt of the claim or identification of a serious risk of a claim.

Internal reporting

The Legal Affairs Facilitator will provide six monthly claims reports to the Board of Directors. Activity with claims will be reported to the relevant Director and Senior Manager as claims are made.

External reporting

Where external stakeholders are required to be notified of claims information the notification should be made to them within 5 working days of the decision had been made on reporting by the relevant director. The Director will identify the appropriate lead specialist to report to any external stakeholders and that lead will keep the Legal Affairs Facilitator informed of communications and copied into correspondence for the centralised claims file.

- **Timescales for reporting LTPS (non-clinical) claims**

Acknowledgement of letters of claim

Letters of claim received should be acknowledged by the Legal Affairs Facilitator within 21 days from date of receipt.

Reporting internally

The relevant Director and Senior Manager will be notified of receipt of a claim within 2 working days of receipt of the claim by the Legal Affairs Facilitator. As the claim progresses, any decisions on the claim including estimated value and settlement decision/date will be reported to the Director and Senior Manager of the service within 2 working days of receipt of the information.

The Legal Affairs Facilitator will provide six monthly claims reports to the Board of Directors. Activity with claims will be reported to the relevant Director and Senior Manager as claims are made.

Reporting to the NHSLA

Letters of claim, subsequent letters and Part 36 offers will be reported to the NHSLA on the day of receipt or by the next working day of receipt by The Legal Affairs Facilitator. If all investigatory information is not immediately available, the letter of claim alone will be submitted to the NHSLA with a clear indication on the information that will follow by way of the RPST report form. For information not immediately available, investigation reports and supporting documentation such as statements, photographs etc will be submitted to the NHSLA with the RPST Claim Report Form within 2 months of reporting the claim to the NHSLA.

From 1 August 2013, all employers' and public liability claims under LTPS, valued up to £25,000, will be notified direct to the NHS LA via a web-based portal. The NHS LA must acknowledge receipt by the next working day. The NHS LA must provide a liability decision within 30 working days for EL claims and 40 days for PL claims. Under the current regime, there is a 90-day period to respond. If the decision is not provided in time, the claim exits the portal process and increased legal costs are payable.

The NHSLA will send an email notification to the Trust when a new claim enters the portal. All available investigation reports and supporting documents will be sent by return using the NHSLA Document Transfer System (DTS). All information will be sent to the NHSLA within 20 working days (30 for PL claims).

External reporting

Where external stakeholders are required to be notified of claims information the notification should be made to them within 5 working days of the decision had been made on reporting by the relevant director. The Director will identify the appropriate lead specialist to report to any external stakeholders and that lead will keep the Legal Affairs Facilitator informed of communications and copied into correspondence for the centralised claims file.

- **Property Expenses Scheme**

Claims e.g. fire, flood and all property claims should be immediately notified to the Director of the service affected. The Head of Facilities will immediately prepare a report for the Director and the Legal Affairs Facilitator regarding the exact nature and cause of the damage or loss and statements obtained from any witnesses. An incident report form must be completed. The Legal Affairs Facilitator will then pursue any follow up action and investigation including reporting to the NHSLA within 24 hours of identification of the need to pursue a claim. The finance department will be informed of the potential value of the claim immediately.

Invoices should be obtained through supplies where possible for the cost of purchase of replacement of the property damaged. Consideration should be given to 'hidden' costs relating to a claim such as overtime worked to rectify the damage/situation, cost of equipment hired e.g. dryers to dry a flooded room. This should be supplied by documentary evidence and if appropriate photographs.

- **Confidentiality**

It is essential that the duty of confidentiality the Trust has to all patients and employees is maintained. Anyone involved in a claim, at any level, has an obligation to comply with this policy and to ensure confidentiality of information at all times. The Trust will ensure that all claims are handled in accordance with the requirements of those set by the Trust's Caldicott Guardian and the Data Protection Act 1998 and in respect of deceased patients the Access to Health Records 1990. Information related to individual patients and their care and treatment provided will not be released without the appropriate consent first being obtained.

There are instances where consent does not need to be sought from an individual when the disclosure of the data is necessary for the following as defined in the Data Protection Act 1998:

- For or in connection with any legal proceedings (including prospective legal proceedings)
- For obtaining legal advice
- For establishing, exercising or defending legal rights

- **Communicating with Patients/Relatives/Carers and Staff**

In the handling and investigation of claims the Trust must follow the principles of Being Open and Supporting Staff and these policies should be referred to. It is recognised that when a claim has been made communication is through the claimants solicitors and the NHSLA but this information must follow the principles of Being Open and Supporting Staff. The Legal Affairs Facilitator will ensure that senior locality managers and directors are kept informed of claims received and progress of the handling of the claim, together with details of learning outcomes and liability decisions.

There are support mechanisms in place within the Trust to help and support those involved in any allegations. It is important to consider not only how the claimant feels in such situations, but also

those in the service being claimed against as this can be an extremely stressful experience. It is recommended that all those involved are treated with sensitivity, informed of progress, and for staff to have sight of any response letter.

For staff involved in an incident where they have been called as a witness in any court setting will in addition be offered support from the Legal Affairs Facilitator and also if necessary from the Trust's appointed Solicitor.

It is not the intention of the investigation process to assess whether disciplinary action against an individual member of staff should be considered. However, if, as a result of the investigation there is prima facie evidence of a breach of the law, professional misconduct, or repetitive incidents, further action may need to be taken. In these circumstances, the appropriate senior manager in consultation with the relevant Director, will decide whether the disciplinary procedure should be invoked. Further advice is contained in the Trust's Disciplinary Procedure.

The NHSLA advised all Chief Executives, Finance Directors and NHS bodies in August 2007 that Parliament has adopted the NHSLA's view on apologies in Section 2 of the Compensation Act 2006 that "An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of duty."

Therefore providing apologies and explanations where appropriate expressing sympathy and an explanation of any adverse event should be provided in line with Being Open. Care needs to be taken in the dissemination of explanations so as to avoid future litigation risks, but, for the avoidance of any doubt, the NHSLA will not take a point against any NHS body or any clinician seeking NHS indemnity, on the basis of a factual explanation offered in good faith before litigation is in train.

- **Clinical Negligence Scheme for Trusts (CNST)**

The CNST handles all clinical negligence claims against NHS bodies where the incident in question took place on or after 1 April 1995. The costs of this Scheme are met by membership contributions. The projected claim costs are assessed in advance each year. The Trust is not liable to any excess.

The scope of the scheme is set out in the CNST rules. The CNST reporting guidelines and the CNST claim report form set out how claims should be reported to the NHSLA.

- **Liabilities to Third Parties Schemes (LTPS)**

The LTPS cover non-clinical risks such as liability for staff and visitors. For the reporting structure outlining the way in which Employers and Public Liability claims are to be reported under the Liabilities to Third Parties Scheme (LTPS) please see the Claims Handling Procedure at **Appendix 1**. The procedure has been reviewed in line with significant changes which came into effect from 1st August 2006; all new claims reported to the NHSLA must include the following documentation:

- NHSLA LTPS Report Form – (<http://www.nhsla.com/Claims/Pages/NonClinical>).
- Letter of Claim

- All documents relating to the type of claim being reported. A completed NHSLA Disclosure List (<http://www.nhsla.com/Claims/Pages/NonClinical.aspx>) must accompany all reported claims, indicating which documents are enclosed by means of a tick in the appropriate box.

- **Property Expenses Scheme (PES)**

The PES covers non clinical risks eg. property damage and was made pursuant to Section 21 of the National Health Service and Community care Act 1990. Details of the Rules under which the scheme is governed may be found in the NHSLA Handbook “Membership Rules” available from the NHSLA website at <http://www.nhsla.com/Claims/Pages/NonClinical.aspx>

- **Liaison with Stakeholders/External Agencies**

The Legal Affairs Facilitator will liaise as appropriate with the relevant Trust Director to determine if external agencies should be informed or involved in the claim process, for example:

- Where the circumstances give rise to suspicion of an unlawful act the relevant Director will consult the Chief Executive to decide whether the matter should be reported to the Police/Health and Safety Executive.
- Where the circumstances give rise to allegations of professional misconduct the appropriate Director will advise whether the matter should be reported to the relevant professional body.
- Where Health and Safety issues arise and the matter has not previously been reported, the Health and Safety Manager will determine if the matter should be reported to the Health and Safety Executive. The Director of Human Resources and Organisational Development will advise if the matter should be reported to the National Patient Safety Agency, the Care Quality Commission, or the Commissioners.
- The relevant Director will be responsible for advising whether the following agencies should be notified such as: Medical and Health Regulatory Agency and Department of Counter Fraud Services.
- The Legal Affairs Facilitator will liaise with the NHSLA; Claimants; Coroner and Coroner’s Officers; and Claimant/Defence solicitors as required. Specifically, NHSLA liaison will involve reporting appropriate cases in accordance with the NHSLA reporting guidelines.

Where reporting is to take place, the relevant Trust lead specialist will report to the external agency and will copy the Legal Affairs Facilitator into all correspondence for the central claim file.

- **Investigation Level and Root Cause Analysis**

The majority of clinical negligence claims originate from either a complaint or a serious incident (SI) and will as a consequence have been investigated in accordance with the Trust’s Concerns and Complaints, Incident Policy and Investigation Policy. The investigating manager will already have carried out a detailed investigation using a root cause analysis methodology. This information should be obtained as part of a claims investigation.

If a claim is received which has not previously been investigated as a complaint or incident, an investigation manager will be appointed by the Director of that Service who will carry out the investigation adopting a root cause analysis approach. The purpose of conducting a root cause analysis of claims is to identify the real causes of the claim – to establish legal causation. Root cause analysis can also reveal underlying system failures and other contributory factors that may have had an impact on the claim and also provide the Trust with learning. The Trust's Investigation Policy should be followed.

The Legal Affairs Facilitator in liaison with the relevant Director will advise of the level of investigation required for claims and whether any external agencies should be consulted, for example where equipment involved in the incident is part of the claim and whether the provider of the equipment should be included. In determining the level of investigation, decisions will include whether specialist clinicians should be involved, a team investigation with a skill mix of specialist staff or a senior manager dependent on the nature of the claim.

Where LTPS claims are received, the Legal Affairs Facilitator will co-ordinate investigations with the senior manager of the area involved and this, together with supporting information (statements etc) will be submitted as appropriate. The majority of LTPS claims are linked to incidents which meet the Reporting of Incidents, Diseases and Dangerous Occurrences Regulations (RIDDOR) and will have been investigated in accordance with the Trust's RIDDOR policy. The Health and Safety Executive (HSE) Report and the Root Cause Analysis report will be submitted to the NHSLA together with supporting evidence.

- **Risk Assessment of Claims**

Risk assessments should be undertaken at a local, directorate and corporate level in order to determine if the risk, potential risk or risk from investigation or settlement outcomes need further action and thereby entered onto either local, directorate or corporate risk registers. These are then submitted to the Bi-monthly Risk Management Improvement Committee. This is the responsibility of the lead manager undertaking risk assessments for the purposes of the risk register.

- **Claims Reports**

The Legal Affairs Facilitator will provide six monthly claims reports to the Board of Directors. Activity with claims will be reported to the relevant Director and Senior Manager as claims are made.

- **Learning from Experience**

The Trust is committed to learn and make changes to practice to improve services and safety as a result of claims. The Trust's systematic approach to encourage learning and promote improvements in practice based on individual and aggregated analysis of incidents, complaints and claims, and is a key aspect of the Risk Management Strategy.

The identification of a risk following claims investigation will be considered for inclusion in the relevant Local/Directorate/Corporate Risk Register with plans to manage, reduce the risk and thereby learn lessons.

Clinical teams produce and implement action plans to develop practice following an investigation as appropriate.

- **Decision Process and Agreement of Settlement of Claims**

The decision on resolving claims will be made on advice from the NHSLA and in accordance with the requirements of Standing Orders/Standing Financial Instructions. When the NHSLA suggest settlement of a claim and liability decisions, the Legal Affairs Facilitator will include this in the six monthly claims reports to the Board of Directors. Activity with claims will be reported to the relevant Director and Senior Manager as claims are made will liaise with the relevant Director and seek agreement to the NHSLA proposal. The Legal Affairs Facilitator will confirm the Trust's view and decision to the NHSLA.

- **Ex-gratia Payments**

Any "ex-gratia" settlements offered by the Trust, whether as a consequence of a case passing through the Concerns and Complaints Policy or otherwise are, by definition, not payments based upon legal liability and are therefore not reimbursable by the NHSLA.

Consideration of ex-gratia payments will be made by the relevant Director and where appropriate, in consultation with the Chief Executive.

- **Claims Outside the NHSLA Schemes**

Claims may be made against the Trust which do not come within the NHSLA Schemes eg. compensation claims because of maladministration. Decisions on whether to settle non-reportable claims will normally be on an assessment of the likely outcome of the claim and on the balance of probabilities if it were to go to Court.

In the case of a small claim where the cost of defending the claim would far outweigh the cost settlement, an offer with no admission of liability may be considered. Any decision on settling a claim will be proposed by the relevant Director in consultation with the Legal Affairs Facilitator and authorised by the Chief Executive and Finance Director and processed in accordance with the Trust's Standing Financial Instructions.

- **Joint Working**

Where there is evidence of other Trusts or external agencies being involved in a claim e.g. contractors then that agency should be involved in any investigation that may take place and any findings or recommendations be shared with that Trust/agency. The identification of external

agencies involved will be made at the onset of the investigation by the Investigation Manager or Legal Affairs Facilitator.

The Legal Affairs Facilitator is responsible for informing the NHSLA of the possibility of additional parties/joint defendants when logging the claim or as soon as they are identified and they are also responsible for informing all additional parties/joint defendants.

- **General Legal Advice**

Seeking professional legal advice is necessary during the course of the Trust's business for numerous reasons. The Trust has a corporate budget for legal advice and this is held by the Trust Board Secretary on behalf of the Chief Executive.

The Trust-wide legal adviser to the Trust is Hempsons LLP. Out of hours/emergency cover from April 2016 is detailed at **Appendix 6**.

Staff may not contact the Trust legal advisors without the permission of either a Director of the Trust or the Trust's Legal Affairs Facilitator. Exceptions to this are Human Resource matters, Trust's estate and property matters where formal arrangements already exist.

Professional legal advice is routinely obtained by the Trust in a number of different areas including:

- **Legal Representatives**

The Trust is allocated a 'Panel Solicitor' by the NHS Litigation Authority (NHSLA) to deal with any clinical negligence claims from patients or their relatives whilst in the care of NHT. As Hempsons LLP are a panel firm appointed by the NHSLA, the Trust will seek to use them in such cases and agreement on this will be sought by the Legal Affairs Facilitator.

The NHSLA also allocate other Panel Solicitors to deal with employers and public liability claims and the Trust will be notified of this either via the NHSLA or by direct contact from the appointed firm.

- **Documentation**

The Legal Affairs Facilitator will maintain a central claims file that will hold all documentation collated in the handling and investigation of any claim or potential claim. Statements collected as part of any investigations, documentary evidence and investigation reports should all be submitted to the Legal Affairs Facilitator for retention in the claim file and disclosure to the NHSLA where necessary.

- **Inquest Funding**

From 1 April 2013 the NHSLA will provide discretionary funding of legal representation at inquests where it is likely that a subsequent civil claim will be pursued. The application for funding must be made via the NHSLA claims portal and an Inquest Funding Request form must be submitted. In

cases where funding has been denied, the decision will be reconsidered following the submission of further evidence that supports a potential claim.

Training requirements associated with this Policy

- **Mandatory Training**

There is no mandatory training associated with this policy.

Training required to fulfil this policy will be provided in accordance with the Trust’s Training Needs Analysis in relation to the investigation of claims. Management of training will be in accordance with the Trust’s Statutory and Mandatory Training Policy.

- **Specific Training not covered by Mandatory Training**

Ad hoc training sessions based on an individual’s training needs as defined within their annual appraisal or job description.

How this Policy will be monitored for compliance and effectiveness

The table below outlines the Trust’s monitoring arrangements for this document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

Aspect of compliance or effectiveness being monitored	Method of monitoring	Individual responsible for the monitoring	Monitoring frequency	Group or committee who receive the findings or report	Group or committee or individual responsible for completing any actions
Duties	To be addressed by the monitoring activities below.				
Claims are managed in accordance with the NHSLA schemes relevant to the Trust i.e. CNST, LTPS & PES and this policy including: <ul style="list-style-type: none"> • Action to be taken including timescales • How the organisation communicates with relevant 	Review of 10% of all claims files covering all types of claims for assurance of compliance	Legal Affairs Facilitator	Six monthly via report to Trust Board of Directors	Six monthly via report to Trust Board of Directors	Quality and Governance Committee

stakeholders such as staff, claimants, NHSLA, solicitors, HM Coroner etc.					
There is no specific mandatory training in relation to this policy and the mandatory training in relation to the investigation of claims is covered in the Investigation Policy and by referring to the training needs analysis in the Statutory and Mandatory Training Policy.					
Where a lack of compliance is found, the identified group, committee or individual will identify required actions, allocate responsible leads, target completion dates and ensure an assurance report is represented showing how any gaps have been addressed.					

Equality considerations

The Trust has a duty under the Equality Act and the Public Sector Equality Duty to assess the impact of Policy changes for different groups within the community. In particular, the Trust is required to assess the impact (both positive and negative) for a number of ‘protected characteristics’ including:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Race;
- Religion or belief;
- Sexual orientation;
- Pregnancy and maternity; and
- Other excluded groups and/or those with multiple and social deprivation (for example carers, transient communities, ex-offenders, asylum seekers, sex-workers and homeless people).

Reference Guide

Department for Constitutional Affairs, 1998. Pre-action Protocols for the Resolution of Clinical Disputes 1998/183 [online]. London: The Stationary Office. Available from: www.dca.gov.uk

Department for Constitutional Affairs, 1998. Pre-Action Protocol for Personal Injury Claims [online]. London: The Stationary Office. Available from www.dca.gov.uk

The National Health Service Litigation Authority Framework Document. Available from www.nhsla.com (Publications - Claims publications)

Clinical Negligence Reporting Guidelines Fifth Edition – October 2008. Available from www.nhsla.com (Publications - Claims publications)

LTPS Claims Reporting Guidelines Available from www.nhsla.com (Publications - Claims publications)

NHSLA Disclosure List. Available from www.nhsla.com (Publications - Claims publications)

NPSA Being Open: Communicating Patient safety incidents with Patients and their carers / Risk Scoring Matrix

DoH. 2003, Recommendation 7 Making Amends, Chief Medical Officer

Civil Procedure Rules

Compensation Act 2006

Document control details

Author:	Legal Affairs Facilitator
Approved by and date:	Trust Policy Board, 12.04.2016
Responsible Committee:	Risk Management Improvement Committee
Any other linked Policies:	CRM001 - Risk Management Strategy CRM002 - Incident Policy CRM003 - Complaints and Concerns Policy CRM008 - Investigation Policy CRM005 - Analysis, Improvement and Learning Policy CRM006 - Being Open Policy CRM007 - Supporting Staff Policy HR001 - Disciplinary Policy and Procedure HR025 - Core Skills Training Policy HSC002 - Policy and Guidance for the Use of Risk Register HSC009 - Policy on the Reporting of Injuries Diseases and Dangerous Occurrences IGPR014 - Access to Records Policy
Policy number:	CRM004
Version control:	Version 1:

Version No.	Date Ratified/ Amended	Date of Implementation	Next Review Date	Reason for Change (eg. full rewrite, amendment to reflect new legislation, updated flowchart, minor amendments, etc.)
1.0	12.04.2016	12.04.2016	12.04.2019	New governance of trust policies template.

APPENDIX 1 - CLAIMS HANDLING PROCEDURE

INTRODUCTION

The number of complaints against NHS Trusts and other Healthcare Providers is growing as patients become more prepared to question the treatment that they are given, to seek an explanation of what happened, and to appropriate redress. Generally, they may seek further treatment, an apology, assurances about future action or compensation.

On occasion, patients may feel that it is necessary to go to litigation by pursuing a claim against Healthcare Providers and, prior to April 1999, this meant a long, drawn out process, along with substantial legal costs, leading up to the court hearing stage.

It was recognised that a pre-action protocol which sets out “ground rules” for the handling of disputes at an early stage was required and to this end Lord Woolf produced a report, “Access to Justice”, in 1996. Following extensive consultation new Civil Procedure Rules were laid before Parliament and published in January 1999. These rules are supplemented by Practice Directions and Pre-Action Protocols (one Protocol deals with clinical negligence and the other deals with personal injury claims).

- **Pre-Action Protocol for the Resolution of Clinical Disputes.**

The protocol encourages a climate of openness when something has gone wrong with a patient’s treatment or the patient is dissatisfied with that treatment or outcome. This reflects requirements for clinical governance in healthcare, provides guidance on how an open culture may be achieved (see National Patient Safety Agency (NPSA) Being Open) and recommends a timed sequence of steps for healthcare providers.

- **Pre-Action Protocol for Personal Injury Claims.**

The protocol aims to achieve more pre-action contact between parties, better earlier exchange of information and investigation which puts the parties in a position to enable early settlement before litigation or for proceedings to run more efficiently. This reflects a desire to build on and increase the benefits of early but well informed settlement which genuinely satisfy both parties.

All NHS Authorities and Trusts are required to comply with the Protocols and to this end the rules, where appropriate, have been incorporated into this Procedure and it is important that managers note the following implications for the Trust.

- Once the litigation process starts tight timetables are imposed.
- Effective systems are required, for providing complete, good quality copies of medical (and other) records quickly. All relevant records will need to be identified at the outset.
- Early investigation of claims will depend in large part on receiving early and informative comments from relevant staff, particularly clinical staff.
- There are financial penalties for delays, in some instances defence cases may even be struck out as a penalty for undue delay.

The rules are designed to encourage early settlement and provide for the claimant to make an offer to settle. The Trust will need to be in a position to respond very quickly to such requests, if not; there are substantial penalties for delay in accepting a reasonable offer.

Where the court decides that one of the parties has been unreasonable in their conduct the court may impose penalties in cost or interest on damages. The possibility of cost or interest penalties means that the pre-action protocol must be complied with. The claim must be thoroughly and speedily investigated at an early stage. The relative merits of defending or settling must be considered early. This means that persons requested to provide information must do so promptly.

For ease of use the Claims Procedure has been kept simple in that it has been written as a number of steps to be followed by managers and staff concerned where litigation is in progress. Where appropriate each step details the action required, by whom, and by when. For reference NHSLA Civil Procedure Rules; Pre-Action Protocol for the Resolution of Clinical Disputes; Pre-Action Protocol for Personal Injury Claims, Clinical Negligence Reporting Guidelines Fifth Edition October 2008 and LTPS Claims Reporting Guidelines have been utilised.

PRE-ACTION PROTOCOLS

The Trust recognises and will at all times adhere to the pre-action protocols for the resolution of clinical disputes and personal injury claims, in the interests of:

- Encouraging a climate of openness when something has “gone wrong” with a patient’s treatment or the patient is dissatisfied with that treatment and/or the outcome.
- Encouraging the adoption of a constructive approach to complaints and claims, and accepting that concerned patients are entitled to an explanation and an apology if warranted, and to appropriate redress in the event of negligence.

PRE-ACTION PROTOCOL FOR CLINICAL NEGLIGENCE CLAIMS (CNST)

Obtaining the Clinical Record

- The patient and/or their legal adviser will request copies of the patient’s medical records (which includes any x-rays, test results etc). The request should be made following the Trust’s Access to Records Policy IGPR014. These requests should adhere to the Department of Health Guidelines and should when properly completed constitute satisfactory evidence for the Trust purposes of the patient’s consent for the release of their records to their legal and other expert advisors.
- It should be noted that if the Trust fails to provide records as requested within 40 days of receipt of the request that is in line with Trust Policy, the claimant/solicitor can apply to the Courts for pre-action disclosure. **The Courts will have power to impose cost sanctions for any unreasonable delay.**
- The Clinical Records Department will also provide the Legal Affairs Facilitator with a duplicate set of clinical records to that which has been disclosed.

For each request for disclosure of records a note should be made detailing either:-

- What documents have been disclosed; or
- Where disclosure has not been undertaken the reason and outcome.
- Where the documents have been destroyed a note to that effect should be made stating the date and reason for destruction.

Letter of Claim

- If the patient decides that there are grounds for a claim, they or their solicitors will send a letter of claim to the Trust.
- The letter of claim should contain a clear summary of the facts on which the claim is based, including the alleged adverse outcome, and the main allegations of negligence. It should describe the patient's injuries, the present condition and prognosis, and the estimated financial loss incurred by the claimant. In more complex cases a chronology of the relevant events should be provided. Sufficient information should be given to enable the Trust to commence investigations if it has not already done so and for the NHSLA to put an initial valuation on the claim.

NOTE: The National Health Litigation Authority (NHSLA) will deal with all claims.

The NHSLA will manage the claim for the Trust, appointing a panel solicitor to defend. The Legal Affairs Facilitator should facilitate this approach by providing all necessary information/documents required to defend the claim noting that the NHSLA has three months to respond formally.

SUMMARY OF CLINICAL NEGLIGENCE REPORTING REQUIREMENTS:

All Staff

- On receiving a request for clinical records under the Pre-Action Protocol or on receipt of a letter of claim, this should be forwarded immediately to the Legal Affairs Facilitator (within one working day).

Legal Affairs Facilitator via the Medical Records Team

- Requests for disclosure of medical records to be processed within 40 days.

Legal Affairs Facilitator in consultation with Director

- Report to the NHSLA immediately or within the next working day.

- Notify the relevant Director within 24 hours of receipt of a claim.
- Ascertain links with previous investigations conducted via complaints or incident procedures and disclose this to the NHSLA. If not previously investigated or more investigation is necessary, arrange for the claim and incident to be investigated and submitted to the NHSLA within 2 months of receipt of the claim.
- Report incidents and complaints that have a high risk of litigation to the NHSLA within 2 months of a request for records or on identification of a serious risk of litigation.
- All letters of claim and Part 36 offers to be notified to the NHSLA within 24 hours of receipt or within the next working day.
- Acknowledge letters of claim within 21 days.
- Legal proceedings to be notified immediately.
- Identify learning outcomes and risks from claims.
- Notify the Director of claims settled.

Letter of Response

The NHSLA should investigate the claim and within 3 months of the letter of claim provide a reasoned answer to it in the form of a letter of response. The NHSLA in consultation with the Trust will specify which issues of breach of duty and/or causation are admitted and which are denied and why. Documents must be enclosed which are material to the issues in dispute which would be likely to be ordered to be disclosed by the court during proceedings.

The letter of response will be drafted by the NHSLA who deal with all CNST cases.

The Proceedings Stage

The Proceedings Stage is extremely complex. Any members of staff who may be involved at any time at the Proceedings Stage will be fully informed and supported as necessary via the Legal Affairs Facilitator.

PRE-ACTION PROTOCOL FOR LTPS CLAIMS

Liabilities for Third Parties Scheme [LTPS] otherwise known as The Risk Pooling Scheme for Trusts [RPST] covers Employers Liability, Public Liability, Professional Indemnity and Property Expenses Scheme [PES].

The procedure to be followed for LTPS claims is similar to the procedure for Clinical Negligence claims, as follows:

Letter of Claim

- If the claimant decides that there are grounds for a claim, they or their solicitors will send a letter of claim to the Trust.
- The letter of claim should contain a clear summary of the facts on which the claim is based, including the alleged adverse outcome, and the main allegations of negligence. It should describe the patient's injuries, the present condition and prognosis, and the estimated financial loss incurred by the claimant. In more complex cases a chronology of the relevant events

should be provided. Sufficient information should be given to enable the Trust to commence investigations if it has not already done so and for the NHSLA to put an initial valuation on the claim. The letter of claim should be forwarded to the NHSLA within 21 days by The Legal Affairs Facilitator; all Employer Liability claims must be accompanied by the disclosure list applicable to the particular type of claim. Legal Affairs Facilitator will acknowledge the letter and identify that the NHSLA will be dealing with it.

NOTE: The National Health Litigation Authority (NHSLA) will deal with all claims. The NHSLA will manage the claim for the Trust, appointing a panel solicitor to defend. The Legal Affairs Facilitator should facilitate this approach by providing all necessary information/documents required to defend the claim.

SUMMARY OF ACTIONS:

All Staff:

- On receipt of a letter of claim refer this immediately to the Legal Affairs Facilitator.

The Legal Affairs Facilitator

- Acknowledge the letter of claim within 21 working days from date of receipt of the claim in the organisation.
- Notify the relevant Director of the receipt of a claim within 2 working days of receipt of the claim.
- For LTPS claims, notify the NHSLA immediately and complete a standard disclosure and LTPS Claim Report Form, submit to the NHSLA (supporting documents such as investigation reports and statements that are not immediately available will be submitted to the NHSLA within 2 months of receipt of the claim).
- For LTPS claims within the NHSLA portal, to submit to the NHSLA an investigation report and supporting evidence within 20 working days.
- For CNST claims, notify the NHSLA immediately and co-ordinate the preliminary analysis and disclosure to the NHSLA, liaising with Directors and the Chief Executive.
- For CNST claims arrange for existing investigation documents to be collated for submission to the NHSLA with the standard disclosure list and arrange for any further investigation to be conducted and completed within 2 months of the receipt of the claim.
- Liaise closely with any records and reports held by the Health and Safety Advisor on reports, inspections etc. and in particular any notification of the incident to the Health and Safety Executive under RIDDOR.
- Legal proceedings to be notified immediately to the NHSLA and to Directors including the Chief Executive.
- Identify learning outcomes and risks from claims
- Seek agreement with Directors on settlement of LTPS claims and the Director and Chief Executive on settlement of CNST claims, reporting all via claims reports.
- Keep the Finance Directorate updated of potential costs to the organisation as a result of claims.

Investigating Managers

- Complete investigations requested by the Legal Affairs Facilitator, Health and Safety Manager or Director within the period specified and not exceeding 2 months of the receipt of the claim.

Letter of Response

The NHSLA should investigate the claim and within 3 months of the letter of claim provide a reasoned answer to it in the form of a letter of response. The NHSLA in consultation with the Trust will specify which issues of breach of duty and/or causation are admitted and which are denied and why.

Documents must be enclosed which are material to the issues in dispute which would be likely to be ordered to be disclosed by the court during proceedings.

APPENDIX 2 – REQUIREMENT FOR AN INQUEST

An inquest must be held when the Coroner is informed that there is reasonable cause to suspect that the deceased died a violent or unnatural death, or a sudden death of which the cause is unknown or if the deceased died in prison or in such circumstances as to require an inquest under any other Act.

There is no general discretion for the Coroner to hold an inquest. The Coroner only has a right to convene an inquest if one of these conditions is satisfied. Conversely, the Coroner has no discretion not to hold an inquest if one of the conditions is satisfied.

The Scope of the Inquest

The question of ‘how’ a person came to their death is not limited to establishing the medical cause of death and may require a critical examination of the circumstances in which the death occurred.

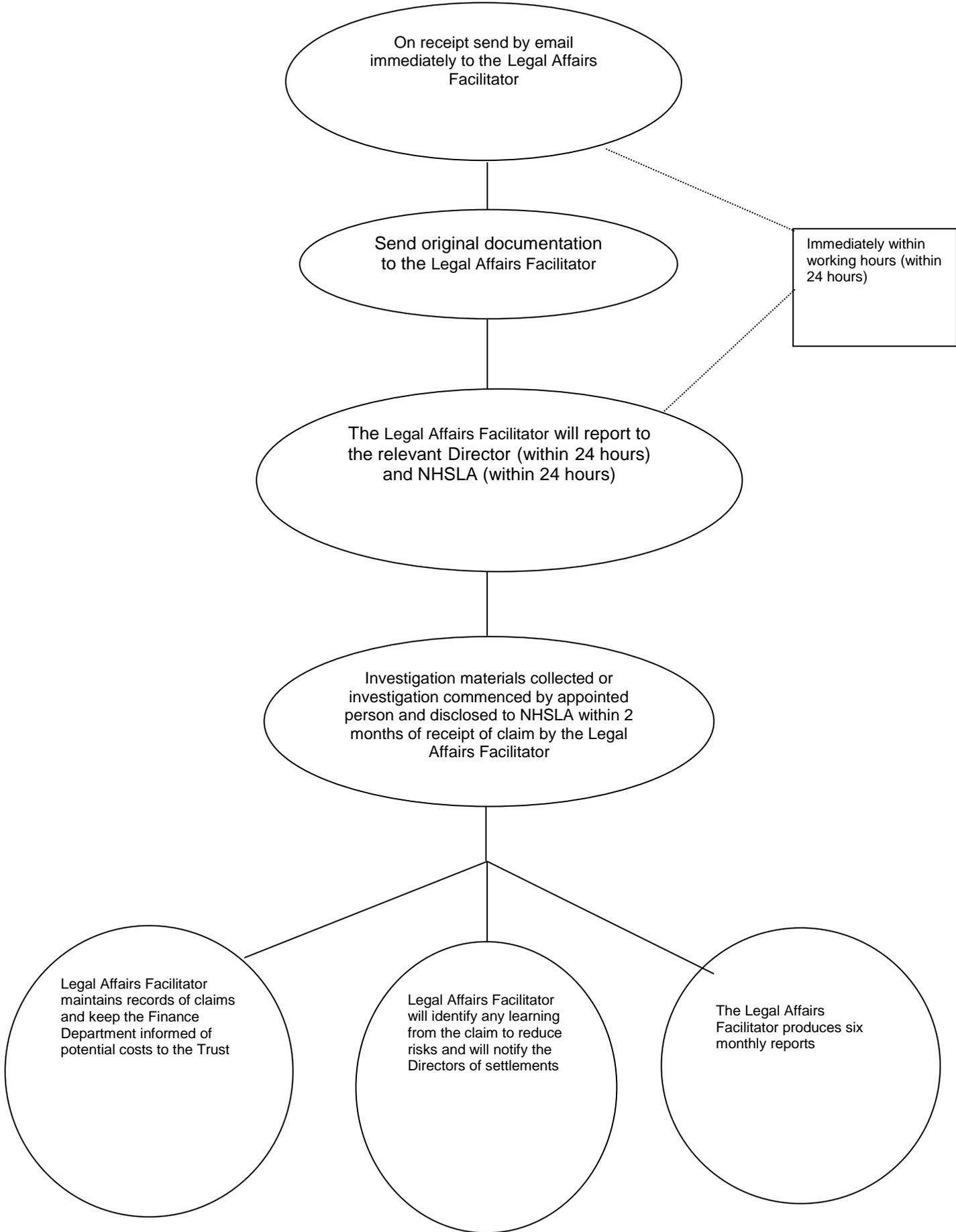
- The Coroner formally records
 - Who the deceased was
 - When they died
 - How they died

Although the inquest is not concerned with apportioning blame for the death, this does not mean the inquest should not inquire into whether the death was contributed to by some human or system failure. Indeed, in some circumstances, this may be a requirement for an effective inquest.

For instance, one of the potential verdicts is that the death was contributed to by neglect. This involves an inquiry into whether there was a gross failure to provide food, shelter or basic medical attention to a dependent person in obvious need. It is clear that this involves an exploration into whether there was such a failure. On the other hand, in the case of a road traffic accident, for example, it is sufficient for the Coroner to satisfy him or herself that the cause of death was an accident. It is not appropriate for the Coroner to then enquire into which of the persons involved was responsible for that accident.

All Trust staff called as witnesses to inquests are offered support, training and guidance from the Legal Affairs Facilitator, who also accompanies them to inquest. Managers should also support staff called as witnesses and attend inquests where possible.

APPENDIX 3 – CLAIM HANDLING RESPONSIBILITIES



APPENDIX 4 – SAMPLE STATEMENT FORMAT

Statement of: (insert name of staff member)

Relating to: (insert name of patient)

D.O.B of patient:

Date of Incident:

Time of Incident:

Occupation of (insert name of staff member and job title):
Healthcare NHS Foundation Trust at

employed by Northamptonshire

(insert name and address of site and description of service i.e. acute mental health directorate)

Give your background covering your qualifications in relation to your role and how long you have been in your current post.

Give the background knowledge that you have of the person this statement relates to and then detail your involvement in the incident. Do not use abbreviations.

I believe that the facts stated in this statement are true.

Signature

Date

Print Name:

Time of statement

Page of

This statement is disclosable under the Data Protection Act 1998 and Freedom of Information Act 2000

APPENDIX 5 - GUIDANCE FOR WRITING STATEMENTS

If you are unsure about whether a statement is necessary, or what should be contained within that statement, please contact the Legal Affairs Facilitator before compiling your statement.

- Where possible statements should be typed.
- Statements should ideally be written within 48 hours of an adverse event occurring.
- Original statements should be submitted and dated, signed and time of statement given.

What your statement should contain

- Facts only
- Who you are – name, grade, ward/specialty
- Where the incident occurred
- Time of the incident
- Your involvement in the incident
- What happened
- What you knew about the patient or member of staff at the time of the incident
- What you found on examination/on seeing the patient or member of staff
- The situation with which you perceived you were dealing
- What you did/did not do
- Why/why not?

What your statement should not contain

- Opinion
- Petulant comment
- A verbatim regurgitation of the entries made in the clinical records – statements are designed to ‘flesh out’ information contained therein

PLEASE NOTE

Statements made following an adverse incident – if litigation has not been intimated at the time the statement is written – the statement will be disclosable if the case subsequently becomes the subject of a claim, i.e. the affected person’s legal team will have access to the statement. For that reason, it is important that if any member of staff is unsure whether to write a statement, or the format of that statement, they should contact the Legal Affairs Facilitator for advice.

Please also note that emails written between staff members, before legal action has been intimated, would be disclosable to the affected person’s legal team should the case become the subject of a claim.

Staff are encouraged and supported to seek advice from their respective professional organisation/union/manager when producing a statement.

APPENDIX 6 - HEMPSONS – LEGAL ADVISORS TO THE TRUST OUT OF HOURS/EMERGENCY COVER AS AT APRIL 2016

HEMPSONS' CORE TEAM – CONTACT DETAILS

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