

Claims policy

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1. Introduction

The Trust has a Risk Management Policy that sets out its approach to minimising the organisation's exposure to risk and effectively manage risk. The underpinning principles for effective risk management are reflected in this policy.

Legal claims against the Trust will be investigated in accordance with NHS Resolution's reporting guidelines, a copy of which can be obtained at <https://resolution.nhs.uk/>

The Trust endeavours to manage and learn from incidents, complaints, PALS enquiries and claims in an integrated way and as such reference should be made to the Incident Reporting and Management Policy; Complaints, Compliments, Concerns and Comments Policy; Being Open Policy; Integrated Patient Experience Learning and Responding Policy.

2. Policy statement

Any claims and potential claims will be investigated objectively and thoroughly in manner, which quickly uncovers the facts and identifies any risks, which require to be managed.

In its approach to the effective management of claims the Trust acknowledges that:

- it is rarely the case that NHS staff set out to deliberately harm either themselves or others.
- staff are usually doing their best to carry out their work in a safe and effective manner in order to benefit patients.
- adverse events which lead to claims often occur due to system errors rather than due to an error on behalf of an individual alone.
- being involved in a case, which is being investigated as a possible claim, can be a stressful experience for both junior and senior staff.
- It is essential that lessons identified from claims are learnt to facilitate organisational wide learning and relevant changes to practice are made.

3. Purpose or Aim

The purpose of this policy is to describe the Trust's approach to the management of claims and the procedures staff should follow.

Adherence to the policy and procedure should ensure:

- that Trust staff are clear about the process for managing claims including their responsibilities in relation to this and that staff are supported throughout the process.
- that claims are handled professionally and expediently in order to minimise the distress to claimants, manage expectations appropriately and protect the reputation of the Trust.
- that the Trust complies with the requirements for membership of the –NHS Resolution claims management schemes.
- that the Trust complies with the requirements of the Pre-action Protocol for the Resolution of Clinical Disputes and the Pre-action Protocol for Personal injury so avoiding the cost penalties associated with non-compliance.
- that the ethos of the Trust's Being Open and Duty of Candour policy is followed.

4. Scope

This policy applies to all staff. This policy does not cover the management of claims related to contractual matters, e.g. Public Finance Initiative.

NHS Resolution Schemes relevant to the organisation

The Trust is a member of the NHS Resolution Clinical Negligence Scheme for Trusts and Risk Pooling Scheme for Trusts and manages its claims in accordance with their guidelines to ensure continued membership

This policy and procedure applies to the management of the following types of claim:

- Clinical Negligence – covered by the NHS Resolution (NHSR) Clinical Negligence Scheme for Trusts (CNST)
- Employer Liability – covered by the NHS Resolution Risk Pooling Scheme for Trusts (RPST) and Liability to Third Parties Scheme (LTPS)
- Public Liability (as above) – covered by NHSR Risk Pooling Scheme for Trusts (RPST) and Liability to Third Parties (LTPS)
- Claims in respect of loss or damage to Trust property – covered by the NHS Resolution Property Expenses Scheme (PES)

5. Clams procedure

Claims are managed in accordance with the [Claims Handling Procedure](#)

6. Roles and responsibilities

The Director of Nursing and Quality has executive responsibility for claims management in the Trust and for putting the necessary arrangements in place so that claims can be managed efficiently in accordance with NHS Resolution's requirements. The Director of Nursing also has responsibility for ensuring support and guidance is available to assist in the management of any hazards or reduction of risks arising from a claim. As **Caldicott Guardian**, the Director is responsible for ensuring that appropriate information governance policies and processes are in place to ensure that medical records staff are clear about how to handle disclosure of records in respect of claims.

All Directors have responsibility for making appropriate professional support available to staff involved in claims and for ensuring that timely explanations, and if necessary, apologies about issues of care have been communicated to individuals affected.

The Director of Finance is responsible for working with the NHS Resolution to agree the level of contributions the Trust makes to their risk management schemes and for ensuring appropriate provisions are in place to meet excess payments in respect of claims.

The Head of Risk Management and Legal Services has overall responsibility for all claims brought against the Trust and has responsibility for managing all claims brought under the CNST scheme and Mental Health Act related claims under the RPST scheme.

The Claims Management Facilitator has responsibility for managing all claims brought under the RPST and LTPS schemes (with the exception of Mental Health Act related claims), i.e. this individual deals with all clinical, employee and public liability claims.

The Trust's corporate team, managed by the Company Secretary is responsible for managing all claims received under the Property Expenses Scheme and all judicial reviews.

The PALS and Complaints Manager is responsible for alerting colleagues with risk management responsibilities to matters that may give rise to a claim.

The Contracts Manager is responsible for overseeing claims associated with motor vehicles, leased or owned by the Trust, and is supported in the administration of claims by nominated staff in the Finance Department

Clinical Directors are responsible for obtaining or providing an internal expert opinion on the merit of a claim.

All Trust Staff are responsible for

- Under no circumstances should staff enter into discussions or negotiations with patients/families or their solicitors to settle any potential claim, without consultation with the Trust's appointed solicitors. This will be a serious breach of this policy.
- Reporting any adverse incident in accordance with the Trust's Incident Reporting Procedure.
- Co-operating fully in the investigation of any claim providing comments or statements as requested in a timely fashion. This applies to current and ex-employees. All NHS employees undertaking NHS work are covered by NHS insurance indemnity.
- Alerting the Trust **immediately** should a Claim Form (issued by the Court) or claimant's solicitor's letter indicating a possible claim in relation to their NHS work be addressed to them personally.
- Alerting the Trust **immediately** should they receive a request for medical records addressed to them personally in a matter, which could potentially become a claim against the Trust.
- Keeping any 'privileged' documents filed **separately** from the medical records. Privileged documents are those produced in contemplation of litigation. Such documents for staff will be maintained on the legal file and these can be made available to staff on request.
- Ensuring the safekeeping of any physical evidence, which may be required in the investigation of a claim. Obtaining photographic evidence if appropriate where the physical environment is in issue and may subsequently change.
- Co-operating with the Trust in investigating claims and in identifying the root causes of an incident which has resulted in a claim.
- Identifying and taking the necessary actions to manage any risks highlighted by a claim.

7. Standards

The Trust will handle all claims professionally in line with the latest legal protocols and in accordance with the NHS -Resolution requirements.

8. Training

The Trust lead for Claims Management participates in a programme of continuous professional development to ensure they remain up to date and keep abreast of developments in this field.

The Claims Co-ordinator will attend external training events to keep up to date with claims handling requirements. Such events may be provided by the NHS Resolution, appointed Trust solicitor firms or other external agencies/companies.

9. Monitoring or audit

This policy will be reviewed after three years or earlier as required. Compliance with this policy will be monitored through a variety of different mechanisms described below.

The Critical Incident Overview Group will receive reports in respect of claims management and may commission an audit of the Trust's claims handling arrangements.

The Trust will seek feedback from the NHR panel solicitors on the adequacy of the Trust's controls and processes in place to manage claims effectively and avoid repetition of the issue that gave rise to the claim.

A system of peer review exists amongst the individuals with responsibility for managing claims to enable critique and quality review and to ensure that the guidelines issued by the NHS Resolution on claims handling are adhered to. Significant issues arising from these reviews will be communicated to the Critical Incident Overview Group. Additionally the Director of Nursing and Quality may wish to periodically commission an audit of claims files.

Definitions

Abbreviations and specialist terms have been defined at their point of use in this document.

10. Associated and related procedural documents

This policy forms part of the Trust's strategic approach to risk management and should be read in association with:

- [-Risk Management Policy](#)
- [Incident Management Policy](#)
- [Being Open and Discharging our Duty of Candour Policy](#)
- [Complaints, Compliments, Concerns and Comments Policy](#)

11. References

References in relation to claims handling

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

NHS Litigation Authority Framework Document. Available from www.nhsla.com (Publications - Claims publications)

Clinical Negligence Reporting Guidelines, fourth edition – January 2007. Available from www.nhsla.com (Publications - Claims publications)

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

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

Version History				
Version	Date	Revision description	Editor	Status
1.0	September 2004	Policy and procedure for the Management of Claims	Linda Hutchings	Approved
2.0	November 2007	Policy and procedure for the Management of Claims	Linda Hutchings	Approved
3.0	27 August 2008	Claims Handling Policy - Clinical Negligence, Liabilities to Third Parties and Property Expenses Scheme Claims	Linda Hutchings	Approved
3.1	June 2009	Administrative changes to address CNST feedback	Linda Hutchings	Approved
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