

Claims Management Policy and Procedure

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Target Audience- who does the document apply to and <u>who should be using it.</u> - The target audience has the responsibility to ensure their compliance with this document by:	<ul style="list-style-type: none"> Ensuring any training required is attended and kept up to date. Ensuring any competencies required are maintained. Co-operating with the development and implementation of policies as part of their normal duties and responsibilities. 		
	<p>This document is predominately for the Legal Services Team however all employees directly employed by the Trust, whether permanent, part-time or temporary (including fixed-term contract). It applies equally to all others working for the Trust, including private-sector, voluntary-sector, bank, agency, locum, and secondees. For simplicity, they are referred to as 'employees' throughout this policy</p>		
Special Cases	There are no special cases where this policy does not apply.		
Accountable Director	Medical Director		
Author/originator – Any Comments on this document should be addressed to the author	Legal and Inquest Manager		
Division and Department	Corporate. Legal Services		
Implementation Lead	Legal and Inquest Manager		
If developed in partnership with another agency ratification details of the relevant agency			
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Review period.	This document will be fully reviewed every three years in accordance with the Trust's agreed process for reviewing Trust -wide documents. Changes in practice, to statutory requirements, revised professional or clinical standards and/or local/national directives are to be made as and when the change is identified.		

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1 Introduction & Purpose

1.1 Introduction & Purpose

Great Western Hospitals NHS Foundation Trust ('the Trust') is committed to managing claims fairly, sensitively and economically. The vast majority of people who come into contact with the Trust receive exemplary care, but occasionally things go wrong. The Trust recognises that when things go wrong, those who suffer harm as a result are entitled to be appropriately compensated and sets out this policy to ensure those claims are managed efficiently and effectively.

1.2 Glossary/Definitions

The following terms and acronyms are used within the document:

AHRA	Access to Health Records Act
AMD	Associate Medical Director
Breach of duty	An act or omission that represents substandard care, judged according to a reasonable body of clinicians
Causation	The causal link between a breach of duty and the loss suffered.
CFA	Conditional Fee Agreement
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.
CMS	Claims Management System. An online system for reporting claims to the NHR.
CNST	Clinical Negligence Scheme for Trusts
Co Sec	Company Secretary
CPR	Civil Procedure Rules
CQC	Care Quality Commission
CRU	Compensation Recovery Unit
DD	Divisional Director
Disclosure	The release of documents which might otherwise have access restricted
EIA	Equality Impact Assessment
ELS	Existing Liabilities Scheme
Exec Co	Executive Committee
FOIA	Freedom of Information Act
GDPR	General Data Protection Regulation
IP&C	Infection Prevention and Control
Liability	The extent of legal responsibility of a person or organisation
LOC	Letter of Claim
Loss	Financial, physical or psychological harm, suffered by a claimant in relation to an incident
LTPS	Liabilities to Third Parties Scheme
Negligence	A breach of a legal duty to take care which results in damage
NHS	National Health Service
NHR	NHS Resolution formerly NHS Litigation Authority
PALS	Patient and Liaison Service
Panel Firm	The firm of Solicitors instructed by the NHR.
PES	Property Expenses Scheme
PQC	Patient Quality Committee
Quantum	Probable cost to the defendant at resolution of a claim
RPST	Risk Pooling Scheme for Trusts
SLA	Service Level Agreement

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2 Main Document Requirements

2.1 Definition of a Claim and the NHSR Schemes Relevant to the Trust

A claim is defined by the National Health Service Resolution (NHSR) as:

Allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident which carries significant litigation risk for the Trust.

The NHSR is a Special Health Authority that has been responsible for handling clinical negligence claims made against National Health Service (NHS) bodies since 1995 and liabilities to third party and property expenses claims since 1999.

The Liabilities to Third Parties Scheme (LTPS) and the Property Expense Scheme (PES) are collectively known as the Risk Pooling Scheme for Trusts (RPST).

The Trust is a member of both Clinical Negligence Scheme for Trusts (CNST) and RPST.

2.2 Who Can Make a Claim

Any person who believes the Trust owed them a duty of care, may bring a claim against the Trust for an actionable breach of duty. This may as a 'litigant in person', with the person bringing their own claim, however, more usually the claim will be made through a solicitor or other legal representative.

Where the potential claimant is a child, or is deemed not to have capacity to bring a legal claim in accordance with the Mental Capacity Act 2005 (Ref 8), a claim may be brought on their behalf by a 'litigation friend'. A litigation friend must act in the best interests of the claimant and there must not be any conflict of interest that would prevent them so acting. The suitability of the litigation friend will be confirmed by the court. In the case of a child the litigation friend will usually be one of the child's parents.

In the event that a potential claimant dies, compensation may be claimed on behalf of the claimant's estate by the executor, administrator or personal representative of the estate. Dependents of a deceased claimant may also claim, following a death under the Fatal Accidents Act 1976 (Ref 7).

2.3 Triggers for Invoking the Claims Procedure

The main triggers received by the Trust that will lead to the assumption that a claim is forth coming are:

- A request for medical records where litigation against the Trust is contemplated;
- A pre-action letter indicating a claim is contemplated;
- A formal Letter of Claim;
- Notification that legal proceedings have been issued.

Whenever a new legal matter, as identified above, is received a member of the Legal Services Team will create a new record on the Safeguard litigation database and begin the claims management process. Each matter will be given a unique reference by the database which must be used on all future correspondence. An associated electronic folder will be created on the 'T drive' where all correspondence will be stored.

If the matter has previously been reported through the complaints or clinical risk management process, a copy of the relevant documentation must be made and kept within the claim file.

All legal correspondence received in the Trust should be forwarded to the Legal Services Team immediately to ensure that the Trust can meet their reporting obligations.

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2.4 Delegation Limits

The Trust does not have delegated authority to settle claims covered by the NHSR schemes. If an admission of legal liability is made without the approval of the NHSR the Trust's scheme cover may be voided. Equally the NHSR should not make admissions without the Trust's authorisation.

Occasionally the NHSR will give delegated authority to solicitors acting on their and the Trust's behalf to settle claims up to a set limit. If this happens, the Trust is still required to authorise any admissions of liability.

2.5 Confidentiality

All employees dealing with claims are subject to, and must act in accordance with, the Trust Code of Conduct for Employees in Respect of Confidentiality (Ref. 11). All employees involved in the management of claims have a common law duty of confidence and should only access personal information (patient or employee) on a 'need-to-know' basis.

Claims folders are kept electronically and access is restricted to the Legal Services Team. Any paper documents relating to the claims process are stored securely in Trust Management. This office is locked when not occupied.

2.6 Disclosure of Health Records

The first indication of a new legal matter against the Trust will usually be a request for information. Where disclosure of records is requested in relation to a contemplated claim, a member of the Legal Services Team will be responsible for the disclosure. All other requests for information will not be managed by the Legal Services Team but the relevant medical records department.

The Trust will aim to disclose, within 28 days of receipt which is in accordance with the Data Protection Act 2018 (DPA 2018 / General Data Protection Regulation GDPR). An extension of a further 28 days can be used provided as long as the requestor is updated. **Where personally identifiable information is requested under DPA 2018 or Access to Health Records Act 1990 the request must be accompanied by a valid form of authority signed by the patient or the patient's personal representative.**

Pre-action disclosure should be distinguished from Standard Disclosure which occurs after Court proceedings have been issued and in accordance with the timescales prescribed by the Civil Procedure Rules (CPR) (Ref 1). The Legal and Inquest Manager will be responsible for this.

2.6.1 Who Can Request Records?

The following parties may request records:

- A patient or their representative ('Personal Disclosure');
- A solicitor requesting records in respect of a claim against another party ('Third-Party Disclosure');
- A solicitor investigating a potential claim against the Trust ('Pre-Action Disclosure');
- The solicitor acting on behalf the Trust.

There is no obligation for the person requesting copies of records to reveal the reason for doing so.

The Legal Services Team can apply discretion to request more information from the claimant's solicitor, i.e. to narrow down a time period for the medical records they wish to be disclosed.

Whilst the legislation states that a charge cannot be made for requesting medical records, the exception is for repeat requests for the same information.

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2.6.2 Process for Disclosing Health Records

On receipt of a request for disclosure of health records (where litigation is mooted) the Governance Administrator will collate and forward the following records to the claimant's Solicitor:

- Copy of claimant's paper and electronic health record;
- Printed copy of the electronic nursing notes (if before 2016);
- Printed copy of the test results;
- DVD containing radiological records.
- Printed copy of the electronic medication records.

Other forms of records (e.g. incident investigation reports, complaints correspondence) should be disclosed following a specific request for those records.

The paper copies of the records will be sent via Royal Mail Recorded Delivery. All third party information will be removed from the medical records before disclosure.

On occasion it may be appropriate to send documents electronically via secure email or a secure portal.

2.7 Requesting Payroll Data

Where details of employee payroll data is requested, this will be will forwarded to the Trust's Employee Services Payroll team via email to the Head of Payroll.

2.8 Requesting Personnel Records and Occupational Health Records

Where required, a member of the Legal Services Team will request personnel files directly from the department in which the claimant worked. Occupational health records should be requested from:

The Occupational Health Department
Commonhead Offices
The Great Western Hospital

Any request should be accompanied by the claimant's authority to disclose these records. Occupational Health and Safety Department will release the records directly to the claimant or their representatives.

For ease of reference the key actions to take on receipt of a legal matter and the associated timeframes are summarised in section 6.

2.9 Types of Claim

2.9.1 Clinical Negligence (CNST) Claims

CNST covers all clinical negligence claims made against member trusts. The scheme indemnifies members for clinical negligence claims for incidents occurring on or after 1 April 1995. The extent of cover afforded to Trusts under CNST is outlined in the CNST Scheme Rules and NHS Indemnity available on the NHSR website (Ref 2).

2.9.2 Clinical Negligence Claims Related to Incidents that Occurred Prior to 1st April 1995

Liability for claims resulting from incidents which occurred prior to the formation of CNST in April 1995 is inherited by the Department of Health. Liability for all claims originating from that time should be

forwarded to the NHS Resolution. The rest of the process will not be required, however the Trust maybe asked for assistance in collating information.

2.9.3 High Risk Complaint or Disclosure Request

When a complainant makes a request for compensation as part of their complaint letter, it is explained to them that we are unable to provide financial compensation as part of the complaint process. However if it is clear that care provided was sub-standard and likely to be found negligence, this could be referred to the NHS Resolution for settling early. The complaint investigator should discuss options with the Legal and Inquest Manager.

On occasion the claimant's solicitor provides the Trust with sufficient information at disclosure stage for us to make initial investigations into the areas of concern. Where it is clear at this stage that an admission of liability needs to be made and the issue is concise and medically not complex (i.e. won't need an independent expert report) the Legal and Inquest Manager can refer this to the NHS Resolution.

Where the NHS Resolution accepts the early reporting of complaint/disclosure as a claim, the rest of the process in this policy will be followed.

2.9.4 Non Clinical (RPST) Claims

RPST scheme covers all non-clinical claims including visitor and staff injury and normally relate to health and safety incidents. The extent of cover afforded to Trusts is outlined in the RPST rules which are available on the NHS Resolution website (www.resolution.nhs.uk)

2.10 Extension Requests

The Limitation Act 1980 affords a claimant three years from the date of the alleged negligent incident, or the date of their knowledge of alleged negligent incident, to bring a claim. In cases in which the claimant is a child, the child has until three years after their 18th birthday to bring a claim. Where patients lack capacity, the limitation period does not commence until they regain capacity.

The claimant may request an extension of time to bring a claim against the Trust. The Legal and Inquest Manager makes the decision on whether the extension is granted.

All correspondence pertaining to the extension of limitation requests must be sent to NHS Resolution when reporting the claim.

2.11 The Letter of Claim (LOC)

On receipt of a Letter of Claim, a member of the Legal Services Team will undertake the following:

- 1) Will check the Safeguard litigation database to see whether the Trust has previously been notified of the matter. If the Letter of Claim indicates that this is a new legal matter, a new record will be added to the system and a corresponding electronic folder created. All legal correspondence on a legal matter (including emails) will be stored electronically in a folder, using the Safeguard-generated unique claims reference on the T drive.
- 2) The NHSR must be notified of any Letter of Claim within 24 hours of receipt. The claim is reported by the Legal and Inquest Manager to the NHSR via the online Claims Management System (CMS). In the absence of the Legal and Inquest Manager, the Claims and Inquest Officer will ensure the legal matter is reported within timescale.

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For non-clinical claims of a low value (less than £25,000) the claimant's solicitor can submit this directly to the NHS Resolution. When this happens there is no requirement to action this bullet point nor bullet point 3.

- 3) Send an Acknowledgement letter to the claimant's solicitor
- 4) Notify the relevant divisional tri that there is a new claim against the Trust. This notification will contain a brief summary of the claim and give indication of whether it has already been through the complaint and/or clinical risk process. Clinical leads and clinical risk will also be notified in the same email
- 5) Notify any member of staff named in the Letter of Claim or any member of staff which hasn't been named but it's clear at this stage they were involved with providing treatment to the patient. They will be asked to provide comments in response to the allegations, see section 2.21?

2.12 Investigation of Letter of Claim

The NHS Resolution may instruct a firm of solicitors to investigate the allegations. Where a firm of solicitors are instructed often they obtain independent expert reports to assist with the liability investigation. The first of solicitors will also ask the Trust to provide other key information to them for example, the clinician comments, any complaint or clinical risk investigation, medical records, polices/guidance.

Comments which have been received from the clinicians/staff involved will be shared with the NHR or solicitors.

When an expert report is received, this should be shared with staff involved with the claim for their awareness and to see if they have any additional comments. The divisional Tri and clinical lead should also have sight of this so they can identify any learning opportunities.

2.13 Letter of Response

It is a requirement that a Letter of Response is sent to the claimant within a set time frame as governed by the Civil Procedure Rules. This is within four months of being served with a Letter of Claim for clinical claims and three months for non-clinical claims.

The NHR or, alternatively, solicitors acting on behalf of the NHR, are responsible for drafting the Letter of Response. The Legal Services Manager needs to agree this. Where staff comments have been sought if possible the Letter of Response should reflect the response.

The Letter of Response will fall into three categories: deny liability, accept liability or a combination of both.

The Letter of Response will be shared with the Tri and anyone involved with the claim.

2.14 Formal Court Proceedings

Where the claimant does not agree or accept the Trust's view on liability contained within the Letter of Response, they are able to serve into court the Particulars of Claim. Particulars of claim set out the allegations more formally.

The Trust should send the Particulars of Claim to the NHS Resolution, who will instruct solicitors to act on our behalf. The next steps will be:
Defence – the Medical Director needs to sign this.

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Formal Witness statements from staff involved with the treatment
Disclosure of Documents – this is signed by the Legal Services Manager
Formalising of Independent Expert Report
Exchange of Witness statements and Independent Expert reports with the claimant
Trial

For most claims, a court will set out the time frame for each of these elements. The claim can be settled at any time, meaning not all of these steps will be required.

2.15 Settling the Claim

A claim can be settled for the following reasons, liability has been admitted, the claim has been successfully defended or based on litigation risk and the financial cost of pursuing a defence. This can happen at any stage of the claim process.

The amount the claimant receives will be decided by NHR and our solicitors.

2.16 Closing the Claim

For the majority of claims the NHS Resolution will send a closure note detailing the final costs of the claims. This data will be added to the database.

A member of the legal team will write up the case and share with the relevant division.

2.17 Payment Requisitions

The RPST scheme has an excess of £10,000 for employer liability claims and £3,000 for public liability claims which the Trust must pay. The way the scheme is managed means the Trust is responsible for paying the total sum payable, with any sum paid above the excess being reimbursed by the NHR.

Following receipt of a payment requisition form from the NHR, the Legal and Inquest Manager will complete a cheque request form and seek authorisation from the budget holder. This is the Director of Governance and Assurance or the Deputy Chief Executive/Director of Finance. The cost code is 00651 1160. Once the cheque request form is completed, this is sent to Finance for processing.

2.18 Contacting Trust Employees

The NHR and/or solicitors acting on behalf of the NHR and the Trust may on occasion wish to speak directly with members of Trust employees. All requests for access to individual employee should be made in the first instance through the Legal and Inquest Manager. The Legal and Inquest Manager must seek the permission of the employee before releasing contact details. Contact details should not be released to the claimant or their representatives.

2.19 Service of Documents upon the Trust

The Trust accepts service of the Letter of Claim, Claim Form, Particulars of Claim and other service documents by post only. Service should be addressed to:

Legal Services
Trust HQ, Great Western Hospitals NHS Foundation Trust
The Great Western Hospital
Marlborough Road
Swindon
SN3 6BB

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If service is received not via the specified means, the Claimant will have to resubmit the service documents via the prescribed means.

In exceptional circumstances service can be via email. The claimant has to request to do this directly to the Legal and Inquest Manager will authorise if appropriate.

2.20 CRU Form

The Compensation Recovery Unit (CRU) is the body responsible for recovering social security benefit payments where compensation payment has been made. The NHS Resolution informs the CRU of any claims for compensation reported to them. Accordingly, the Trust is not required to inform the CRU of new claims.

Handling of Claims for Other Trusts. The Trust, on occasion, may secure a contract to manage claims on behalf of other trusts. These claims will be handled in accordance with this policy and the terms of the Service Level Agreement.

2.21 Support Mechanisms for Employees, Patients and Carers

The Legal Services Team will email every employee from whom they ask for comments, details of employee support services. Their line manager will be included in these emails and where possible informed prior to the email, in order to ensure staff members are supported

The following wording is adopted in the email:

Understandably this on-going issue could be a cause of stress and worry for you and as such legal services manager (Name), your colleagues and staff support services (contact details....)can be very good points of contact to offer advice and help if you need it.

N.B. This wording may be amended from time-to-time. Any changes to the wording of the email will be reflected in this policy the next time a formal review of the policy is undertaken.

2.22 Support for Patients or Relatives

The Legal Services Team will rarely have direct contact with the claimant. It is not appropriate for the Legal Services Team to offer support to a claimant who is making a claim against the Trust.

General support for patients or relatives is available through the Patient and Liaison Service at the Trust but this should not extend to giving legal advice. All direct approaches from a claimant (on matters relating to their claim against the Trust) should be referred to the Legal and Inquest Manager.

2.23 Learning from Experience

The Trust will pay to the NHR annual premiums. The amount will be determined by the amount of compensation paid out on behalf of the Trust and learning from individual claims and embedding that learning is paramount.

When the Letter of Claim is received, clinical risk is notified of this and whether this is already an incident form which is pertaining to the allegations. If there isn't this is an opportunity for clinical risk to complete a retrospective incident form to enable the incident to be investigated and analysed in accordance with the Incident Management (including Serious Incidents) Policy (Ref 9).

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It is acknowledged that in some circumstances the index event will be so far in the past it may no longer be possible to conduct an effective investigation and therefore it would not be appropriate for an incident form to be completed

Potential learning will be considered at key points through the life span of the claim e.g., concession of liability, receipt of independent expert reports and settlement. Learning from the reasons why the claim was settled will be logged on Ulysses Safeguard (legal claims database) so that reports can be generated.

For each claim a list of key people will be created (Tri, clinical lead, staff involved etc.), at specific points in the claim process, these people will be kept up to date which will enable awareness and learning opportunities. The specific points are:

On receipt of the Letter of Claim

On receipt of the expert reports (a brief overview will be included to highlight concerns/legal risks the expert has identified)

On receipt of the Letter of Response

NHS Resolution closure of the claim letter.

For each individual claim which has been closed by the NHS Resolution a write up will be done, to include case summary, key points, learning and costs. This will be shared with the division and put on the legal section of the intranet.

Learning from claims and key themes will be shared in the report to PQC.

Other potential learning tools available to the divisions on requests are meeting with the divisional tri for discussions around claims and divisional/department reports.

2.24 Claims Reports to Board and Relevant Committees

The Legal and Inquest Manager will produce a quarterly litigation report which is incorporated into the Corporate Governance report. This is presented at the Executive Committee and Quality and Governance Committee.

A quarterly report will be presented at the Patient Safety Committee

2.25 Communication with Relevant Stakeholders

2.25.1 NHS Resolution

- All new CNST and RPST Claims will be reported by the Claims and Inquest Officer to the relevant Team Leader using the NHR's online CMS system within 24 hours of receipt;
- Further correspondence on a claim should be with the allocated NHR Case Manager;
- The Claims and Inquest Officer will be the primary Trust contact for the NHR.

2.25.2 Claimants

- If a patient is considering making a claim against the makes direct contact they should be referred either to PALS , or to the Legal Services Team if they have already been through the complaints procedure;
- The Legal Services Team should not offer legal advice to potential claimants; instead, if they are determined to make a legal claim against the Trust, the team should suggest the potential claimant seek independent legal advice;
- Once a claimant has made contact with a solicitor, all further contact with the claimant should be made via the solicitor;

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2.25.3 Solicitors

- All enquiries from solicitors should be forwarded to the Legal Services Team in the Trust Management Offices; GWH;
- Once a claim has been reported to the NHR, they may instruct solicitors on behalf of the Trust, the Legal Services Team will then liaise with the panel firm;
- Once a claim has been reported to the NHR, communication with claimant solicitors will usually be via the NHR Case Manager or the Trust's solicitors.

2.25.4 Coroner

- The primary Trust contact for the Coroner is the Legal Services Team.
- Contact with the Coroner is rarely required as part of the claims process, however if there is a requirement, queries are directed through the Legal Services Team.
- For further advice on contact with the Coroner's office see the Trust Inquest Policy (Ref 10);

2.25.5 Police

- Occasionally the police may wish to conduct an investigation into an incident occurring on Trust premises, an Executive Director will be identified as the lead Trust contact in this case.
- Where the police require a statement as part of their investigations, they liaise directly with the relevant Trust department. Legal Services can provide support to employees who wish for this.

3 Monitoring Compliance and Effectiveness of Implementation

The arrangements for monitoring compliance are outlined in the table below: -

Measurable policy objectives	Monitoring or audit method	Monitoring responsibility (individual, group or committee)	Frequency of monitoring	Reporting arrangements (committee or group the monitoring results is presented to)	What action will be taken if gaps are identified
90% of legal disclosures sent out within one month	Monitored via Safeguard system, reported on quarterly basis	Legal and Inquest Manager	Quarterly	Quality and Governance Committee	Reported and monitored via Quality and Governance Committee
80% of closed claims to have a case study completed	Monitored via Safeguard system, reported on quarterly basis	Legal and Inquest Manager	Quarterly	Quality and Governance Committee	Reported and monitored via Quality and Governance Committee

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4 Duties and Responsibilities of Individuals and Groups

4.1 Chief Executive

The Chief Executive has overall responsibility for ensuring there are processes and procedures in place to effectively manage claims.

4.2 Ward Managers, Matrons and Managers for Non Clinical Services

All Ward Managers, Matrons and Managers for Non Clinical Services must ensure that employees within their area are aware of this document; able to implement the document and that any superseded documents are destroyed.

4.3 Document Author and Document Implementation Lead

The document Author and the document Implementation Lead are responsible for identifying the need for a change in this document as a result of becoming aware of changes in practice, changes to statutory requirements, revised professional or clinical standards and local/national directives, and resubmitting the document for approval and republication if changes are required.

4.4 Trust Board

The Trust Board are to take assurances that there are processes and procedures in place which effectively manage legal claims against the Trust.

4.5 The Quality and Governance

- The Audit, Risk and Assurance Committee has overarching responsibility for claims management and the Board has delegated responsibility for claims management to it. In order to fulfil that role it will:
- Provide assurance to Trust Board the processes for managing claims is robust;
- Review the Legal Service Report at least once a year, reporting any concerns to Trust Board.

4.6 Patient Quality Committee

The Patient Quality Committee will receive a quarterly report on claims

4.7 Designated Board Member – The Medical Director

The Chief Executive has delegated Executive responsibility for Claims Management to the Medical Director.

4.8 Legal and Inquest Manager

The Legal and Inquest Manager is to:

- Ensure disclosure of medical records where litigation contemplated against the Trust is undertaken according to the relevant legislative framework;
- Ensure there is a system in place to manage legal claims effectively and in accordance with NHR guidelines;
- Liaise with clinicians and other employees as appropriate to provide comments and otherwise investigate the basis of the claim
- Ensure there is a system in place to analyse claims. for any trends and potential learning points

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4.9 Role of Employees

Employees may be asked to provide comments to the Legal Services Team. The reason for doing so may be twofold:

1. As a relevant party to an incident to comment on their own involvement in the case (factual witness);
2. As an expert in their respective field, to provide independent comments (insofar as they are able as a Trust employee) on the care afforded to a patient by the Trust.

Employees will usually be asked to provide comments within two weeks of the request being made, but on occasion it may be necessary to return comments sooner due to time constraints placed on the Trust by the legal process.

Where employees have been asked to provide factual comments, they should ensure their comments are factual and that they express their own opinion backed by references/evidence where appropriate. There is a contractual duty for the employee to provide these comments. Failure to do so can instigate HR process.

When employees have been asked to provide comment as an internal independent opinion these will usually be asked to focus on the following elements:

1. Breach of duty – did the standard of care afforded the patient fall below a reasonable level, judged objectively according to a body of fellow professionals (the ‘Bolam test’) and whether the treatment/care, even if supported by a body of fellow professionals, would stand up to logical analysis (the ‘Bolitho test’); and
2. Causation – whether any identified breach of duty directly lead to the harm suffered by claimant. This will not usually be in question, but occasionally there may be multiple or successive causes of a patient’s injury, or the damage suffered may be too remote a consequence of the breach that it would be unjust to hold the Trust liable.
3. Loss – it is also important to verify the extent of any injury suffered by the claimant.

Comments will be provided to the NHR to assist them in forming a view on the potential liability of the Trust. The NHR, or more likely solicitors acting on their behalf, may then instruct its own independent medical experts at its discretion.

5 Further Reading, Consultation and Glossary

5.1 References, Further Reading and Links to Other Policies

The following is a list of other policies, procedural documents or guidance documents (internal or external) which employees should refer to for further details:

Ref. No.	Document Title	Document Location
1	Civil Procedure Rules	https://www.justice.gov.uk
2	NHR Reporting Guidelines	https://resolution.nhs.uk
3	Pre-Action Protocol for the Resolution of Clinical Disputes	https://www.justice.gov.uk
4	Pre-Action Protocol for Personal Injury	https://www.justice.gov.uk
5	General Data Protection Regulation	https://www.gov.uk

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Claims Management Policy & Procedure

Ref. No.	Document Title	Document Location
6	Access to Health Records Act 1990	https://www.gov.uk
7	Fatal Accidents Act 1976	https://www.gov.uk
8	Mental Capacity Act 2005	https://www.gov.uk
9	Incident Management (including Serious Incidents) Policy	T:\Trust-wide Documents
10	Inquest Guidelines	T:\Trust-wide Documents

5.2 Consultation Process

The following is a list of consultees in formulating this document and the date that they approved the document:

Job Title / Department	Date Consultee Agreed Document Contents
Associate Medical Director (AMD) – Women’s and Children’s	3 August 2020
Risk, Governance and Claims Facilitator.	25 June 2020
Deputy Chief Nurse	11 August 2020
Deputy Director of Nursing - USC	August 2020

6 Equality Impact Assessment

An Equality Impact Assessment (EIA) has been completed for this document and can be found at Appendix A.

Appendix A - STAGE 1: Initial Screening For Equality Impact Assessment

At this stage, the following questions need to be considered:			
1	What is the name of the policy, strategy or project? Claims Management Policy & Procedure		
2.	Briefly describe the aim of the policy, strategy, and project. What needs or duty is it designed to meet? The Trust recognises that when things go wrong, those who suffer harm as a result are entitled to be appropriately compensated and sets out this policy to ensure those claims are managed efficiently and effectively.		
3.	Is there any evidence or reason to believe that the policy, strategy or project could have an adverse or negative impact on any of the nine protected characteristics (as per Appendix A)?		No
4.	Is there evidence or other reason to believe that anyone with one or more of the nine protected characteristics have different needs and experiences that this policy is likely to assist i.e. there might be a <i>relative</i> adverse effect on other groups?		No
5.	Has prior consultation taken place with organisations or groups of persons with one or more of the nine protected characteristics of which has indicated a pre-existing problem which this policy, strategy, service redesign or project is likely to address?		No

Signed by the manager undertaking the assessment	Lesley Biles
Date completed	06/08/2020
Job Title	Legal & Inquest Manager

On completion of Stage 1 required if you have answered YES to one or more of questions 3, 4 and 5 above you need to complete a [STAGE 2 - Full Equality Impact Assessment](#)

Equality Impact Assessment

Are we Treating Everyone Equally?

Define the document. What is the document about? What outcomes are expected?

Consider if your document/proposal affects any persons (Patients, Employees, Carers, Visitors, Volunteers and Members) with protected characteristics? Back up your considerations by local or national data, service information, audits, complaints and compliments, Friends & Family Test results, Staff Survey, etc.

If an adverse impact is identified what can be done to change this? Are there any barriers? Focus on outcomes and improvements. Plan and create actions that will mitigate against any identified inequalities.

If the document upon assessment is identified as having a positive impact, how can this be shared to maximise the benefits universally?

Our Vision

Working together with our partners in health and social care, we will deliver accessible, personalised and integrated services for local people whether at home, in the community or in hospital empowering people to lead independent and healthier lives.



Trust Equality and Diversity Objectives			
Better health outcomes for all	Improved patient access & experience	Empowered engaged & included staff	Inclusive leadership at all levels

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