NHS

University Hospitals of Derby and Burton

NHS Foundation Trust

TRUST POLICY AND PROCEDURE FOR LEGAL SERVICES CLAIMS HANDLING

Reference Number: COR 2014 039	**Version:** 6	**Status:** Final	**Author:** Kathryn Fearn **Job Title** Associate Director of Legal Services

Version / Amendment History	Version	Date	Author	Reason
	0.1-1	Oct-Nov 2008	N Evans	New Policy for NHSLA
	2	May 2010	N Evans	Review in advance of NHSLA assessment
	2.1	Dec 2010	G Ogden	Referral process updated
	3	July 2011	N Evans	Review in light of changes to NHSLA Guidelines
	3.1	July 2012	N Evans	Review in light of organisational changes
	4	December 2014	T Lunn	Review in light of changes to NHSLA Guidelines
	5	January 2019	N Evans	Review in light of merger and changes to NHSR Guidelines
	6	August 2022	K Fearn	Review in light of recent operational changes

Intended Recipients: Chief Executive, Director of Governance and Communication, Executive Chief Nurse, Executive Medical Director, Medical Director Quality and Safety, Director of Nursing (Professional Standards), Director of Nursing (Operations), Director of Patient Experience Facilities and Estates, Lead Nurse Patient Experience, Divisional Medical Directors, Divisional Nursing Directors, Divisional Directors, Director of Midwifery, Clinical Governance Facilitators, Head of Clinical Governance, Information Access Office and Legal Services Department.	
Training and Dissemination: This Policy will be posted on the Trust's intranet. The policy will also be emailed to all those listed as "Intended Recipients" above. The Associate Director of Legal Services will be responsible for delivering training on the policy to all Claims Managers and thereafter the Policy will be uploaded to the Legal Hub on Flo and accessible to all Trust staff. It is recommended that Claims Managers work from an electronic version of this Policy.	
To be read in conjunction with Local Guidelines on Handling Coroner's Investigations and Inquests; Legal Services Local Guidelines on Confidentiality and Information Governance; Trust Guidelines for Managing Patient Requests for Assistance in the Preparation of a Will; Trust Guidelines for Supporting Staff involved in Traumatic Situations and Incidents; Trust Policy for Being Open and Duty of Candour.	
In consultation with and Date: Learning Review Group (LRG), Executive Medical Director, Executive Chief Nurse, Medical Director Quality and Safety, Divisional Medical Directors, Divisional Nursing Directors, Clinical Governance Facilitators. Various dates over December 2018 and January 2019.	
EIRA stage One Completed: Yes Stage Two Completed: N/A	
Procedural Documentation Review Group Assurance and Date	
Approving Body and Date Approved	Trust Operational Group February 2019 Minor amendments approved by the Executive Medical Director – December 2022
Date of Issue	December 2022
Review Date and Frequency	December 2025 (then 3 yearly)
Contact for Review	Associate Director of Legal Services
Executive Lead Signature	Interim Executive Medical Director
Approving Board Member Signature	

CONTENTS PAGE

SECTION		PAGE
1	**Introduction**	6
2	**Purpose and Outcomes**	6
3	**Definitions Used**	6
4	**Key Responsibilities/Duties**	9
4.1	Chief Executive	9
4.2	Director of Governance and Communication	
4.3	Trust Secretary	9
4.4	Associate Director of Legal Services and Claims Managers	9
4.5	Role of the Lead Clinician	10
4.6	Learning Review Group	10
4.7	Information Access Office	10
5	**Handling Clinical Negligence Claims**	10
5.1	NHSR Schemes and Reporting Guidelines	10
5.2	Allocation of Clinical Negligence Claims	11
5.3	Identifying the Correct Defendant	11
5.4	Identifying Whether a Clinical Negligence Claim Needs to be Reported to NHSR	11
5.5	Conducting a Preliminary Analysis to Assess Significant Litigation Risk	13
5.6	Requesting a Report from the Lead Clinician	14
5.7	Reporting a Clinical Negligence Claim to NHSR	15
5.8	Future Management of the Claim	16

5.9	Responding to a Request for an Extension of Limitation	16
5.10	Service of the Letter of Claim	16
5.11	Service of Legal Proceedings	17
5.12	Admitting Liability and/or Settling a Claim	18
5.13	Mediation or Trial	19
5.14	Signing of Legal Documents	19
5.15	Steps to be Taken at the Conclusion of a Clinical Negligence Claim	19
6.	**Handling Employer's Liability (EL) and Public Liability (PL) Claims**	20
6.1	NHSR Schemes and Reporting Guidelines	20
6.2	Allocation of EL and PL Claims	20
6.3	Identifying Whether an EL or PL Claim Needs to be Reported to NHSR	20
6.4	Investigating the Claim	21
6.5	Future Management of the Claim	24
6.6	Service of Legal Proceedings	24
6.7	Service of a Part 36 Offer	24
6.8	Admitting Liability of Settling a Claim	25
6.9	Mediation or Trial	25
6.10	Signing of Legal Documents	26
6.11	Steps to be taken at the Conclusion of an EL or PL Claim	26

7. Actions to be Taken on Property Expenses (PES) Claims 26

8. Monitoring Compliance and Effectiveness 27

9. References 28

APPENDICES

Appendix 1	Table to Assist in Identifying the Correct Defendant in a Clinical Negligence Claim
Appendix 2	List of Derby City GPs to assist in identifying the correct Defendant in a Clinical Negligence Claim
Appendix 3	NHSR Guidance: How to Use the NHSR Online Reporting Wizard
Appendix 4	Table to Assist in Identifying the correct Defendant in a Non-Clinical Negligence claim

TRUST POLICY AND PROCEDURE FOR LEGAL SERVICES CLAIMS HANDLING

1 Introduction

The aim of this policy is to ensure that the Trust fulfils its duties with regard to the handling of claims and potential claims. Effective claims management is important to:

- Collect information about claims to help to facilitate wider organisational learning and ensure that any healthcare governance issues which may emerge are addressed promptly;
- Ensure that the Trust complies with NHS Resolution's Reporting Guidelines and with its legal duties in respect of claims management;
- Secure savings in the cost of litigation, and therefore limit the amount of money diverted from clinical care; and
- Manage issues likely to arouse media interest and therefore protect the reputation of the Trust and its staff.

2 Purpose And Outcomes

The purpose of this Policy is to set out the process for handling all legal claims in accordance with NHS Resolution's requirements. For the avoidance of doubt, the Policy does not apply to claims by private patients.

The policy has been developed in order to describe:

- Key responsibilities/duties in respect of claims management.
- The requirements of the NHS Resolution schemes relevant to the Trust i.e. the Existing Liabilities Scheme (ELS); the Clinical Negligence Scheme for Trusts (CNST); the Early Notification Scheme (ENS); the Risk Pooling Schemes for Trusts (RPST), which includes the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES).
- Action to be taken, including timescales.
- Communication with relevant stakeholders.
- The process for monitoring compliance with all of the above.

The expected outcome resulting from the implementation of this Policy is that all claims will be managed according to the NHS Resolution Reporting Guidelines and other applicable insurers' standards.

3 Definitions Used

Claims Manager — The lawyer in the Trust's in-house legal team who is responsible for the conduct of a legal claim against the Trust

Clinical Negligence 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

Clinical Witnesses — Clinicians who were involved in providing the care and treatment to the Claimant that now forms the basis of a clinical negligence claim

CMS	NHSR's Claims Management System
CNF	Claim Notification Form used to register an EL or PL claim in the Portal
CNST	Clinical Negligence Scheme for Trusts
CRH	Chesterfield Royal Hospital NHS Foundation Trust
DCGH	Derby City General Hospital (now the Royal Derby Hospital)
DHC	Derby Healthcare Plc
DRI	Derbyshire Royal Infirmary (now the London Road Community Hospital)
DTHFT	Derby Teaching Hospitals NHS Foundation Trust
DTS	NHS Resolution Document Transfer System
EL	Employer's Liability Claim
ELS	Existing Liabilities Scheme
ENS	Early Notification Scheme
Key Date Diary	The diary managed by the Legal Office Manager to record key dates including due dates for the Letter of Response, Acknowledgement of Service, Defence, mediation , trial and inquest hearing dates. The Legal Office Manager will send an email to the whole legal team on a Monday morning, detailing all key dates for the forthcoming week
LRCH	London Road Community Hospital
LTPS	Liabilities to Third Parties Scheme
NHSR	NHS Resolution (Previously the NHS Litigation Authority or NHSLA)
Non Clinical Negligence Claim	For RPST purposes, a Non Clinical Negligence claim is defined by NHSR as "a *demand for compensation made following an adverse incident resulting in damage to property and/or personal injury".* These are typically EL or PL claims.
PALS	Patient Advice and Liaison Service
PES	Property Expenses Scheme
PL	Public Liability Claim

Portal	The Personal Injury and Employer Liability Portal. From 1 August 2013, all organisations have to deal with personal injury claims valued at no more than £25,000 damages through this government claims portal. This is a web-based electronic claims portal system designed to facilitate communication and documentation exchange between Claimants and Defendants in personal injury (EL and PL) claims. It does not apply to clinical negligence claims.
Preliminary Analysis and Reporting Due Dates spreadsheet	Live spreadsheet which can be accessed and updated by the whole legal team and is used to monitor compliance with timescales on claims and inquests
QHB	Queen's Hospital Burton
RDH	Royal Derby Hospital
Request for Disclosure	Request for disclosure of medical records made under the subject access provisions of the General Data Protection Regulation 2018 or the Access to Health Records Act 1990
RIDDOR	Reporting of Injuries, Diseases & Dangerous Occurrences Regulations
RPST	Risk Pooling Schemes for Trusts
Significant Litigation Risk	A brief examination of the evidence, which must be tested against the legal criteria of breach of duty and causation to assess whether there is a realistic prospect of a claim being made
SJ	Samuel Johnson, Lichfield
SRP	Sir Robert Peel, Tamworth
UHDB	University Hospitals of Derby and Burton NHS Foundation Trust

4 Key Responsibilities/Duties

4.1 Chief Executive

The Chief Executive has ultimate responsibility for all claims against the Trust and for ensuring that robust systems are in place for the management of these claims in accordance with the Trust's responsibilities/duties in respect of claims management and the requirements of NHSR.

4.2 Associate Director Medical Directors Office

The Associate Director of Legal Services has delegated authority for Clinical and Non-Clinical Negligence claims against the Trust and for ensuring that robust systems are in place for the management of these claims in accordance with the requirements of NHSR. The Associate Director Medical Directors Office is responsible to the Trust Board and the Chief Executive for effective claims handling.

4.3 Trust Secretary

The Trust Secretary is responsible for ensuring that Property Expenses (PES) claims are managed in accordance with The Property Expenses Scheme Rules (see further under para 7 below).

4.4 Associate Director of Legal Services and Claims Managers

The Trust employs a solicitor as Associate Director of Legal Services and a team of lawyers as Claims Managers. Their key areas of responsibility are to:

- Handle all Clinical Negligence, EL and PL Claims against the Trust in accordance with the requirements of this Policy and NHSR Reporting Guidelines, adopting a proactive and systematic approach from the outset.
- Handle "in-house" those claims/potential claims that do not require immediate reporting to NHSR.
- Identify and report those claims that do require reporting to NHSR and then to liaise closely with NHSR and/or Panel Solicitors to progress reported claims.
- Handle all inquests involving the Trust in accordance with the local Guidelines on Handling Coroner's Investigations and Inquests. Act as Trust contact for HM Coroner, manage requests for statements/reports, provide support to staff and attend inquest hearings or arrange external legal representation as necessary. Identify inquests which are eligible for inquest funding and report these to NHSR using a completed Inquest Funding Request Form.
- Ensure appropriate consultation on claims and inquests with the clinical witnesses, Lead Clinicians and divisional teams, the Trust Board, Chief Executive, Executive Medical Director, Executive Chief Nurse, Medical Director for Quality and Safety and Director of Midwifery as appropriate. Take instructions before making admissions of liability and/or settling a claim.
- Provide and facilitate support to staff involved in claims or potential claims and inquests (see Trust Guidelines for Supporting Staff involved in Traumatic Situations and Incidents).
- Maintain electronic case files to recognised legal file management standards. Ensure that all attendances and telephone calls are recorded in the form of dated attendance notes/progress notes. Adopt the suite of local precedents in order to save time and ensure consistency of approach across the legal team.
- Establish and maintain a case management system about the status of all claims

and inquests (DATIX).

- Report to the divisional teams and LRG when admissions of liability are made, a claim is settled or opportunities for learning are identified on a claim or inquest.
- Ensure a systematic approach to the analysis of claims and inquests through regular reporting of data to divisional teams, Quality and Performance Committee, the LRG and the Medical Director for Quality and Safety in order to facilitate wider organisational learning and ensure that any healthcare governance issues which may emerge are addressed promptly.
- Escalate issues likely to arouse media interest to the communications team.
- Ensure that the Quality and Performance Committee is sighted on all legal claims and inquests that represent a significant reputational risk to the Trust.

Claims Managers should also be familiar with the **NHSR Guidance on Saying Sorry,** which confirm that NHSR will never withhold cover because an apology or explanation has been given.

4.5 Role of the Lead Clinician

Before the Trust is notified of a clinical negligence claim, the Lead Clinician may be involved in dealing with a complaint or risk management investigation in relation to the same patient episode. In doing so, they should have reference to the Trust's Policy on Being Open and Duty of Candour and the NHSR Guidance on Saying Sorry. NHSR encourages clinical staff to say sorry meaningfully as soon as possible when things go wrong and has confirmed that it will never withhold cover for a subsequent legal claim because an apology or explanation has been given.

In the early stages of a Clinical Negligence Claim the Lead Clinician may be asked to provide a written Report to assist the Trust to assess whether the claim carries a Significant Litigation Risk (see para 5.6 below).

As the claim progresses, the Lead Clinician may be asked to provide a formal witness statement (click here for NHS Guidance for clinical witnesses) or to give evidence at trial (NHSR have produced this guidance for clinicians giving evidence in court)

The Lead Clinician will be involved in providing instructions to the Trust lawyers regarding any admissions of liability or attempts at settlement.

4.6 Learning Review Group (LRG)

The LRG is responsible for reviewing data relating to Clinical Negligence claims and inquests to identify trends and lessons to be learned. The Group is chaired by the Medical Director for Quality and Safety. The group also includes representatives of the divisional risk teams and PALS and Legal Services.

4.7 Information Access Office

The Information Access office deal with all requests for disclosure of health records in accordance with the Trust's Access to Personal Data (Subject Access) Policy, available on the intranet.

5. Handling Clinical Negligence Claims

5.1 NHSR Schemes and Reporting Guidelines

Clinical Negligence Claims should be handled in accordance with the requirements set out in the NHSR Claims Reporting Guidelines. Clinical Negligence Claims for incidents

occurring before 1 April 1995 fall within the Existing Liabilities (ELS) Scheme and those relating to incidents occurring after 1 April 1995 fall within the Clinical Negligence Scheme for Trusts (CNST). There is no excess payable under either scheme. The reporting requirements are the same and are set out in the CNST Reporting Guidelines.

5.2 Allocation of Clinical Negligence Claims

On receiving notification of a Clinical Negligence claim or potential claim, the Associate Director of Legal Services or a senior member of the legal team will allocate the claim to a Claims Manager who has the legal expertise to deal with a case of that complexity and value.

5.3 Identifying the Correct Defendant

The Claims Manager must first confirm the identity of the responsible organisation (i.e. the correct Defendant) with reference to the table set out at **Appendix 1**. This is key in claims where the date of negligence was before 1993 OR the claim involves community teams OR the claim involves services provided by Derbyshire Pathology.

5.4 Identifying Whether a Clinical Negligence Claim Needs to be Reported to NHSR

Having confirmed that UHDB is the correct Defendant to the claim, the Claims Manager will then need to identify whether the claim needs to be reported to NHSR. The following table sets out the triggers for when a claim should be reported to NHSR and the applicable timescales:

Situation	Action Required	Timescale
Request for Disclosure or some other indication from the Claimant that a claim is being considered e.g. request for extension of limitation **AND** **Internal investigation (e.g. complaint review, incident investigation)) identifies the possibility of a claim with a Significant Litigation Risk (regardless of value) (See para 5.5 below).**	Report to NHSR via the Claims Reporting Wizard	ASAP but no later than 1 month from receipt of the Request for Disclosure.
Request for Disclosure or some other indication from the Claimant that a claim is being considered e.g. request for extension of limitation **AND** **There is no internal investigation (e.g. no complaint review or incident investigation)** **BUT** **The clinician involved in the Claimant's episode of care or the Lead**	Report to NHSR via the Claims Reporting Wizard	ASAP but no later than 2 months from receipt of the Request for Disclosure.

Clinician identifies the possibility of a claim with a Significant Litigation Risk (See para 5.5 below).		
Indication that a clinical negligence claim is likely to be pursued in relation to a death that is subject to an ongoing inquest.	Report to NHSR via the Claims Reporting Wizard and including a completed Inquest Funding Request Form	ASAP but no less than 1 month before the inquest hearing date.
Letter of Claim served	Report to NHSR via the Claims Reporting Wizard or (if the claim has been reported to NHSR previously) via DTS	Within 24 Hours of receipt, with completed documentation to NHSR within 2 weeks of receipt. In addition, within 14 days of receipt the Trust should send an acknowledgement letter to the Claimant's solicitor, identifying that NHSR will be dealing with the claim. The acknowledgement letter should not give any indication that we regard the Claimant's letter as Protocol Compliant.
Proceedings served	Report to NHSR via the Claims Reporting Wizard or (if the claim has been previously reported) via DTS	Within 24 Hours of Receipt. Send acknowledgement to Claimant and completed documentation to NHSR within 2 weeks of receipt.
Part 36 Offer received	Report to NHSR via the Claims Reporting Wizard or (if the claim has been previously reported) via DTS	Within 24 hours of receipt. The Claims Manager should not give any indication to the Claimant that any such offer is valid and/or that time runs from a particular date.
Maternity Incidents of potentially severe brain injury to baby with incident date after 01-04-17 that meet the Early Notification Criteria i.e. all babies born at term (≥37 completed weeks of gestation), following labour, that had a potentially severe brain injury diagnosed in the first seven days of life. These are any babies that fall into the categories:	Report to NHSR Using the Early Notification Report Form	The Trust's legal department should be informed by clinical teams within 14 days that a notifiable severe brain injury incident has occurred using the Early Notification Report Form. The Trust's legal department should then report the incident to NHSR within 30 days of the incident.

• **Was diagnosed with grade III hypoxic ischaemic encephalopathy (HIE) or** • **Was therapeutically cooled (active cooling only) or** • **Had decreased central tone AND was comatose AND had seizures of any kind.**		
Serious incident where investigations suggest that there have been failings in the care provided AND there is the possibility of a large value claim i.e. damages exceeding £500,000	Report to NHSR via the Claims Reporting Wizard, irrespective of whether or not a claim has been notified or a request for disclosure received	ASAP and no later than 3 months from when the Trust becomes aware of the incident.
Group Action i.e. any adverse incident/issue which has the potential to involve a number of patients e.g. failure or a screening service or a Royal College Review that identifies shortcomings in a clinical area	Report to NHSR via the Claims Reporting Wizard , irrespective of whether or not claim(s) have been notified	ASAP but no later than 1 month from when the Trust becomes aware of the issue
Serial Offender Claims i.e. claims arising from the alleged negligence and/or serious professional misconduct of a staff member affecting a number of patients	Report to NHSR via the Claims Reporting Wizard , irrespective of whether or not claim(s) have been notified	ASAP . In any instance where the Claims Managers are alerted to serious issues about the conduct of any member of staff (or any staff group) he/she will escalate these to the Associate Director of Legal Services who will escalate to the Executive Medical Director or Chief Nurse.

5.5 Conducting a Preliminary Analysis to Assess Whether there is a Significant Litigation Risk

For all clinical negligence claims or situations that may trigger a report to NHSR, the Claims Manager must carry out a preliminary analysis of the claim as follows:

- The most common method of notification of a potential clinical negligence claim is receipt of a Request for Disclosure of medical records. These Requests for Disclosure will be processed by the Information Access team in accordance with the Trust's Policy for Access to Personal Data (Subject Access). If a Request for Disclosure indicates that a claim is being investigated against the Trust, the Information Access team will send a copy of the Request for Disclosure to the Legal Services Department immediately upon receipt (usually via email).

- If notification of a claim comes via any other route (i.e. it does not come to legal

services via the Information Access team) the Legal PA/secretary will contact the Subject Access team to obtain an electronic copy of the medical records (RDH and LRCH) or to instruct them to scan and upload all paper records so that the electronic medical records are complete (QHB, SRP and SJ).

- Upon notification of a clinical negligence claim or potential claim, the Legal PA/secretary will input all available data into the DATIX database, open an electronic file with a unique DATIX reference, add the claim to the Preliminary Analysis and Reporting Due Dates spreadsheet, search for any relevant incidents or complaints recorded on DATIX save any relevant documents to the shared drive folder.

  The Claims Manager will then review all of the available documentation, including any relevant PALS/complaint file and/or risk management documentation and all other related documentation either collated by the Legal PA/secretary or which is available on Datix. The Claims Manager will also review the medical records carefully (collated and scanned in by the Subject Access Team)–
- The Claims Manager will conduct a preliminary analysis of this evidence, which must be tested against the legal criteria of breach of duty and causation to assess whether there is a realistic prospect of a claim being made i.e. a Significant Litigation Risk. An attendance note recording this preliminary analysis saved on the legal file.

- Once this preliminary analysis has been carried out, the Claims Manager will draft a Claim Notification Report and send this to the Executive Medical Director, the Executive Chief Nurse, the Divisional Medical Director, the Divisional Nursing Director, the Division Clinical Governance Facilitator, the Medical Director Quality and Safety and Head of Clinical Governance. The clinical witnesses will also be informed about the claim, either direct or via the clinical lead.

- If this preliminary analysis identifies a Significant Litigation Risk from the documentation (e.g. from a complaint review or incident investigation) the Claims Manager will report the claim to NHSR via the Claims Reporting Wizard ASAP but no later than 1 month from receipt of the Request for Disclosure (see para 5.7 below).

- If there is not enough information available to assess whether or not there is a Significant Litigation Risk on information available, the Claims Manager will speak to the clinical team and if necessary the Lead Clinician will be asked to provide a written report to assist in the investigation of the claim (see para 5.6 below). If this identifies a Significant Litigation Risk, the Claims Manager will report the claim to NHSR via the Claims Reporting Wizard ASAP but no later than 2 months from receipt of the Request for Disclosure (see para 5.7 below).

- If the preliminary analysis does not identify a Significant Litigation Risk (at either the 1 or 2 month mark), the claim will be moved on DATIX into “Watching Brief” status, pending confirmation as to whether or not the claim will proceed. The Claims Manager will continue to liaise direct with the Claimant or their legal representative and the claim will not be reported to NHSR at that stage.

5.6 Requesting a Report from the Lead Clinician

Claims Managers may request a report from the Lead Clinician setting out:

- A factual overview of the clinical care received;

- A clinical opinion on breach of duty i.e. whether there is a responsible body of clinicians in the relevant specialism that would support the treatment the patient received.
- A detailed response to the specific allegations made by the patient.
- A clinical opinion on causation i.e. whether (on balance of probabilities) any breach of duty made a difference to the outcome for this patient.
- Condition and Prognosis, where appropriate.
- Risk Management Implications i.e. what can be learned for the future from the events in question? Where appropriate, the lead clinician will be asked to report the claim to his/her Division Clinical Governance Facilitator(s).
- The Report produced by the lead clinician should state clearly that it is made in response to actual or contemplated legal action to ensure that it is protected from disclosure by legal privilege.

5.7 Reporting a Clinical Negligence Claim to NHSR

NHSR is now paperless, and requires that all correspondence and documents should be sent electronically. All new clinical negligence claims must be reported to NHSR electronically using the Claims Reporting Wizard. For guidance, see NHSR's guide to using the online reporting Wizard at Appendix 3.

The Claims Reporting Wizard captures key information and imports it onto NHSR's Claims Management System (CMS) on approval. There is a free text section to add a covering message to the NHSR approver, which should be used to highlight matters such as any agreed limitation extension, associated disciplinary issues, whether there are any potential third party issues, listed inquest date etc. When reporting a claim, the Claims Manager should also submit:

- **A completed Useful Documents Guide**

  Generally the relevant documents should be sent to NHSR when the claim is reported. These will include all correspondence from the Claimant/their solicitor, the PALS and complaints file, risk management file, SI Report, relevant Trust Policies and Guidelines and any reports from the Lead Clinicians.

  However, NHSR does recognise that exceptionally it will not be possible to collate all of the relevant documentation/information to NHSR whilst complying with the timescales detailed in the table at para 5.4 e.g. when service of a Letter of Claim or Proceedings is the first notification of a claim. In such exceptional cases, the outstanding information/documentation should be submitted to NHSR within 2 weeks of reporting the claim.

- **For maternity incidents of potentially severe brain injury that fall within the criteria of the Early Notification Scheme (see para 5.4 above) , the** Early Notification Report Form **completed by the clinical team**

- **Inquest Funding Request Forms (where there is an open inquest into a death that forms the basis of a clinical negligence claim)**

The report forms and supplementary documents are located in the NHSR Extranet here: **Documents > Policies and Procedures > Reporting Guidelines > Key Documents.**

Once the claim has been reported and approved by NHSR, all subsequent correspondence and documents must be sent to NHSR electronically using the Document Transfer System (DTS).

5.8 Future Management of the Claim

Once the Claim has been reported to NHSR, they will liaise with the Claimant or the Claimant's representative on the Trust's behalf and will report the claim to the Compensation Recovery Unit.

NHSR may handle the claim in-house or instruct Panel Solicitors. From this point onwards, NHSR, the Trust's Claims Managers and the Panel Solicitor will be in close liaison about the progress of the claim and other requirements including meeting all deadlines.

The Trust's Claims Managers will:

- Take steps to preserve the necessary medical records and other key documentation;
- Respond promptly to requests for information and instructions from NHSR;
- Keep the Lead Clinicians, clinical witnesses and divisional teams updated as the claim progresses;
- Provide and facilitate support to staff involved in the claim (see Trust Guidelines for Supporting Staff involved in Traumatic Situations and Incidents).

5.9 Responding to a Request for an Extension of Limitation

Claimants or their legal representatives will often ask for an extension of the limitation period. NHSR has issued guidance on how the Trust should respond.

NHSR approval is not required to grant an extension of limitation. However, if the claim has been reported to NHSR at the time that the extension is requested it is good practice for the Claims Manager to liaise with the NHSR file handler and agree the approach to be taken.

When considering a request for an extension of limitation, the Claims Manager should carefully check the date the cause of action arose and/or any later date of knowledge. If limitation has already expired, Claims Managers should under no circumstances agree to an extension.

If limitation has not yet expired there may be some merit in agreeing an extension where the Claimant has only just started an investigation or where the Trust's own investigations are still outstanding. Extensions should be of a reasonably limited duration i.e. no longer than 6 months. Claims Managers should be sensitive to the fact that costs will be incurred by forcing a Claimant to issue proceedings, especially in a case where investigations suggest that the claim should be settled.

All extensions should be agreed using the following wording: "*UHDB agrees that in any subsequent issue about limitation, we will not rely upon any period of time that elapses between the date of this correspondence and [agreed date]".* This approach allows the Trust to preserve existing limitation arguments while allowing the Claimant to finalise investigations in a cost effective manner.

NHSR approval **is** required before the Claims Manager can agree any extension for service of court documents (such as the issued Claim Form or Particulars of Claim).

5.10 Service of the Letter of Claim

On receipt of a Pre-Action Protocol Letter of Claim, the Claims Manager will check whether the claim has already been reported to NHSR:

- If so, the Letter of Claim will be sent to the NHSR claims handler by DTS within 24 hours of receipt.
- If not, the claim will be reported to NHSR within 24 hours via the Claims Reporting Wizard, with completed documentation to NHSR within 2 weeks of receipt of the Letter of Claim (see para 5.7). A clinical negligence file will be opened and relevant documentation collated in the usual way (see para 5.5).

In addition, within 14 days of receipt the Trust will send an acknowledgement letter to the Claimant's solicitor, identifying that NHSR will be dealing with the claim. The acknowledgement letter should not give any indication that the Claimant's letter is accepted as Protocol Compliant.

The Claims Manager will diarise the Letter of Response due date and input the date into Datix, input details into the Preliminary Analysis and Reporting Due Dates spreadsheet and will also:

- Send a copy of the Letter of Claim to the Lead Clinician and clinical witnesses with a request for a report focused on the allegations set out in the Letter of Claim (see para 5.6) and
- Send a copy of the Letter of Claim to the Divisional Medical Director, Divisional Nurse Director and Clinical Governance Facilitator.

NHSR or Panel Solicitors must then serve the Letter of Response within 4 months of receipt of the Letter of Claim. The Claims Manager must take instructions from the Clinical Witnesses on the content of the Letter of Response before it is served

5.11 Service of Legal Proceedings

Legal Proceedings are now dealt with via an online Portal hosted by HM Court Service. All Claimant firms are required to agree with NHS Resolution a nominated Panel Firm of Solicitors who will accept service of Proceedings via the Portal.

It is therefore unlikely that future Legal Proceedings will be served directly on the Trust but in the event they do the following steps should be taken:

On receipt of legal proceedings, the Claims Manager will check whether the claim has already been reported to NHSR:

- If so, the proceedings will be sent to the NHSR claims handler by DTS within 24 hours of receipt.
- If not, the claim will be reported to NHSR within 24 hours via the Claims Reporting Wizard, with completed documentation to NHSR within 2 weeks of receipt of the proceedings (see para 5.7). A clinical negligence file will be opened and relevant documentation collated in the usual way (see para 5.5).

In addition, within 14 days of receipt the Trust will send an acknowledgement letter to the Claimant's solicitor, identifying that NHSR will be dealing with the claim. The acknowledgement letter should not give any indication that proceedings have been validly served.

NHSR must then file and serve the Acknowledgement of Service (the general rule is that this is within 14 days of service of proceedings) and the Defence (generally within 28 days of service of proceedings unless an extension has been agreed). The Claims Manager will diarise these due dates and input the date into Datix, input details into the Preliminary Analysis and Reporting Due Dates spreadsheet and will also:

- Send a copy of the proceedings and supporting documentation to the Lead Clinician and clinical witnesses, with a request for a report focused on the allegations of negligence as particularised (see para 5.6) and
- Send a copy of the proceedings and supporting documentation to the Divisional Medical Director, Divisional Nurse Director and Clinical Governance Facilitator.

5.12 Admitting Liability or Settling a Claim

NHSR authority is required before:

- Any monetary compensation is offered. In the absence of such authorisation, NHSR will not reimburse the Trust either for compensation awarded or for any of the costs generated. Such payments, if made, will fall outside CNST and could result in criticism from the Auditors.

- Any admission of liability is made. This should not inhibit clinicians from having open discussions with patients. NHSR encourages clinical staff to say sorry meaningfully as soon as possible when things go wrong and has confirmed that it will never withhold cover for a subsequent legal claim because an apology or explanation has been given.

NHSR must obtain express approval from the Trust's Claims Manager before making any admission of liability. The Claims Manager MUST take instructions from the Lead Clinician before giving approval to NHSR to admit liability.

NHSR does not require Trust approval to settle a claim on a no admissions basis, but will be in close liaison as the claim progresses and it is envisaged that decisions about settlement will be made in partnership by NHSR and the Claims Manager, who in turn will take instructions from the Lead Clinician.

In the event that the Lead Clinician does not accept the legal advice to make an admission of liability and/or settle a claim, this will be escalated to the Associate Director of Legal Services. If she cannot resolve the dispute, this will be escalated to the Divisional Medical Director/Nurse Director or Executive Medical Director or Executive Chief Nurse for resolution.

When liability is admitted and/or a claim is settled, the Claims Manager will take the following steps:

- Update DATIX, to include recording that liability is admitted and the settlement date.

- Draft a Notification Report and circulate this to the Executive Medical Director, Executive Chief Nurse, Medical Director of Quality and Safety, Divisional Medical Director, Divisional Nursing Director, Head of Governance, Risk and Patient Safety Officer and Complaints Manager and Lead Clinician. These reports are analysed on a case by case basis by the Divisional Clinical Governance Facilitators.

- In addition, the Associate Director of Legal Services or a senior member of the legal team will present the Notification Report to the LRG for discussion, and the group will take steps to ensure that any learning from the claim is considered by the relevant Division/s.

- In appropriate cases, a Letter of Apology will be agreed with NHSR and then signed and sent to the Claimant (via their lawyers) by the Trust's Chief Executive. It is important that this letter is written carefully and sensitively, with

input from the Lead Clinician to reflect steps taken to learn from the claim. A badly worded Letter of Apology can cause great distress to the Claimant and their family.

- Ensure that all settled claims are included in the confidential Quality and Performance Committee Legal Report.

- Brief the communications team in advance about admissions or settlements that carry significant reputational risk (e.g. high value, birth injury, fatal accident claims involving the death of a young patient, claims involving the death or a child or baby, claims where there has been previous press interest etc). NHSR should be asked to approve any press statement before it is released by the Trust.

5.13 Mediation or Trial

Less than 1% of clinical negligence claims go to trial. Where appropriate, NHSR encourages parties to participate in mediation or other forms of Alternative Dispute Resolution as a means of resolving concerns fairly. Where a claim is listed for trial or mediation, the Claims Manager will:

- Instruct the Legal Office Manager/PA to Diarise the date in the Key Date Diary, in DATIX and on the Trial Board.

- Ensure that details of the claim and trial/mediation date are included in the confidential report to Board and that the communications team are briefed.

Ensure that the Divisional Medical Director, Clinical Governance Facilitaor and Divisional Nursing Director are aware of forthcoming trial and mediation (where liability is in dispute) dates.

- For mediation, liaise with the Divisional team and Panel firm to decide who the Trust will send to mediation and ensure they are clear on their role and are supported and prepared for the mediation.

- Before trial, the Claims Manager MUST take instructions from the Executive Medical Director or Executive Chief Nurse before confirming Trust approval to NHSR to proceed to trial.

- Provide and facilitate legal advice and support to clinical witnesses who will be called to give evidence at trial. This will include pushing the panel firm of solicitors to arrange a conference with counsel in good time before the trial date. NHSR have produced guidance for clinicians giving evidence in court

5.14 Signing of Legal Documents

In Law, the Trust remains the Legal Defendant to claims. Therefore, Trust Officers must sign all Defences and other Statements of Case such as Statements of Truth, Consent Orders and Lists of Documents. Those officers currently authorised to sign such documents are the Chief Executive, Executive Directors of the Board, Associate Director of Legal Services and Deputy Head of Legal Operations.

5.15 Steps to be Taken at the Conclusion of a Clinical Negligence Claim

At the conclusion of the claim, the Claims Manager will ensure that the following steps have been taken:

- All clinical witnesses have been informed of the outcome.
- The Executive Medical Director, Executive Chief Nurse, Medical Director for Quality and Safety, Divisional Medical Director, Divisional Nursing Director, Head of Governance, Risk and Patient Safety Officer and Complaints Manager and Lead Clinician have been notified of any admissions/settlement as appropriate (see para 5.12).
- A Letter of Apology has been sent if appropriate (see para 5.12).
- DATIX has been updated.
- Any original records have been returned to base and/or copy medical records sent for confidential shredding
- Any paper legal file will then be archived and destroyed in accordance with the Trust's Retention and Destruction Schedules. The electronic file will be archived electronically.

6. Handling Employer's Liability (EL) and Public Liability (PL) Claims

6.1 NHSR Schemes and Reporting Guidelines

EL and PL Claims are personal injury claims brought against the Trust by employees, members of the public and (occasionally) patients. These range from straightforward slips and trips to serious workplace manual handling, bullying and stress claims.

EL and PL claims are covered by the Liabilities to Third Party Scheme (LTPS) and should be handled in accordance with the rules of that scheme. EL and PL claims are subject to an excess which must be paid by the Trust itself in respect of each and every claim as follows:

EL Claims	£10,000
PL Claims	£3,000

The excess is calculated with reference to the total cost of the claim i.e. damages plus Claimant and defence costs.

6.2 Allocation of EL and PL Claims

On receiving notification of an EL or PL claim, the Associate Director of Legal Services or a senior member of the legal team will allocate the claim to a Claims Manager who has responsibility for the management of these types of claims.

6.3 Identifying Whether an EL or PL Claim Needs to Be Reported to NHSR

The way in which the Trust is usually notified of an EL or PL claim depends on the value of the claim:

- Where the Claimant values the claim at more than £25,000 damages or the claim relates to alleged incidents prior to April 2013, the first notification of the claim will usually be service of a Pre Action Protocol Letter of Claim. This must be reported to NHSR via the Claims Reporting Wizard within 24 hours of receipt (see para 5.6 above), using an LTPS Claim Report Form in addition to the Useful Documents Guide.
- Where the Claimant values damages at less than £25,000 and the claim relates to incidents after April 2013, notification will usually be via the Personal Injury

and Employer Liability Portal (The Portal). This is a national web-based electronic claims portal system designed to manage low value EL and PL claims quickly and efficiently. The Portal operates by way of a system of notifications and responses that are inputted into the Portal by the Claimant and NHSR on behalf of the Trust.

A Claimant who is seeking damages of less than £25,000 for an EL or PL claim must register the claim on the Portal by completing and registering a Claim Notification Form (CNF). NHSR will usually receive the CNF from the Portal and will then forward a copy to the Trust. EL and PL Portal claims do not need to be reported save for two important exceptions:

Situation	Action Required	Timescale
PORTAL ONLY: Claim Notification Form received **AND** **The covering letter confirms that NHSR have not been made aware of the claim via the Portal**	Report to NHS Resolution	Within 24 hours of receipt. The Claim should be reported via the Claims Wizard (see para 5.6) using an LTPS Claim Report Form as well as the Useful Documents Guide.
PORTAL ONLY: Claim Notification Form received from the Claimant's solicitor **AND** **No NHS Resolution contact received within 3 working days**	Contact NHS Resolution to discuss whether or not to report the claim to NHSR	No more than 3 working days after receipt of the Claim Notification Form

6.4 Investigating the Claim

The Legal PA/secretary will input all available data into the DATIX database, open an electronic file with a unique DATIX reference and liaise with PALS and Risk Management to obtain all related documentation and input details into the Preliminary Analysis and Reporting Due Dates spreadsheet.

The claim will then be allocated to the appropriate Claims Manager, who will send a Notification Report to the Trust's Health and Safety Manager, Executive Director of Workforce and Organisational Development, Clinical Governance Facilitator and relevant Divisional managers as appropriate.

The claim will then be dealt with according to the appropriate pathway:

	If a Letter of Claim has been served direct on the Trust	If a CNF has been received via the Portal
1.	The Claims Manager will firstly consider whether liability properly lies with the Trust, with particular reference to the table at Appendix 4 and the PFI Agreement (i.e. The Mobilisation and Services Agreement and the Project Agreement held on CD Rom in the Legal Services Department). If it is felt that the Trust is owed an indemnity by Derby Healthcare Plc (DHC) the Claims Manager will notify DHC, in accordance with the PFI Agreement. If DHC agree to indemnify the Trust and take over conduct of the claim, the Trust is not required to notify NHSR of the claim. If DHC disputes the indemnity, the Claims Manager must consider whether to report the claim to the NHSR.	The Claims Manager will firstly review the CNF. If the covering letter confirms that NHSR have not been made aware of the claim via the Portal, the Claims Manager will report the claim to NHSR within 24 hours of receipt. The Claim should be reported via the Claims Wizard (see para 5.6) using an LTPS Claim Report Form as well as the Useful Documents Guide. The Claims Manager will consider whether liability properly lies with the Trust, with particular reference to Appendix 4 and the PFI Agreement (i.e. The Mobilisation and Services Agreement and the Project Agreement held on CD Rom in the Legal Services Department). If it is felt that the Trust is owed an indemnity by Derby Healthcare Plc (DHC) the Claims Manager will liaise with DHC firstly to notify them of the claim and seek agreement to an indemnity. If DHC agree, the Claims Manager will ask DHC to confirm this in writing and then instruct NHSR to reject the claim (either through the Portal or in writing). If there is no agreement from DHC regarding the indemnity, the Claims Manager must liaise directly with NHSR and their line manager to resolve the issue.
2.	If there are no indemnity issues and a Letter of Claim has been received, the Claims Manager will ensure that this is reported to NHSR within 24 hours of receipt of the Letter of Claim. All new EL/PL claims must be reported securely on-line using NHSR's Claims Reporting Wizard (see para 5.6). When reporting a Letter of Claim on an EL/PL claim, the following basic documentation will be sent electronically in all cases: - LTPS Claim Report Form. - Useful Documents Guide. - Copy Letter of Claim and any other correspondence from the Claimant's solicitor; - Copy of all relevant IR1s and RIDDORS if available.	If there are no indemnity issues, and NHSR have not contacted the Trust within three days of notification of the claim, the Claims Manager will contact the NHSR to check that they have received the new claim through the Portal. The Claims Manager will then proceed to stage 4.

<table>
<tr><td>3.</td><td>The Claims Manager will also acknowledge receipt of the Letter of Claim within 21 days of receipt. The acknowledgement letter should not give any indication that the Trust regards the Claimant’s letter as Protocol compliant.</td><td>N/A</td></tr>
<tr><td>4.</td><td colspan="2">The Claims Manager will then conduct a detailed investigation of the claim.

For every EL or PL Claim, the Claims Manager will:

• Review all documentation relating to the incident and the person(s) involved provided by PALS and RISK, including: incident and Investigation reports, RIDDOR reports, copies of comments from witnesses, supervisors and/or managers obtained as part of the incident or PALS investigation; the complaint files including any prior correspondence e.g. initial letter/s of complaint and response;
• Send an “NHSR Disclosure List”, listing all relevant documents applicable to the particular type of claim, to the Trust’s Health and Safety Manager and to any other relevant managers. They will complete and return the “NHSR Disclosure List” to the Claims Manager with copies of all relevant documents;
• Request relevant CCTV footage;
• For an EL claim, obtain from The Resource Team/Salary Department details of the Claimant’s sickness and wages for 13 weeks prior to the date of the accident, including the time that the Claimant was absent due to the alleged injuries. Find out whether/when the Claimant returned to work;
• For an EL claim, obtain the Claimant’s Personnel file;
• For an EL claim, ask Occupational Health (OH) if relevant OH records exist and consider whether the Claimant’s original medical records are relevant to the claim. If so, the Claims Manager must obtain the Claimant’s express written consent to disclose OH and medical records, before obtaining these and sending to the NHSR;
• Obtain the relevant Trust policies or guidelines;
• Arrange to meet with the relevant manager (either the Claimant’s line manager or the manager for the area where the incident happened) to explore the circumstances of the claim, whether there were any witnesses to the incident, what action has happened since the incident (i.e. additional training, signs put in place, equipment checked or removed etc);
• Arrange via the relevant line manager to meet with the relevant witnesses to take detailed statements from them;
• Obtain any other documentation/information deemed relevant for the evaluation of the claim.</td></tr>
<tr><td>5.</td><td>The Claims Manager will supply a report to NHSR with an LTPS Useful Documents Guide outlining details of the investigation undertaken, a brief analysis of the claim and identify whether an admission needs to be made. This must be sent NHSR within 2 weeks (where possible).</td><td>The Claims Manager will supply a report to NHSR with LTPS Useful Documents Guide outlining details of the investigation undertaken, a brief analysis of the claim and identify whether an admission needs to be made within the Portal timeframe. This must be sent NHSR within 20 working days for any EL claim and 30 working days for any PL claim.</td></tr>
</table>

These documents must be sent to NHSR electronically using DTS. NHSR request that Trusts avoid wherever possible sending them correspondence and documents in paper form. For guidance on using the CRS and DTS, see NHSR’s guide at Appendix 3.

6.5 Future Management of the Claim

This information will form the basis of NHSR's advice to the Trust on future management of the claim. NHSR will allocate all EL and PL claims to an NHSR Claims Handler, who will liaise with the Claims Manager at the Trust regarding the information submitted and any further investigations required.

Once the claim has been reported to NHSR, any further correspondence received should be sent to the NHSR immediately upon receipt. The Trust Claim Manager will:

- Take steps to preserve all key documentation and continue to obtain further documentation as required;
- Respond promptly to requests for information and instructions from NHSR;
- Keep the Health and Safety Manager and/or other relevant managers, clinicians and witnesses updated as the claim progresses;
- Provide and facilitate support to staff involved in the claim.

6.6 Service of Legal Proceedings

On receipt of Legal Proceedings, the Claims Manager will check whether the claim has already been reported to NHSR:

- If so, the proceedings will be sent to the NHSR claims handler by DTS within 24 hours of receipt.
- If not, the claim will be reported to NHSR within 24 hours via the Claims Reporting Wizard, with completed documentation to NHSR within 2 weeks of receipt of the proceedings. An EL or PL file will be opened and relevant documentation collated in the usual way (see para 6.4).

In addition, within 14 days of receipt the Trust will send an acknowledgement letter to the Claimant/'s solicitor, identifying that NHSR will be dealing with the claim. The acknowledgement letter should not give any indication that proceedings have been validly served.

NHSR must then file and serve the Acknowledgement of Service (the general rule is that this is within 14 days of service of proceedings) and the Defence (generally within 28 days of service of proceedings unless an extension has been agreed). The Claims Manager will diarise these due dates in the Key Date Diary and input details into the Preliminary Analysis and Reporting Due Dates spreadsheet.
The Claims Manager will also send a copy of the proceedings and supporting documentation to the relevant Manager and arrange a date to meet to discuss.

6.7 Service of a Part 36 Offer

On receipt of a Part 36 Offer, the Claims Manager will report this to NHSR via the Claims Reporting Wizard or (if the claim has been previously reported) via DTS within 24 hours of receipt.

The Claims Manager should not give any indication to the Claimant that any such offer is valid and/or that time runs from a particular date.

6.8 Admitting Liability or Settling a Claim

Early identification of indefensible EL or PL Portal Claims is a key part of the Claims Manager's responsibility. If liability is admitted within the Portal Timescales (30 days for a EL claim and 40 days for a PL claim), the Claimant's costs are fixed and represent a significant saving for the Trust as opposed to when liability is admitted or the claim is settled outside of the Portal Timescales;

NHSR must obtain express approval from the Trust's Claims Manager before making any admission of liability and the Claims Manager must take instructions from the Health and Safety Manager and/or the relevant manager before authorising NHSR to settle a claim.

NHSR does not require Trust approval to settle a claim on a no admissions basis, but will be in close liaison as the claim progresses and it is envisaged that decisions about settlement will be made in partnership by NHSR and the Claims Manager, who in turn will take instructions from the relevant Manager;

In the event that the relevant manager does not accept the legal advice to make an admission of liability and/or settle a claim, this will be escalated to the Associate Director of Legal Services. Is she cannot resolve the dispute it will be escalated to the Executive Medical Director or Executive Chief Nurse for resolution.

When liability is admitted and/or a claim is settled, the Claims Manager will take the following steps:

- Update DATIX, to include recording that liability is admitted and the settlement date.
- Draft a Notification Report and circulate this to the Health and Safety Manager, Chief Operating Officer, Executive Director for Workforce and Organisational Development (EL claims Only), Director of Governance and Communications, Divisional Clinical Governance Facilitator, the relevant Manager and the Director of Patient Experience, Facilities and Estates.
- Brief the communications team in advance about admissions or settlements that carry significant reputational risk (e.g. high value, fatal accident, claims where there has been previous press interest etc). NHSR should be asked to approve any press statement before it is released by the Trust.

6.9 Mediation or Trial

Where appropriate, NHSR encourages parties to participate in mediation or other forms of Alternative Dispute Resolution as a means of resolving concerns fairly. Where a claim is listed for trial or mediation, the Claims Manager will:

- Diarise the date in the Key Date Diary.
- Ensure that details of the claim and trial/mediation date are included in the confidential report to Quality and Performance Committee and that the communications team are briefed.
- Ensure that the Divisional Medical Director, Clinical Governance Director and Divisional Nursing Director are aware of forthcoming trial and mediation dates.

- For mediation, liaise with the Divisional team and Panel firm to decide who the Trust will send to mediation and ensure they are clear on their role and are supported and prepared for the mediation.

- Before trial, the Claims Manager MUST take instructions from the Executive Medical Director, Executive Chief Nurse or Executive Director of Workforce before confirming Trust approval to NHSR to proceed to trial.

- Provide and facilitate legal advice and support to all witnesses who will be called to give evidence at trial. This will include pushing the panel firm of solicitors to arrange a conference with counsel in good time before the trial date.

6.10 Signing of Legal Documents

The process is identical to the process as outlined at para 5.14 above.

6.11 Steps to be taken at the Conclusion of an EL or PL Claim

At the conclusion of the claim, the Claims Manager will ensure that the following steps have been taken:

- All managers and witnesses have been informed of the outcome.
- The Health and Safety Manager, Chief Operating Officer, Executive Director for Workforce and Organisational Development (EL claims Only), Director of Governance and Communications, Divisional Clinical Governance Facilitator, the relevant Manager and the Director of Patient Experience, Facilities and Estates have been notified of any admissions/settlement as appropriate (see para 6.8 above).
- DATIX has been updated.
- Original records (if any have been obtained) have been returned to base and copy medical records sent for confidential shredding
- Any paper legal file will then be archived and destroyed in accordance with the Trust's Retention and Destruction Schedules.
- All electronic files will be archived electronically.

7. Actions to be Taken on Property Expenses (PES) Claims

The Property Expenses Scheme (PES) covers losses for material damage to buildings and contents from a variety of causes, including fire, theft and water damage. PES also offers business interruption expense cover arising from property damage.

The Trust Secretary is responsible for ensuring that Property Expenses (PES) claims are managed in accordance with The Property Expenses Scheme Rules.

To report a PES claim, the Trust secretary should complete a PES Claim Form which can be obtained here and this should be sent by email to PES@resolution.nhs.uk

8. Monitoring Compliance and Effectiveness

Monitoring Requirement	Compliance with the minimum requirements in relation to the: • Action to be taken, including timescales. • Communication with relevant stakeholders. Where the monitoring has identified deficiencies, there must be evidence that recommendations and action plans have been developed and changes implemented accordingly.
Monitoring Method	The Preliminary Analysis and Reporting Due Dates spreadsheet is a live spreadsheet which can be accessed and updated by the whole legal team to monitor compliance with timescales on claims and inquests. This will be reviewed on a weekly basis in the legal department catch up meeting. More detailed analysis of this data will be presented at bi-monthly Legal Services Departmental Meetings, to monitor compliance with timescales. 12 monthly audit of a selection of files chosen at random by the Associate Director of Legal Services, to monitor communication with relevant stakeholders.
Report Prepared by	Kathryn Fearn, Associate Director of Legal Services
Monitoring Report presented to	Director of Governance and Communication
Frequency of Report	12 monthly

9. References

Existing Liabilities Scheme (ELS);

Clinical Negligence Scheme for Trusts (CNST)

CNST Claims Reporting Guidelines

The Early Notification Scheme (ENS)

ENS Report Form

The Risk Pooling Schemes for Trusts (RPST)

Liabilities to Third Parties Scheme (LTPS)

Property Expenses Scheme (PES)

NHSR Guidance on Saying Sorry

NHSR Guidance on being a witness in a clinical negligence claim

NHSR Guidance Note on Giving Evidence in Court

NHSR Guidance Note on Limitation

Ministry of Justice Pre-Action Protocol for the Resolution of Clinical Disputes

Ministry of Justice Pre-Action Protocol for Low Value Personal Injury (Employer's Liability and Public Liability) Claims

Ministry of Justice Pre-Action Protocol for Personal Injury Claims