

**CLAIMS HANDLING  
POLICY AND PROCEDURE**  
Clinical Negligence, Liabilities to Third Parties and  
Property Expenses Scheme Claims

Approved by: **Trust Executive Committee**

On: **28 November 2017**

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Corporate / Directorate **Corporate**

Clinical / Non Clinical **Non Clinical**

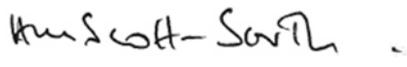
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Divisional Medical Directors  
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- Information for: **All staff**

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# Burton Hospitals NHS Foundation Trust

## POLICY INDEX SHEET

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# **CLAIMS HANDLING POLICY AND PROCEDURE**

**Clinical Negligence, Liabilities to Third Parties and  
Property Expenses Scheme Claims**

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# **Burton Hospitals NHS Foundation Trust**

## **CLAIMS HANDLING POLICY AND PROCEDURE**

### **1. BACKGROUND**

- 1.1 The number of claims against NHS Trusts is increasing as patients become more prepared to question the treatment they have received, seek explanations and pursue appropriate redress. In addition, NHS staff are making claims against NHS organisations where losses arise as a result of their employment.
- 1.2 Litigation claims are a rapidly growing cost to the NHS and Burton Hospitals NHS Foundation Trust is committed to effective and timely investigation and response to any claim which includes allegations of clinical negligence or personal injury. Claims management and monitoring is a fundamental tool of risk management, the aim of which is to collect information about claims which will help facilitate wider organisational learning.
- 1.3 This Policy describes the requirements of the NHS (now called NHS Resolution), with regard to the processing of clinical negligence and personal injury claims and complies with the model Claims Handling Policy issued by the NHS Resolution (NHSR).

### **2. POLICY OBJECTIVES**

The objective of this Policy and procedure is to give guidance on how claims should be dealt with within the organisation, involving third parties such as the NHS Resolution (NHSR) Solicitors, Claimants and the Coroner. It also details the NHSR Claims reporting guidance for the Property Expenses Scheme (PES), the Liabilities to Third Parties Scheme (LTPS) and Clinical Negligence (CNST & ELS). This will ensure that all staff are aware of the actions required upon receipt of a potential or formal claim and to provide guidance to ensure that:

- Staff are clear about the process for managing claims
- The Trust complies with the requirements of the risk management standards for CNST and LTPS
- The Trust complies with the requirements of the Pre-Action Protocols for personal injuries and the resolution of clinical disputes so avoiding cost penalties
- Lessons are learned from claims received by the Trust

### 3. DEFINITIONS

#### 3.1 NHS Resolution (NHSR)

3.1.1 The NHS Resolution (NHSR) is a Special Health Authority that was established to deal with claims against NHS bodies. It is effectively an “insurance company” which governs three financial pooling schemes:

- Existing Liabilities Scheme (ELS) (Refer to section 3.3)
- Clinical Negligence Scheme for Trusts (CNST) (Refer to section 3.4)
- Liabilities to third parties (LTPS) (Refer to section 3.5)

3.1.2 A central requirement of these schemes is the promotion and development of good risk management practices. The Trust is required to comply with the NHS Resolution reporting guidelines, which detail good practice in claims management. They encourage appropriate tasks to be handled in-house rather than by referral to solicitors. The timescales and reporting requirements reflect and underpin the timescales and requirements of the Civil Procedure Rules 1998 and good clinical governance.

3.1.3 In April 2002 the NHS Resolution took over financial and case management responsibility for all clinical negligence claims, which are managed under the Clinical Negligence Scheme for Trusts. Existing excesses were abolished. The NHS Resolution will not reimburse Trusts either for the compensation awarded, or for any costs generated, where a case has been handled without reference to or authorisation of, the NHSR. Such payments, if made by a Trust, will fall outside the scheme and could possibly result in criticism from Auditors.

#### 3.2 Claim

3.2.1 A claim is defined as any allegation 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.

3.2.2 This includes complaints leading to claims, notification of serious adverse events, incident reports generated by risk management processes and disclosure of medical records. Defining an incident as a “claim” in the absence of a demand for compensation does **NOT** itself imply that the NHS Resolution accepts that compensation will ultimately be paid. It simply means that a preliminary analysis should be carried out and the matter may need to be reported.

3.2.3 Claims received relate to incidents occurring over a wide period of time. Claimants must make a claim within three years of the incident occurring or within three years of the “date of knowledge” i.e. the date that they discovered negligence may have occurred. For children, claims can be brought up to three years after their 18th birthday.

### **3.3 Existing Liabilities Scheme (ELS)**

3.3.1 The Existing Liabilities Scheme covers claims relating to clinical negligence claims/incidents which occurred before 31 March 1995.

### **3.4 Clinical Negligence Scheme for Trusts (CNST)**

3.4.1 The CNST covers clinical negligence claims relating to incidents that occurred from 1 April 1995. For further information please refer to the clinical reporting guidelines at [www.nhs.uk](http://www.nhs.uk).

### **3.5 Liabilities to Third Parties – LTPS – Non-clinical claims**

3.5.1 All non clinical claims, including employee and visitor incidents and property damage are covered under the Liabilities to Third Parties Scheme (LTPS) for Trusts. It covers claims relating to incidents after 1 December 1999 and is split into two parts:

- Property Expenses Scheme (PES) (Refer to section 9)
- Liabilities to Third Party Scheme (LTPS) (Refer to section 8)

### **3.6 DATIX Database (formerly known as Safeguard Database)**

3.6.1 All claims received by the Trust are entered onto a networked risk management system, linking formal complaints, incidents and claims – the DATIX database.

## **4. CONFIDENTIALITY**

4.1 All employees of Burton Hospitals NHS Foundation Trust have a duty to ensure that any information pertaining to the management of all clinical and non clinical claims against Burton Hospitals NHS Foundation Trust is handled in the strictest confidence. Further details can be located in the Trust's Confidentiality Policy.

## **5. CLAIMS MANAGEMENT**

5.1 Claims management is one group of activities which are inter-dependent and complementary and include:

- Risk Management
- Complaints
- Clinical Audit
- Incident Reporting
- Health & Safety

These activities feed into the clinical and corporate governance framework which aims to encourage a climate of openness when something has gone wrong.

5.2 An incident may be a potential claim. Claims should be used in the same way as complaints and incidents to highlight areas for improvement and to ensure follow up action is taken to prevent a re-occurrence. The Trust's Corporate Directorate, which includes Clinical Risk, Health & Safety, Complaints and Claims, have monthly meetings to discuss relevant cases.

5.3 It is rarely the case that staff set out to deliberately harm themselves or others. Adverse events which lead to claims often occur due to system errors rather than individual error alone.

Clinical negligence and personal injury claims are made against Burton Hospitals NHS Foundation Trust; therefore the Trust is the Defendant. However, claims often relate to treatment or a failure to administer treatment by an individual healthcare professional. The Trust will support the staff concerned and, where possible, seek their agreement to actions to be taken.

5.4 Burton Hospitals NHS Foundation Trust recognises that the litigation process can be very difficult for all involved, including the patients, relatives and staff. It is important to consider not only how the Claimant feels in these situations, but also those in the service being claimed against as this can be an extremely stressing experience. It is recommended that they are treated with sensitivity, informed of progress and have sight of any response letter. Please see the Trust's Being Open Policy and Supporting Staff Policy for further guidance on these importance issues.

5.5 The NHSR has produced a brief guide to clinicians to offer more detail concerning the litigation process. This guide is available on the NHSLA website at [www.nhsla.com](http://www.nhsla.com).

5.6 Staff should not indicate to patients or their families that they believe the Trust is liable or that they believe compensation is due – there must have been a breach of duty of care which in turn has caused damage. Following investigation it may become clear that either there has not been an actual breach of duty or that the breach of duty has **not** caused the damage i.e. the damage would have happened in any event.

5.7 Claims will be managed by the Head of Legal Services , in conjunction with the NHS Resolution and the solicitors appointed by the NHS Resolution e.g. the Trust's Panel Solicitors. The Head of Legal Services will ensure that adequate advice can be obtained at all times, either from the NHS Resolution, the panel Solicitors or the Trust appointed Solicitors.

## **6. DUTIES**

### **6.1 The Quality Committee**

The Quality Committee will receive quarterly reports from the Head of Legal Services detailing all the settled claims handled by the Trust.

## 6.2 Chief Executive

6.2.1 The Chief Executive is ultimately responsible for ensuring that all claims are dealt with effectively and efficiently and is responsible for signing all formal documentation related to claims handling, such as the Defence, Counter Schedule and List of Documents. In the absence of the Chief Executive the Head of Legal Services can also sign documentation such as Defence documents, Consent Orders and the List of Documents. The Chief Executive is also responsible for ensuring that robust systems are in place for the management of these claims in accordance with the requirement of the NHSR.

## 6.3 Director of Finance

The approval of the Chief Executive and Director of Finance is required for the settlement of personal injury claims.

## 6.4 Director of Governance/Trust Secretary

6.4.1 The Director of Governance is the nominated Board member with responsibility for clinical negligence and personal injury issues and will keep the Board informed of major developments on claims-related issues.

6.4.2 The Director of Governance will receive regular reports from the Head of Legal Services, summarising clinical and non-clinical claims and any failures identified by those claims.

## 6.5 Clinicians and Associate Directors

The relevant Clinicians involved with the Claimant's care and treatment will be responsible for providing the Head of Legal Services with timely responses to requested reports in order to maintain adherence to Court timetables. This will also facilitate better and earlier exchange of information and improved investigation. There is also a responsibility to reveal information likely to cause serious harm to the physical or mental health of a patient or any other individual. Clinicians and/or Associate Directors must also reveal information relating to or provided by an individual other than the patient (or health professional involved in the care of the patient) who could be identified, and has not given consent to the disclosure (e.g. in paediatric and psychiatric cases).

## 6.6 Head of Legal Services

6.6.1 The Head of Legal Services is responsible for the day-to-day management of clinical negligence claims and non-clinical personal injury claims and for reporting the claims to the NHS Resolution.

6.6.2 This will include responsibility for:

- Identifying and arranging for the preservation of relevant records and other items such as equipment
- Establishing and, where necessary, maintaining contact with relevant staff and former employees and supporting staff and former staff involved in the litigation process

- Undertaking an analysis of the incident to identify whether a failure in care has occurred and, if so, to identify the underlying cause, applying the principles of root cause analysis
- Undertaking a Preliminary Analysis of the case and making an initial valuation of the claim subject to the Judicial Studies Board rules and in line with the CNST reporting guidelines. Where there is indication of concern, reporting the claim to the NHS Resolution
- Reporting cases under the LTPS scheme in line with the NHS Resolution guidelines
- Liaising with the NHR/Panel Solicitors and analysing, with expert advice (legal, financial and risk management, as appropriate) whether individual claims should continue to be defended
- Preparing reports and other submissions required by the Board of Directors, Finance Department and the NHS Resolution
- Ensuring details of all new non clinical claims are reported to Finance to ensure the appropriate financial planning can be undertaken and reserves are retained
- Ensuring that information emerging during the investigation of claims is shared with staff directly involved in the case and the Director of Governance/Trust Secretary as appropriate for clinical governance responsibilities, and that lessons learned in the process of claims management are used for clinical risk management purposes in the context of future service provision
- Ensuring the Director of Governance/Trust Secretary and Trust Board/Quality Committee is aware of all new claims received by the Trust, together with the progress of these cases and liaising with Clinical Risk, Health & Safety and Complaints/PALS to review specific incidents and complaints
- Acting as the main point of contact with the Coroner to obtain reports and attending Inquests, and representing the Trust and witnesses and to arrange external legal representation as necessary
- Attending the regional network for litigation managers to receive updates on current case law, new initiatives and to discuss claims handling procedures
- The Head of Legal Services will collate the appropriate documentation for PES and report the case to the NHR, who will appoint a Claims Inspector/Loss Adjuster to investigate the claim.
- Communication with relevant stakeholders where necessary will include:
  - The Chief Executive
  - The NHR
  - NHR Panel Solicitors
  - Claimants and their solicitors
  - Lead clinicians and other Trust staff involved in the claim
  - PALS
  - The Incident Review Group
  - The Risk and Compliance Group

- The Board of Directors
- Human Resources
- Occupational Health
- The Trust's Insurers
- The Coroner and his Officers

6.6.3 The Head of Legal Services will meet periodically where necessary with the Directorates and/or their Representatives to discuss any new claims received, the progress of existing claims and risk management issues arising out of the claims process.

## 6.7 **Financial Controller**

6.7.1 The Financial Controller will ensure that the appropriate reserves are kept for all cases reported under the LTPS scheme.

## 6.8 **Medical Records Manager**

The Medical Records Manager is responsible for the disclosure of medical records. These requests will be processed in accordance with the Trust's Access to Health Records Policy. The Medical Records Manager will also manage the requests for all third party cases where it has been indicated that there is no contemplation of a claim against the Trust. The Medical Records Manager will ensure that the provisions of the Act are complied with, and to note if the record contains information which might possibly cause the requestor to commence a claim against the Trust. If this is the case, then the Medical Records Manager will be responsible for sending the request to the Head of Legal Services in order to alert the Head of Legal Services to a possible claim against the Trust.

# 7. **PROCESS FOR HANDLING CLINICAL NEGLIGENCE CLAIMS**

This section of the Policy identifies the process for handling clinical negligence claims (see flow chart at Appendix 1). Each of the stages is described below.

There are no excesses applicable to any of the clinical negligence schemes (ELS/CNST).

Upon notification of all Clinical Negligence claims that fall within the ELS/CNST:

- Requests for Disclosure of Records will be processed in accordance with the Trust's Access to Health Records Policy by the Medical Records Department. If a Request for Disclosure indicates that a claim is being investigated against the Trust, the Medical Records Department will send a copy of the Request for Disclosure to the legal Services Department immediately upon receipt
- Upon notification of a claim, the Legal Assistant will input all available data into the DATIX database, open a paper file with a unique reference , search for any relevant incidents or complaints recorded on DATIX and liaise with PALS and Risk Management to obtain all related documentation

- On receipt of the copy records, PALS and Risk Management documentation the Head of Legal Services will deal with the claim
- The Head of Legal Services must investigate and assess whether the claim presents a significant litigation risk
- The Head of Legal Services will scrutinise the medical records carefully in addition to any relevant complaint file and/or risk management documentation
- Where there is a completed complaint and/or risk management investigation relevant to the claim which identifies a significant litigation risk, the Head of Legal Services should report the claim to the NHSR within one calendar month of notification of the claim using the relevant reporting forms
- The Lead Clinician/s may be asked to provide a written report/s to assist the investigation by commenting on the following:
  - A factual overview of the clinical care received;
  - Care Management Problems i.e. to identify all events where care deviated beyond acceptable limits;
  - A detailed response to the allegations made by the patient, including an opinion on breach of duty and causation i.e. whether on the balance of probabilities the Claimant's injury was caused by breach of duty;
  - Condition and Prognosis, where appropriate;
  - Risk Management Implications i.e. what can be learned for the future from the events in question?
- If the clinicians' report and/or other investigations identify concern(s) and the claim has not already been reported to the NHSR, the Head of Legal Services will review the documentation to assess whether the claim presents a Significant Litigation Risk. If so, the Head of Legal Services should report the claim to the NHSR
- All new CNST claims must be registered securely on-line using the NHSR's Claims Reporting System (CRS)
- In addition, the Head of Legal Services will comply with the following timescales for reporting to the NHSR:

<b>Legal proceedings</b>	Should be reported to the NHSR by DTS within 24 hours of receipt (or by CRS if they relate to a new claim).
<b>Letter of Claim</b>	Should be reported to the NHSR by DTS within 24 hours of receipt (or by CRS if they relate to a new claim).  In addition, within 14 days of receipt the Trust should send an acknowledgement letter to the Claimant/s' solicitor, identifying that the NHSR will be dealing with the claim. The acknowledgement letter should not give any indication that we regard the

	<p>Claimant's letter as Protocol Compliant.</p> <p>The NHSR must then serve its Letter of Response within 4 months of the Letter of Claim.</p>
<b>Part 36 offers</b>	<p>Any such offer, even one unsupported by medical evidence and/or a schedule, requires immediate notification to the NHSR by telephone followed up by sending the Part 36 Offer letter to the NHSR within 24 hours of receipt by DTS (or CRS if the offer relates to a new claim).</p> <p>The Head of Legal Services should not give any indication to the Claimant that any such offer is valid and/or that time runs from a particular date.</p>
<b>On notification of a potential claim where there is a completed complaints investigation and/or risk management investigation where the response or the conclusion indicates a Significant Litigation Risk</b>	Must be reported to NHSR as soon as possible but no later than one month of notification of the claim.
<b>Serious Incidents where investigations suggest there have been failings in the care provided and there is the possibility of a large value claim (i.e. damages &gt;£5000,000)</b>	Must be reported to NHSR as soon as possible but no later than 3 months from the first notification of the incident (irrespective of whether a claim has been notified).
<b>"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</b>	<p>As soon as possible, irrespective of whether a claim has been notified.</p> <p>In any instance where the Head of Legal Services is alerted to serious issues about the conduct of any member of staff (or any staff group) he/she must inform the Director of Governance immediately.</p>
<b>Group action – i.e. any adverse issue which has the potential to involve a number of patients (e.g. failure of a screening service)</b>	As soon as possible but no later than one month from first notification of the incident (irrespective of whether a claim has been notified).

- If there is any doubt about a particular set of circumstances and whether or not they should be reported to the NHSR, the Head of Legal Services should speak to the NHSR to obtain guidance
- All new CNST claims must be reported using a Clinical Claims Report Form. This should be accompanied with a completed Useful Documents Guide and copies of all relevant documentation wherever possible. If a Letter of Claim or Proceedings or a Part 36 offer is the first notification to the NHSR, all outstanding documentation on file that is not sent at the time of reporting should be sent within two weeks thereafter. Relevant documentation may include the following:

- Copies of relevant correspondence received from the Claimant/Claimant's solicitor
- Copies of comments/reports from clinical staff/other staff
- Any relevant Trust Policies or Procedures
- Where relevant, the Incident Report, Investigation Report or formal complaint file and in particular the letter of complaint and any formal correspondence in response
- This information should be transferred to the NHR electronically by CRS (when reporting a new claim) and/or DTS (if the claim has been reported previously)
- This information will form the basis of the NHR's advice to the Trust on future management of the claim. This could take the form of in-house handling under NHR instructions or instruction of Panel Solicitors by the NHR. From this point onwards, the NHR, the Trust's Head of Legal Services and the Panel Solicitor will be in close liaison about the progress of the claim and other requirements including meeting all deadlines
- Documents should wherever possible be sent to the NHR electronically using its Document Transfer System (DTS). The NHR request that Trusts avoid wherever possible sending them correspondence and documents in paper form. For guidance on using the CRS and DTS, see the NHR's guide at [www.nhsa.com](http://www.nhsa.com) ("Using the NHS Litigation Authority Member's Extranet")
- NHR authority is required before:
  - Any admission of liability is made. This should not inhibit open discussions with patients. The NHR advocates the giving of apologies with appropriate explanations where appropriate. See [www.nhsa.com](http://www.nhsa.com) for NHR's "Saying Sorry" leaflet
  - Any monetary compensation is offered. In the absence of such authorisation, the NHR 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
- The NHR will always liaise with the Head of Legal Services before making admissions, whether on breach of duty or causation, and will obtain the Trust's express agreement before making any admissions of liability
- All staff members involved in the claim will be informed and supported by the Head of Legal Services, through the relevant Divisional Manager and through the individual's direct line manager
- On receipt of expert feedback reports from the NHR panel firms, the Head of Legal Services will send these reports to the appropriate Clinicians including but not limited to the Medical Director, Chief Nurse and Director of Governance

- On admission of liability/settlement of a claim, the Head of Legal Services will notify the Medical Director, Chief Nurse, Director of Governance, Divisional Medical Director and Divisional Nursing Director and any Clinicians who have been involved in the claim
- On conclusion of the claim, the Head of Legal Services will ensure that the following steps have been taken:
  - All stakeholders have been informed of the outcome, including staff members involved in the claim;
  - DATIX has been updated;
  - Original records have been returned to base and copy medical records sent for confidential shredding;
  - The Medical Director, Chief Nurse and Director of Governance have been notified of any admissions/settlement as appropriate
- The file will then be archived and destroyed in accordance with the Trust's Medical Records Retention Policy

## **8. LIABILITIES TO THIRD PARTIES SCHEME (NON CLINICAL CLAIMS)**

This section of the Policy identifies the process for handling non clinical claims. Each of the stages is described below; additionally a **flowchart** is attached as **Appendix 2**.

Additional guidance is available in the RPST reporting guidelines issued by the NHS Resolution.

**8.1 Employer Liability and Public Liability claims are normally made via a Solicitor's letter.** They can also be received via the NHSLR portal system. This letter provides details of the Claimant as well as a brief summary of the incident. The Solicitor will usually ask the Trust to refer the letter to their Insurers. The three year limitation period still applies and responsibility for a claim is as follows:

### **8.1.1 Incidents prior to 1 April 1999**

St Paul's International Insurance company, under the terms of the Insurance Policy, cover the cost of Employer's liability over the value of £10,000 and Public liability over the value of £5,000. St Paul's do undertake to manage all personal injury claims against the Trust, including low value claims, relating to incidents that occurred from 1 April 1993 to 1 April 1999. Given the three year statute of limitation, no new cases should be forthcoming at the date of review.

### **8.1.2 Incidents after 1 April 1999**

The NHS Resolution, under the LTPS Scheme (see section 3.5.1) undertake to manage all personal injury claims against the Trust and cover the cost of Employer's liability over the value of £10,000 and Public liability over the value of £3,000.

## 8.2 Notifying the NHR

8.2.1 Claims should pass to the NHR via the DTS secure on-line system.

8.2.2 Where a claim is being made under the scheme the NHR authorisation is required before admissions are made and/or any compensation offered. If authorisation is not sought before admissions are made there is no obligation under the scheme for the Trust to be granted assistance.

8.2.3 Once the case has been notified under the LTPS, the scheme rules require that the following also be notified to the NHR immediately upon receipt:

- Any further correspondence from or on behalf of the Claimant (particularly any letters triggering time limits under the Pre Action Protocol for Personal Injury Claims – e.g. Part 36 offers to settle or nomination of medical experts)
- Any proceedings or written notice thereof

## 8.3 Actions to be taken, including timescales, when reporting Personal Injury Claims to the NHS Resolution

8.3.1 The protocol requires Claimants to send a formal “Letter of Claim” containing a clear summary of the facts upon which the claim is based, including the main allegations of negligence, the nature of the injuries, present condition and prognosis, and any financial loss.

8.3.2 The Letter of Claim triggers specific time limits, indicating that the legal process has commenced, and there will be three months to respond formally. If the Letter of Claim is received via the portal system there will be 30 working days to investigate and assess liability. The claim will be acknowledged by the NHR within 24 hours.

8.3.3 The Defendant will have **21 days** to issue an acknowledgement to the Letter of Claim and thereafter three months in which to complete liability investigations if the Letter of Claim is received outside of the NHR portal.

8.3.4 On receipt of a new non clinical claim, the Head of Legal Services will:

- Set up a colour coded legal file, numbered in accordance with current practice and prepare a Case Checker pro forma for monitoring compliance with timescales. (see Appendix 4)
- Contact relevant staff, including Associate Directors, Departmental Managers, Head Nurse, Clinic Risk Department, Health & Safety Manager and Estates to request copies of all the documentation held on the incident
- Obtain and copy the Claimant’s Personal File, in cases where the Claimant is an employee. This will be held in the Legal Services Department. On receipt of a Form or Authority signed by the Claimant, the file will then be released
- Contact the external payroll department, in cases where the Claimant is an employee, to request details of the employee’s pay and allowances. This

should include the thirteen weeks prior to the accident, the time off due to the accident and thirteen weeks following return to work

- On receipt of all the documentation, the Head of Legal Services will complete the NHS Resolution Disclosure List and arrange for this document to be signed by the Chief Executive and/or the Head of Legal Services
- Acknowledge receipt of the claim **within 21 days of receipt**
- Report the case to the NHS Resolution including the following documents, **within 21 days of receipt** or if the case is reported via the NHSR portal within 30 working days
  - Covering letter clearly indicating a new notification is attached
  - Completed LTPS Incident Report Form
  - Copies of correspondence from the Claimant's Solicitors
  - Any correspondence e.g. initial letter/s of complaint
  - All reports of investigations into the incident
  - Copies of comments from Supervisors and/or Managers obtained as part of the initial investigation
  - As much documentation as possible of that set out in the Personal Injury Protocol "Standard Disclosure Lists"
  - Letter of Claim
  - Copy of acknowledgement to Claimant's solicitor

In response to the Letter of Claim the Trust should advise Claimants that the matter is being passed to the NHSR for handling

The Head of Legal Services as far as is practically possible will carry out the following steps immediately upon receipt of the Letter of Claim:-

- Collect and collate records and any other information relating to the incident and the person(s) involved, including incident reports, complaint files and any data held on computer files which are not routinely printed and stored in hard copy format
- Identify all relevant personnel and their contact addresses and telephone numbers

**8.3.5 It should be borne in mind that reports which do not have as their sole or dominant purpose actual or prospective litigation are likely to be discloseable.**

**8.3.6 This means that their content ought to be factual and avoid opinion and supposition as far as practically possible.**

**8.3.7 The interpretation of such reports may amount to an admission of liability but this should not inhibit the Trust from dealing properly and effectively with any remedial action that may be indicated.**

8.3.8 Matters with no prior record or incident investigation where a Letter of Claim relates to an incident not previously recorded and/or not previously internally investigated by the Trust immediate action should be taken to implement the appropriate investigations.

8.3.9 When the Claimant is a member of staff, the NHS Resolution and/or the Claimant's own solicitor, may require access to Occupational Health records. If so, a separate **Form of Authority** must be obtained, referring specifically to the disclosure of Occupational Health records, and indicating to whom the records can be disclosed. On receipt of the Form of Authority it should be forwarded to the Senior Medical Officer for Occupational Health, who will disclose the records directly to the persons named.

8.3.10 Finance will be notified that a new claim has been received and details of the valuation of the case, probability and likely year of settlement will be provided to ensure that the appropriate reserves are held.

#### 8.4 **Settlement of Non Clinical Claims**

8.4.1 Where the NHS Resolution/Solicitor decides that a claim should be settled, they will notify the Trust. The Head of Legal Services will determine together with the Clinicians if they agree with the views of the NHS Resolution/Solicitors. However, the final decision regarding liability will rest with the NHS Resolution and the Head of Legal Services.

8.4.2 The NHS Resolution will issue an invoice to the Trust once the case has been settled. The Trust will pay the whole amount and the NHSR (within 28 days) will reimburse the Trust any amount above the excess.

8.4.3 The Head of Legal Services will seek authority for payment of invoices from the Chief Executive and Director of Finance for any amount up to £5,000. On receipt of this authority, the Head of Legal Services will request a cheque or payment by BACS transfer from Finance for payment of the invoice.

8.4.4 The Head of Legal Services will complete an NHS Executive form for every claim where the total expenditure exceeds £500.00. This is signed off by the Chief Executive and Director of Finance and a copy is sent to Finance.

8.4.5 The file is closed after a case is settled, withdrawn or discontinued. Before closure, the closed case checklist should be followed to ensure all relevant staff are advised and the claim should be reviewed for risk management issues prior to archiving for ten years. The case is also closed on the DATIX Database.

#### 8.5 **Summary of LTPS Reporting requirements and actions to be taken, including timescales**

- Have a system in place for identifying and appropriately investigating and documenting adverse incidents as soon as they are discovered
- Report all Letters of Claim to the NHSR immediately with a completed LTPS report form and all existing accident records, reports and related documents
- Acknowledge all Letters of Claim within 21 days

- All subsequent letters and in particular all Part 36 offers to be notified to NHSR immediately
- Ensure priority is given to identifying, creating and sending further documents and information requested by NHSR on any claim
- Priority assistance to the NHSR or others acting as their agents in identifying and making available the personnel relevant to issues arising in any claim
- All legal proceedings to be notified immediately

## 9. PROPERTY EXPENSES SCHEME (PES)

The Property Expenses Scheme (PES), which is managed by the NHS Resolution, was established on 1 April 1999 as a risk-pooling scheme under which eligible NHS bodies have jointly made financial provision to meet qualifying expenses/liabilities in lieu of commercial insurance.

Further details of this scheme can be found on the NHSR website along with the revised LTPS reporting guidelines at [www.nhsla.com](http://www.nhsla.com).

- 9.1 This part of the policy details the process to be taken in the event of an incident involving property. The **excess on this policy** is as follows:

Delegated Limit	£600,000
Buildings	£20,000
Contents	£10,000
Money	£10,000
Goods in Transit	£10,000
Engineering	£20,000
Fidelity Guarantee	£10,000
Contract Works	£10,000

- 9.2 **Action to be taken, including timescales, in the event of an Incident/Potential Claim**

### 9.2.1 Action by a Departmental Manager

Any incident involving damage to buildings, plant, machinery (including medical equipment), breakdown, failure or loss of equipment, must be reported immediately to the Health and Safety Manager, the Head of Estates (or nominated deputy). The following action must be taken:

- Secure the site and equipment
- Take appropriate action for continuity of service
- Carry out preliminary investigations, in liaison with the Health and Safety Manager and Estates personnel as appropriate, obtaining statements from relevant staff

9.2.2 Incidents that occur Out of Hours should be reported to the On Call Director Manager and On Call Engineer who will ensure that the site and equipment is secure and that the appropriate action is taken for continuity of service. The On Call Director Manager and On Call Engineer will, as soon as reasonably possible, inform the Health & Safety Manager and Head of Estates as soon as possible.

9.2.3 All incidents which are likely to result in an insurance claim will be reported to the Trust's Head of Legal Services by the Departmental Manager at the earliest opportunity. Consideration will be given as to whether the incident is reportable under RIDDOR. Initial notification should be followed by a report on Losses Form L1 (available on the Legal Services intranet site).

9.2.4 The L1 should be forwarded to the Head of Legal Services with all supporting information including :

- Date and Time of Incident
- Exact Location
- Circumstances of the Incident
- Details of Remedial Actions Taken
- Details of Witnesses
- Details of Loss

**It is vital that no equipment or evidence of the incident is disposed of until the Trust is authorised to do so by the NHS Resolution.**

#### 9.2.5 **Action to be taken by the Head of Legal Services**

The Head of Legal Services will collate the appropriate documentation and report the case, on the appropriate forms, to the NHS Resolution, at the time of the incident, who will appoint a Claims Inspector/Loss Adjuster to investigate the claim.

#### 9.2.6 **Further Advice**

Further advice regarding the Property Expenses Scheme (PES) can be obtained from the Trust's Financial Accountant on extension 5922.

## **10. COMMUNICATING WITH RELEVANT STAKEHOLDERS**

The Head of Legal Services will ensure that all relevant stakeholders are communicated with appropriately. Stakeholders will include:

#### 10.1 **The NHSR**

Liaison with the NHSR is undertaken by the Head of Legal Services in connection with CNST, LTPS, PES and ELS for claims.

#### 10.2 **Claimants**

Once proceedings have commenced correspondence with the (potential) claimant should cease. However, where there is ongoing correspondence this should come from the Head of Legal Services

#### 10.3 **Solicitors**

Any correspondence with the solicitors for the claimant or Trust will normally be undertaken by the Head of Legal Services. Correspondence with claimant's solicitors will conform to the Civil Procedure Rules and/ the Data Protection Act

#### 10.4 **HM Coroner**

Correspondence with HM Coroner in the context of claims will be rare. When it is necessary it will be undertaken by the Head of Legal Services. Coronial proceedings may alert the Trust to the potential for claims for damages and the Head of Legal Services is, therefore, notified of all inquest proceedings. The NHSR must be notified when a significant litigation risk has been identified.

#### 10.5 **Strategic Health Authority (SHA) / Primary Care Trust (PCT) – demise 31.3.2013**

From time to time claims may arise under the Existing Liabilities Scheme and where the 'defendant' will be the SHA / CCG. Such claims will be notified to the NHSR and the NHSR and the Head of Legal Services will co-operate fully together to investigate and manage such claims.

#### 10.6 **Other Trusts**

Should a claim, for whatever reason, involve another Trust it will be responsibility of the Head of Legal Services to liaise with that Trust to ensure an effective and expedient investigation is undertaken.

### **11. INQUESTS**

11.1 The Coroner has a duty to hold an Inquest where there is reasonable cause to suspect the deceased died a violent or unnatural death, or has died a sudden death of which the cause is unknown, or has died in legal detention (prison, police or under the Mental Health Act). The Coroner's duty is to establish who the deceased was, when and where he/she died and how the deceased came by his or her death. A death should be referred to the Coroner in the following circumstances (this list is not exhaustive):

- Cause of death unknown
- Death cannot be readily certified as being due to natural causes
- The deceased was not attended by a doctor during his last illness
- There are any suspicious circumstance or history of violence

- The deceased was detained under the Mental Health Act
- The death might have been contributed to by the actions of the deceased himself or herself (such as a history of drug or solvent abuse, self-injury or overdose)
- Where there is an allegation of medical mismanagement

11.2 The Coroner will decide whether it is necessary to hold a post mortem and whether an Inquest is necessary. An Inquest is a fact finding exercise and not a vehicle for apportioning blame. The Coroner will write to the Head of Legal Services requesting reports from staff to assist with his/her investigation. Guidance on writing witness statements is available on Legal Services intranet site.

11.3 The Coroner will put the Trust on notice regarding the dates for the Inquests and which witnesses are to be called. The Head of Legal Services will attend these Inquests and represent the Trust and also support the members of staff who have been called and to transcribe the Conclusion (previously called verdict). Should any concerns be raised during the Inquest, these can be directly raised with the Trust and appropriate channels offered to the family via the Head of Legal Services.

## 12 ROOT CAUSE ANALYSIS

12.1 Incidents which are considered significant may have had a Root Cause Analysis (RCA) prepared at the time of the incident. If this has not happened, the Head of Legal Services will discuss the case with the Director of Governance and decide whether a Root Cause Analysis is appropriate.

## 13 OBTAINING LEGAL ADVICE

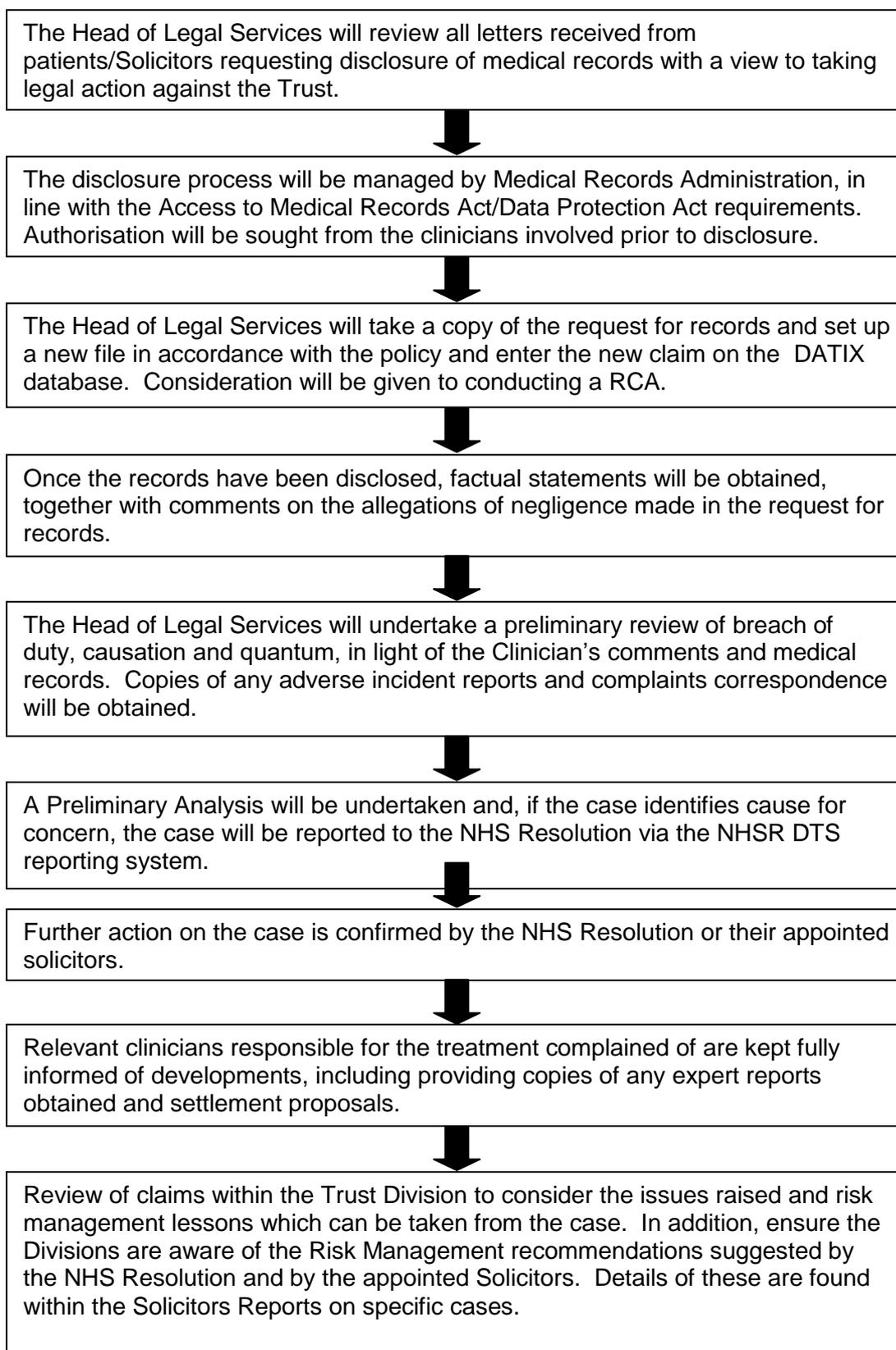
13.1 All advice concerning clinical and non clinical claims should be obtained from the NHS Resolution or their instructed solicitor.

13.2 However, where advice concerning general matters is required the Head of Legal Services will advise during office hours and can also approach the Solicitors contracted to provide general legal advice. In addition, there is an out of hours service providing emergency legal advice. , **which is accessible on the Legal Services intranet site. There is a 24 hour out of hours telephone service – the details of which are on the Legal Services Intranet site.**

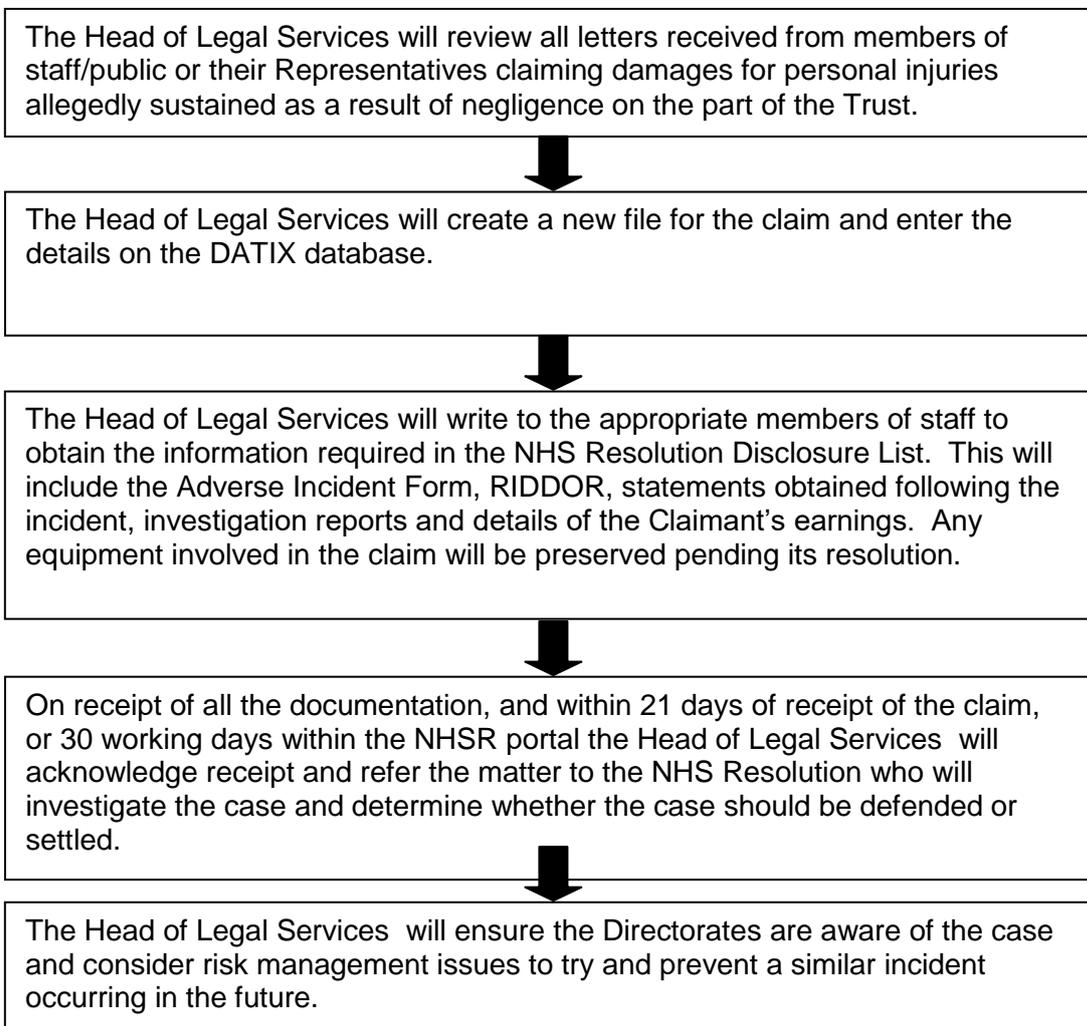
## 14 PROCESS FOR MONITORING THE EFFECTIVENESS OF THIS POLICY

14.1 The effectiveness of this policy will be measured in the following way:

- For every new claim the Head of Legal Services will complete a Case Checker form detailing the timescales for the actions required and exchange of relevant information with claimants, or their representatives, in accordance with the Civil Procedure Rules. This pro forma monitors that actions are taken and information is sent to the relevant stakeholders within the prescribed timescale
- The Head of Legal Services will prepare a monthly report to the Director of Governance summarising the ongoing and closed cases and areas of non compliance with procedural timescales. Where deficiencies are identified, action plans will be developed by the Head of Legal Services and monitored by the Director of Governance

**FLOW CHART FOR INVESTIGATING CLINICAL NEGLIGENCE CLAIMS**

## FLOW CHART FOR INVESTIGATING NON CLINICAL CLAIMS



## EX GRATIA PAYMENT CHECKLIST

Checklist to be used when compiling the summary of the case

<p><b>Category 7 - Ex Gratia Payments</b></p> <p>Type of Case -</p> <p>Reference Number -</p> <p>Health Body (name and code) -</p>
<p>1. Explain the amount involved and the reasons why the case has arisen and the category of ex-gratia payment in terms of the guidance for example, maladministration.</p>
<p>2. Have other options been considered? If not, why not? Explain why an ex gratia payment offers the best value for money.</p>
<p>3. Has appropriate legal advice been sought? If not, why not? If advice has been sought, what recommendations were made and have these been followed? If not, why not?</p>
<p>4. Confirm that the proposed payment does not place the Claimant in a better position than if the error had not occurred? If it does, why? In cases of hardship record what evidence exists on this?</p>
<p>5. Provide detailed calculations to support the proposed payment and demonstrate why the proposed sum is in accordance with the relevant paragraphs of this guidance</p>

<p>6. For settlements on termination of employment, has relevant central guidance on such payments been followed in all respects? If not, why not?</p>
<p>7. For clinical negligence and personal injury cases has the relevant central guidance for such cases been followed in all respects? If not, why not?</p>
<p>8. Identify any failings in the actions of employees, including supervisors. Having considered this, is there a need for disciplinary action? Record what action has been taken or is proposed or, if no action is to be taken, explain why? Include dates, names of individuals and positions.</p>
<p>9. Was there any breakdown in procedures? If so, detail the weakness or fault in system of control or supervision.</p>
<p>10. What proposed improvements have been put forward to correct defects in the existing systems or procedures? Include the timetable for implementation of the improvements. What monitoring measures have been introduced to ensure the improvements are working effectively?</p>
<p>11. Is it necessary to inform the Board/Chief Executive? If not, why not?</p>
<p>12. Do your SFIs require a Board report for this case? If so, please enclose the report. If not, in the light of this case consider whether your SFIs should be amended to require a Board report in such cases.</p>



**CASE CHASER**

Disclosure	
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Reports sent to Clinicians	
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Letter of Claim (LOC)		
LOC sent to Clinicians:-		<b>Reply Received .....</b>

Particulars of Claim	Sent to Clinicians	
		<b>Reports Received .....</b>

Witness Statements:-	
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Expert Reports:-
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<p>Note to Chief Executive - Defence documents signed ready for service to court</p> <p>Note to Chief Executive - List of Documents signed ready for service to courts</p>	
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Allocation Questionnaire	
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Court Directions	
<b>Trial Date:-</b>	.....