



# Claims Management Policy

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A = Approved      D = Draft				
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<ul style="list-style-type: none"> <li>▪ Investigations and Learning Policy</li> <li>▪ Policy for Managing Complaints, Concerns, Comments and Compliments</li> <li>▪ Incident and Serious Incident Management Policy</li> <li>▪ Freedom to Speak up (Raising Concerns Policy)</li> <li>▪ Being Open Policy</li> <li>▪ Information Governance Policy</li> <li>▪ Data Protection Policy (including Subject Access Request Procedure)</li> <li>▪ Procedure for Handling Disclosure Requests</li> </ul>				

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## Staff Summary

<p>The Claims Management Policy is a vital part of ensuring that claims made against the Trust are managed effectively in line with claims management protocols and in conjunction with Trust insurers, the NHS Resolution (NHSR)YAS is committed to:</p> <p>Effective and timely investigation, response and management of claims that involve allegations of clinical negligence, personal injury loss or damage to property</p> <ul style="list-style-type: none"><li>▪ Supporting staff involved in the claims processes.</li><li>▪ Settling justified claims fairly and quickly</li><li>▪ Defending unjustified claims robustly, helping to protect NHS resources</li><li>▪ Learning from claims to provide safer care to reduce harm</li></ul>
<p>Clinical claims arising out of incidents occurring after 1 April 1995 are handled under the NHSR “Clinical Negligence Scheme for Trusts” (CNST), a voluntary risk-pooling scheme for NHS trusts and Foundation trusts. Claims relating to incidents from before April 1995 are handled under the “Existing Liabilities Scheme” (ELS), now funded centrally by the Department of Health.</p>
<p>Non-clinical claims are handled under the NHSR “Liabilities to Third Parties Scheme” (LTPS) and “Property Expenses Scheme” (PES). These two schemes are collectively known as the “Risk Pooling Schemes for Trusts” (RPST) and cover claims relating to incidents arising after 1 April 1999.</p>
<p>The claims management process can be initiated following;</p> <ul style="list-style-type: none"><li>▪ Receipt of a pre-action disclosure request for records from a solicitor acting for a patient indicating that a clinical negligence claim is being investigated</li><li>▪ Receipt of a letter from a solicitor acting for a patient/service user/member of staff or the public, indicating that a claim for personal injury and/or damage to property is contemplated</li><li>▪ Notification from the Trust’s insurers that a claim has been reported via the Ministry of Justice Portal for low value personal injury claims</li><li>▪ Receipt of a Letter of Claim or where proceedings are served upon the Trust.</li></ul>
<p>The CNST covers incidents which occur in the context of NHS trust employment. When a claim is made it will be alleged that clinicians have failed to work to a suitably professional standard and that as a consequence, the patient has suffered injury and/or loss.</p>
<p>LTPS typically covers Employers’ and Public Liability claims from NHS staff, patients and members of the public. These can range from injuries sustained from example slips, trips and falls to workplace manual handling, bullying and stress claims. This scheme also covers damage to claimant’s property.</p>
<p>PES covers losses for material damage to the Trust’s 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.</p>

The Legal Services Team will acknowledge the Letter of Claim and report the claim to NHSR. The Legal Services Team will collate all documentation relating to the claim, and in conjunction with the NHSLA will provide a reasoned response within the timescales determined within the claims management protocols.

In order to effectively manage claims, it is important that all incidents reported are investigated in a timely manner, and cooperation is provided to the Legal Services Team during the claims process. The Legal Services Team maintains a close liaison with the Clinical Directorate in relation to clinical claims, the Quality, Risk and Safety Teams in regard to incidents and the Patient Relations Team in regard to complaints in order to ensure that lessons are learned from claims.

## **1.0 Introduction**

**1.1** The NHS Resolution (NHSR) which was formally known as the NHS Litigation Authority is a Special Health Authority that was established in 1995. The NHSR handles negligence claims made against NHS organisations, and as such manages:

- Clinical Negligence Scheme for Trusts (CNST);
- Liabilities to Third Parties Scheme (LTPS); and
- Property Expenses Scheme (PES).

**1.2** Clinical claims arising out of incidents occurring after 1 April 1995 are handled under CNST, a voluntary risk-pooling scheme for NHS trusts and Foundation trusts. Claims relating to incidents from before April 1995 are handled under the “Existing Liabilities Scheme” (ELS), now funded centrally by the Department of Health.

**1.3** Non-clinical claims are handled under LTPS and PES. These two schemes are collectively known as the Risk Pooling Schemes for Trusts (RPST) and cover claims relating to incidents arising after 1 April 1999.

**1.4** Yorkshire Ambulance Service NHS Trust is a member of the NHSR schemes and pays an annual contribution (premium) to the relevant schemes, which are similar to insurance. The Trust aims to manage all claims brought against the Trust or its employees, in accordance with NHSLA Scheme rules and guidance.

## **2.0 Purpose**

**2.1** The Claims Management Policy is designed to provide structure and clarity around the process for receiving, investigating, responding and reporting on all claims handled by the Trust.

**2.2** This policy is part of the organisation’s internal control system and provides assurance to the Board that robust procedures are in place to mitigate the risks associated with the management of claims. Key elements of the process include investigations, data analysis and reports, which can provide a valuable source of learning, in order to improve the quality of care and the safety of staff, patients and others affected by the activities of the Trust.

## **3.0 NHS Resolution Membership Schemes**

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

**3.1** The CNST covers incidents which occur in the context of NHS Trust employment. When a claim is made against the NHS, it will be alleged that clinicians have failed to work to a suitably professional standard and that, as a consequence, the patient has suffered injury and/or loss.

**3.2** To succeed in a claim against the Trust, the patient needs to prove:

- that the treatment fell below an accepted standard of competence; and

- that he/she has suffered an injury; and
- that it is more likely than not that the injury would have been avoided, or less severe, with proper treatment.

When a Clinical Negligence claim is made against the Trust (as a member of CNST), the Trust remains the legal defendant, however the NHSR takes over full responsibility for handling the claim and meeting the associated costs.

**3.3** When a significant litigation risk has been established, and a realistic valuation of a possible claim has been made, the matter becomes reportable to the NHSR.

**3.4** The NHSR maintains a carefully selected panel of firms of specialist solicitors who represent the interests of the NHS when claims are made. Whenever possible and appropriate the NHSR attempts to settle claims before they reach court.

### **The Risk Pooling Schemes for Trusts (RPST)**

**3.5** The RPST is the collective name for two separate schemes covering non-clinical risks, the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES)

**3.6** LTPS typically covers Employers' and Public Liability claims from NHS staff, patients and members of the public. These range from slip and trips and falls, to workplace moving and handling, bullying and stress claims. LTPS also covers damage to claimant's property.

**3.7** LTPS also covers claims arising from breaches of the *Human Rights Act*, the *Data Protection Act* and the *Defective Premises Act*, as well as defamation, unlawful detention and professional negligence claims.

**3.8** PES covers "first party" losses for material damage to the Trust's 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.

**3.9** The Trust is required to report claims to the NHSR upon receipt of a formal Letter of Claim, where the total cost will approach or exceed the applicable excess at the earliest opportunity.

**3.10** Personal injury cover is unlimited in value and there is no limit on the number of claims that the Trust may make in any membership year. LTPS and PES claims are subject to excesses. All claims which are above the Trust's excesses (see below) must be reported to the NHSR. For all non-clinical claims the final decision as to whether admission will be made rests with the NHSLA.

- Employer Liability claims excess: £10,000
- Public Liability Claims excess: £3,000
- Products Liability claims excess: £3,000
- Professional indemnity claims excess: £3,000
- Property Expenses:
- Buildings: £20,000

- Contents: £20,000

**3.11** The Trust is responsible for funding below-excess claims itself. Such payments would only be made after consultation with and/or the approval of either the Legal Services Manager, the Head of Legal Services/Trust Solicitor, the Executive Director of Quality, Governance and Performance Assurance or the Executive Director of Finance. The Trust can ask the NHR to handle these claims for a nominal handling fee (currently £200). In the main, claims are currently all dealt with by the NHR.

## **4.0 Records Management**

**4.1** All records (manual or electronic) containing personal data are covered by the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 and consequently the provisions of the Act apply to all Trust records containing person identifiable information, including records handled through the claims management process.

**4.2** Requests for disclosure of records are usually made under the subject access provisions of the GDPR, and there are three usual routes for these requests:-

- By a person or their representative directly (Personal Disclosure)
- By a solicitor requesting records in respect of a claim against another party (Third Party Disclosure)
- By a solicitor acting either to investigate or notify a claim against the Trust (Pre-Action Disclosure)

**4.3** The Legal Services Team review the records requested to ensure that the provisions under the GDPR are complied with, and will adhere to the legal obligations detailed under section 3 of the *Trust Records Management Policy*.

**4.4** With specific regard to the disclosure of records the Legal Services Team will take account of the right of data subjects to disclosure under Article 15 of the GDPR. and the requirements set out within the claims management Pre-Action Protocols. Any disclosure of records will be made by the Legal Services Team.

**4.5** To comply with the access rights set out within the GDPR and the Pre-Action Protocols within the claims management process (detailed below), records must be provided within one calendar month of the request. Failure to meet this timeframe may result in additional costs and financial penalties for the Trust. Requests for records and information relating to a claim from the Legal Services should be provided at the earliest opportunity and within the timescales set.

**4.6** Where any request for records are received under the above processes in contemplation of a claim against the Trust, this will be recorded on the Trust's Datix system and in some instances reported to the NHR under the early notification scheme.

**4.7** Where a request for records is made where a claim is contemplated/and or a notification of a claim is received in relation to a deceased patient and the Coroner has opened an inquest, this will be reported to the NHR and where appropriate a request for inquest funding will be made.

**4.8** The records of deceased patients are governed by the Access to Health Records Act 1990. The Legal Services Team will only grant applications for records in these circumstances to the personal representatives of the estate or to someone having a claim arising out of the death. Consideration will also be given to additional provisions for withholding disclosure, e.g. where the deceased specifically prohibited this or when information was provided in the expectation that it would not be disclosed to the applicant.

## **5.0 Claims Process and Timescale**

### **5.1 All claims**

5.1.1 The Legal Services Team records all claims on the Trust's Datix system in order to track progress and adherence to specified timeframes. On receipt of a letter of claim, the Legal Services Team will report the claim to the NHR via their secure extranet site and begin the process of collating requested records.

5.1.2 On occasions where records cannot be traced within the specified timeframes; it is expected that the Legal Services Team will be informed at the earliest opportunity and provided with reasons for the potential delay. The Legal Services Team will inform the NHR who may attempt seek an extension from the Claimant's legal representatives. In these circumstances the Trust is at risk of the Claimant's legal representative applying to the Court for a pre-action disclosure order, and thereby incurring unnecessary legal costs. The Legal Services Team ensures that a record of searches is kept in anticipation of the potential for court proceedings to be issued.

5.1.3 On receipt of a claim, the NHR will issue a Claim Management report, which includes financial data, an estimated year of settlement and a probability of success. Quarterly reports are provided from the NHR and a copy of these is provided to the finance department for their records. The approval and payment of settlements/costs will be dealt with in accordance with the Trust's Standing Financial Instructions.

5.1.4 The Legal Services Team acts as the single point of contact for any communication with the NHR or their directly instructed solicitors throughout the claims process.

5.1.5 The Legal Services Team will keep staff who are involved in the claim and their associated managers informed about significant developments in the claims process e.g. when an admission of liability or breach of duty is to be made.

5.1.6 Should the Trust be issued with court proceedings, the Legal Services Team will notify the NHR immediately by telephone and send the proceedings to them within 24 hours.

5.1.7 Any offers of settlement, including Part 36 offers, will be reported to the NHR immediately.

- 5.1.8 On conclusion of the claim the Legal Services Team will notify the relevant staff and managers of the outcome.
- 5.1.9 Where a claim is settled and compensation paid, or where risk management issues have been raised, the Legal Services Manager will review and complete a summary of the claim, which will be sent to the appropriate manager to ensure any necessary outstanding remedial action is addressed.

## **5.2 Clinical Negligence Claims**

- 5.2.1 The process for Clinical Negligence Claims is set out within the *Pre-Action Protocol or the Resolution of Clinical Disputes*. The Protocol attempts to set out a code of good practice which parties should follow when litigation might be a possibility. The protocol summarises the guiding principles which healthcare providers, patients and their advisers are invited to endorse when dealing with patient dissatisfaction with treatment and its outcome, and with potential complaints and claims.
- 5.2.2 A Letter of Claim, which is compliant with the *Pre-Action Protocol* indicates that the formal legal process has commenced. A formal Letter of Claim will usually follow once the Claimant and/or their legal representatives have undertaken investigations as to whether there are grounds to pursue a clinical negligence claim.
- 5.2.3 The Letter of Claim should refer to any relevant documents, including health records, and if possible enclose copies of any of those which will not already be in the Trust's possession. Sufficient information must be given to enable the Trust to focus investigations and to put an initial valuation on the claim.
- 5.2.4 The Legal Services Team will acknowledge receipt of the letter of claim within 24 hours and report it to the NHR. It is mandatory for the Trust to report the claim to the NHR upon receipt of a letter of claim. The Trust is not required to delay reporting claims until the standard disclosure documents are available. All documents, including a copy of the solicitor's letter, preliminary analysis, staff comments and any other relevant documentation e.g. Trust Incident Report or complaints correspondence will be sent to the NHR.
- 5.2.5 If an investigation has already been completed, an initial review will take place between the Head of Legal Services/Trust Solicitor, the Legal Services Manager and the Executive Medical Director and a preliminary analysis will be carried out.
- 5.2.6 The preliminary analysis is a structured process and contains the following sub-headings:-
- Synopsis and Chronology – A brief outline of main events including details of the main parties involved
  - Care Management Problems - All events where care deviated beyond acceptable limits
  - Breach of Duty – A record of case management problems leading to harm, and that make a direct response to specific allegations made in the request for records

- Causation - Relates to harm that has directly led to loss of amenity, pain and suffering. This can be difficult to determine in many cases without further investigation
- Quantum - This should be estimated by the Legal Services Manager on the basis of information known at the time, using the Judicial Studies Board Guidelines supplemented by advice from the NHSR. It should represent a best guess of the probable cost to the defendant at the time of resolution of the case and should incorporate figures for both claimant and defence legal costs
- Risk Management Implications – In liaison with the Quality and Safety and Risk Teams aim to identify what can be learned for the future from the events in question
- Action plan – Identify what the next steps should be e.g. obtaining witness evidence, expert opinion on causation, obtaining a condition and prognosis report etc.

5.2.7 In some circumstances this will be the first the Legal Services Team become aware of the potential claim against the Trust and it will trigger the investigation stage, outlined below.

5.2.8 The Head of Legal Services/Trust Solicitor, Legal Services Manager, or the person delegated to carry out these functions will also take the following steps:

- Grading of the investigation in line with the Investigation grades (detailed in the Investigations and Learning Policy) and allocation to an appropriate manager to complete the investigation.
- Identification of all relevant staff and obtaining a factual account in the form of a witness statement.
- Discussions with Clinical Managers who are asked to provide reports on the clinical care received and to give an opinion on whether the care fell below an acceptable standard, leading to harm, and to respond in detail to all allegations made. The report should state clearly that it is made in response to actual or contemplated legal action
- Following up of requests for information/assistance from the NHSR.

5.2.9 The Trust recognises that the main purpose of investigations is to identify and learn from lessons, however; the possibility of litigation is kept in mind. The Trust follows recommended good practice and collects information by way of formal statements that can be used to inform any subsequent legal process. The Trust also acknowledges that such statements will be disclosable in any subsequent litigation and therefore it is essential that they are both accurate and complete, and that they are signed by the clinician or other person requested to make a statement.

5.2.10 Managers are allocated to investigate incidents and Serious Incidents in accordance with the Trust's Risk and Incident Management Procedures utilising the Datix incident management system. Since 27 November 2014, NHS providers are required to comply with the statutory and contractual duty of candour obligations. The statute is applied when an adverse event has occurred in which a moderate or above level of harm has been caused to the patient while under the care and treatment of an NHS provider. These obligations

should be considered as part of the investigation and the process followed in line with the YAS Being Open policy.

- 5.2.11 Further investigations are carried out in conjunction with the NHSR and often panel solicitors are appointed by the NHSR to obtain expert evidence as to whether the Trust has breached its duty and/or causation can be established.
- 5.2.12 The Trust should, within **four months** of the letter of claim, provide a reasoned answer in the form of a letter of response which sets out the response to the allegations raised, to include the below:
- If the claim is admitted the Trust will say so in clear terms
  - If only part of the claim is admitted, the Trust will make clear which issues of breach of duty and/or causation are admitted and which are denied and why
  - If it is intended that any admissions will be binding
  - If the claim is denied, the Trust will include specific comments on the allegations of negligence, and if a synopsis or chronology of relevant events has been provided and is disputed, the Trust's version of those events will be provided
  - Where additional documents are relied upon, e.g. an internal protocol, copies of these will be provided.
- 5.2.13 If any admissions are to be made in the letter of response approval from the Executive Medical Director will be sought.
- 5.2.14 If the claim is defended and the Claimant wishes to pursue the matter then the next step is to issue formal court proceedings. The Claimant starts formal court proceedings against the Trust by issuing a Claim Form at Court and the Trust are mandated to follow to set out the process in line with the Civil Procedure Rules.
- 5.2.15 In the event that a claim proceeds to a trial, witnesses will be supported throughout the process by the Legal Services Team.

### **5.3 Employer and Public Liability Claims**

- 5.3.1 Employer and Public Liability Claims are managed under the '*Pre-Action Protocols for Personal Injury Claims*'. The Protocol is primarily designed for those road traffic, tripping and slipping and accident at work cases which include an element of personal injury.
- 5.3.2 The aims of the Protocols are:
- more pre-action contact between the parties
  - better and earlier exchange of information
  - better pre-action investigation by both sides
  - to put the parties in a position where they may be able to settle cases fairly and early without litigation
  - to enable proceedings to run to the court's timetable and efficiently, if litigation does become necessary
  - to promote the provision of medical or rehabilitation treatment (not just in high value cases) to address the needs of the claimant

5.3.3 The way in which the Legal Services become aware of and manage a Claim under the LTPS depends upon type and the value of the claim, detailed below:

#### **Low Value EL/PL Personal Injury Claims**

5.3.4 All claims in relation to Employee Liability and Public Liability incidents occurring on or after 31 July 2013 and valued at above £1,000 but under £25,000 (excluding claims involving vulnerable adults or children) (Low Value EL/PL Personal Injury Claims) must now be reported through the Claims Portal ([www.claimsportal.org.uk](http://www.claimsportal.org.uk)). The Portal is a secure electronic communication tool enabling documentation to be sent between parties.

5.3.5 The claim must be reported to the NHR by the Trust in the following circumstances:

- The Trust receives a Claim Notification Form and the covering letter confirms that the NHR have not been made aware of the claim via the Portal;
- The Trust receives a Claim Notification Form and the Trust has not received any contact from the NHR within 3 working days.

Management of such claims follows the Pre-Action Protocol for Low Value Personal Injury (Employers Liability and Public Liability) Claims, set out below:

5.3.6 Under the Low Value Personal Injury EL/PL Protocol strict and tight timeframes are imposed to provide a decision as to liability. In relation to Employer Liability claims the Trust / the NHR must provide a decision as to liability to the Claimant within **30 working days** and for Public Liability claims the time limit is **40 working days**. This puts significant pressure on the Legal Services Team to liaise with the Trust's various departments to obtain sufficient information to assist the Trust / NHR to conclude whether liability should or should not be admitted at a very early stage.

5.3.7 The advantages of dealing with claims under the Low Value EL/PL Personal Injury Protocol are to save costs in that fixed costs are recoverable. Given the tight timescales imposed for Low Value EL/PL Personal Injury claims all staff must fully co-operate with the Legal Services Team to ensure that an investigation into the allegations can be carried out and a decision as to whether the claim has any merit considered.

5.3.8 It will also allow the Legal Services Team to notify relevant departments at an early stage of any risk management issues to enable a plan to be implemented to prevent a repeat incident from occurring.

5.3.9 Legal Services will begin its investigation by searching the Trust's Datix system to ascertain if an incident report form was reported in relation to the incident. The lead investigator will be notified of the claim and if the investigation has not already been completed, be expected to carry out the investigation within **15 working days** and the investigation report updated as to any findings.

- 5.3.10 The Legal Services Team will collate all relevant documentation pertinent to the claim, for example training records, risk assessments, staff earnings details, maintenance records and related incidents.
- 5.3.11 In the case of Employers' Liability claims, dates of Claimant's absence will be requested from the Resource Department, earnings details from the Payroll Department and sickness records from the Human Resources Department. Managers within these departments are requested to provide the information requested within **10 working days** of the request.
- 5.3.12 All departments will endeavour to provide the information requested by Legal Services immediately to ensure that the tight timescales are complied with.
- 5.3.13 Once the above documentation and information has been collated, the Legal Services Team will review the documentation, in conjunction with the NHSR, and assess whether any admissions are to be made.
- 5.3.14 There is a legal requirement on the Trust to provide any documentation as part of pre-action disclosure to the Claimant. Failure to provide this will result in further legal action and costs against the Trust.
- 5.3.15 If any admissions are to be made in the letter of response approval from the Legal Services Manager, Head of Legal Services/Trust Solicitor or delegated person will be sought and a copy of the response letter will be kept on file.
- 5.3.16 If the claim is defended and the Claimant wishes to pursue the matter then the next step is to issue formal court proceedings. The Claimant starts formal court proceedings against the Trust by issuing a claim form at Court and the Trust are mandated to follow to set out the process in line with the Civil Procedure Rules.
- 5.3.17 In the event that a claim proceeds to a trial, witnesses will be supported throughout the process by the Legal Services Team.

#### **EL/PL Claims Not Covered Under the Low Value EL/PL Personal Injury Protocol**

- 5.3.18 For EL claims that do not fall under the low value EL/PL protocol, the Trust is likely to become aware of such claims upon receipt of a letter of a formal claim and The '*Pre-action Protocol for Personal Injury Claims*' will be applicable and should be complied with.
- 5.3.19 A letter of notification may be served prior to a letter of claim. The Trust must acknowledge receipt of a letter of notification within 14 days and the Legal Services Team will record this on Datix as a potential claim and commence preliminary investigations.
- 5.3.20 The letter of claim should contain a clear summary of the facts on which the claim is based, together with an indication of the nature of the injuries suffered and any financial loss incurred by the claimant should be outlined.

- 5.3.21 Under the Personal Injury Protocol the Trust must acknowledge receipt of the Letter of Claim within 21 days. The Claimant should not issue proceedings until 3 months from the date of the Letter of Claim unless limitation is due to expire (see below). The claim will be reported to the NHSR via the secure extranet site along with a completed LTPS Claim Report Form, correspondence from the Claimant's solicitors, any supporting documentation (which will vary according to the claim) and the associated documentation detailed in the Personal Injury Protocol Standard Disclosure List.
- 5.3.22 Upon receipt of a letter of claim the same investigative steps as set out for EL/PL Portal claims as outlined in paragraph above will be undertaken. All departments should investigate any incident in a timely manner and adhere to the timescales requested by the Legal Services Team.
- 5.3.23 Once all the above documentation and information has been collated, the Legal Services Team will review the documentation, in conjunction with the NHSR and assess whether any admissions are to be made.
- 5.3.24 The Trust should, within **3 months** of the letter of claim, provide a reasoned answer in the form of a letter of response.
- 5.3.25 For any claims where an admission has been made, approval for the settlement amount should be sought from one of the following people dependant on the total amount of the claim in line with the Trusts Standing Financial Instructions and authorised approval levels:

- Legal Services Manager
- Head of Legal Services/Trust Solicitor
- Executive Director of Quality Governance and Performance Assurance
- Executive Director of Finance
- Chief Executive Officer

Where the value of the damages for any claim is reserved at £25,000 or higher, the Executive Director of Quality, Governance and Performance Assurance will be notified.

- 5.3.26 Once a liability decision has been made, the same process will follow as set out in paragraphs 5.3.14 to 5.3.17.

#### **5.4 Property Claims (covered under the LTPS scheme)**

- 5.4.1 Yorkshire Ambulance Service NHS Trust (YAS) has a responsibility to its patients to take reasonable steps to ensure patients property is kept safe and secure. Where damage or loss to a patient's property has occurred, the processes below will be followed:
- 5.4.2 If a member of YAS staff is informed of lost property by a patient, where appropriate, efforts should be made locally to support the patient in looking for their property. In the event that the item can't be located, the patient should then be advised to contact the Patient Relations Team who will assist the patient in trying to locate the item.

- 5.4.3 If a member of YAS staff is made aware of damaged property, or have caused damage to patient's property, this should be reported on Datix. If the damage has been caused by a YAS vehicle, this will be reported to the Trust's motor insurers.
- 5.4.4 If the item cannot be located and the patient wishes to pursue a complaint about the lost property, this will be dealt with by the Patient Relations Team in line with the complaints process in the first instance.

- 5.4.4 In the event of damaged property, or items that cannot be recovered, the loss/damage should be reported on the Datix System for investigation. The Datix report does not constitute a claim for reimbursement.
- 5.4.5 If, following the investigation into the loss or damaged property, the Claimant intends to seek reimbursement, the Claimant must be advised that a formal Letter of Claim should be sent to the Legal Services Team detailing the circumstances surrounding the loss or damage, specifying the amount claimed for and the Claimant's relevant insurance policy if any. No guarantee of reimbursement, replacement or repair should be given.
- 5.4.6 Once a letter of claim has been received, the claim will be acknowledged within 3 working days and recorded on Datix and reported to the NHSR as a Public Liability claim. The Legal Services Team will facilitate an investigation with the locality team involved who will be required to provide a report on the circumstances surrounding the loss/damage within **15 working days**.
- 5.4.7 If any admissions are to be made in the letter of response, approval from the Legal Services Manager, Head of Legal Services/Trust Solicitor or delegated person will be sought and a copy of the response letter will be kept on file
- 5.4.8 Property Claims (covered under Property Expenses Scheme)
- 5.4.9 The Property Expenses Scheme (PES) provides cover for damage to property belonging to YAS and has an excess of £20,000. This also encompasses business disruption.
- 5.4.10 All damage to Trust property should be reported and investigated following the internal incident management processes, and for incidents where the damage is estimated to be above the excess value of £20,000 these should be reported to the Legal Services Team who will report the claim to the NHSR.

## **6.0 Support for Patients, Carers and Staff**

- 6.1** Direct support to patients and carers provided by the Legal Services Team is limited, but includes providing appropriate advice and ensuring that all contact and communication with patients and carers is handled considerately.
- 6.2** The support provided to staff during the claims management process is described in part in the content of this policy and in more detail within the associated policies and guidance documents.

## **7.0 Claims Data Collection and Analysis**

- 7.1** The Legal Services Team routinely collect claims related data related to claim type, number, location and costs. The claims data is analysed to determine trends, such as increasing costs and claims from specific incident types.

**7.2** The data collected is included in reports containing both quantitative and qualitative data analysis, and reported to Executive groups as required within their respective reporting timescales.

**7.3** The overall aim of the data collection and analysis to inform the Trust Executive Group, take action to reduce the potential for claims and to reduce the associated costs.

## **8.0 Links between the Management of Claims, Incidents and Complaints**

**8.1** In order to effectively learn lessons and to reduce the risks associated with claims, the Legal Services Team maintains a close liaison with the Quality and Safety Team in regard to incidents and the Patient Relations Team in regard to complaints.

**8.2** It is possible that a request for Pre-Action Disclosure may be the first indication that an incident has occurred. Where a claim has not previously been reported as an incident, but should have been, it will be immediately reported in accordance with the Trust's Incident and Serious Incident Management Policy. The investigation as a claim, and as an incident, will then proceed as a single process.

**8.3** Where an incident or complaint is followed by allegations of negligence and/or a demand for compensation, or is identified as carrying a significant litigation risk, the Legal Services Manager should be notified. The Legal Services Team will record this as a potential claim and undertake a preliminary analysis. Dependent on the nature of the incident, guidance may be sought from the NHSR before proceeding as appropriate.

**8.4** Incidents, complaints and claims are discussed collectively by the Incident Review Group which meets on a fortnightly basis. Links between incidents, complaints and claims are made routinely at this meeting, along with agreed management actions.

## **9.0 Training Expectations for Staff**

**9.1** Training is delivered as specified within the Trust Training Needs Analysis (TNA)

**9.2** Additional bespoke training sessions will be developed and delivered, as required to meet any identified training needs.

## **10.0 Implementation Plan**

**10.1** The following stakeholders have been consulted in the development, consultation and review of this policy;-

- 10.2** This Policy (Claims Management Policy) has been reviewed by members of the Incident Review Group and has been recommended to the Trust Management Group for approval.
- 10.3** The latest approved version of this Policy will be posted on the Trust Intranet site for all members of staff to view. New members of staff will be signposted to how to find and access this guidance during Trust Induction.
- 10.4** Archived documents will be stored electronically within the Document Library archive. A copy of previous versions of the policy will additionally be held by the policy author.
- 11.0 Monitoring Compliance with this Policy**
- 11.1** Document management and regulatory compliance reports are presented by the Legal Services Manager throughout the year to a range of executive committees. The committees review the reports, note any deficiencies and remedial actions in their minutes. Progress against actions will be monitored as part of routine business and will be subject to the Trust's performance management process.
- 11.2** The effectiveness of this policy is monitored against adherence to the NHSLA Reporting Guidelines and the Pre-Action Protocols. Key Performance Indicators (KPI) based on national and local standards have been agreed, and performance against these KPI's is monitored through reports to executive committees

## 12.0 References

### Legislation and Protocols

- EU General Data Protection Regulations
- Data Protection Act 2018
- Access to Health Records Act (1990)
  
- Pre-action Protocol for the Resolution of Clinical Disputes. Civil Procedure Rules. *Ministry of Justice*
- Pre-Action Protocol for Personal Injury Claims. Civil Procedure Rules. *Ministry of Justice*
  
- Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims. Civil Procedure Rules. *Ministry of Justice*
  
- Civil Procedure Rules. *Ministry of Justice*
  
- The National Health Service Litigation Authority Framework Document
- Clinical Negligence Reporting Guidelines fifth edition – October 2008
- Clinical Negligence Scheme for Trusts membership Rules April 2001 (Revised May 2014)
  
- NHSLA LTPS Claims Reporting Guidelines. Revised October 2014

## **13.0 Appendices**

### **Appendix A - Definitions**

#### **Claim**

Claim means any demand, however made, against a scheme member for monetary compensation in respect of a qualifying liability. (CNST Membership Rules April 2001 revised April 2013)

#### **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, including; complaints leading to claims, serious untoward incidents, incident reports which present significant litigation risk and requests for the disclosure of medical records. (NHSLA Clinical Negligence Reporting Guidelines - Fifth Edition, October 2008).

#### **Non-Clinical Negligence Claim**

A demand for compensation following an adverse incident resulting in personal injury, loss, or damage to property.

#### **Letter of Claim**

A claimant is required to send a Letter of Claim containing a clear summary of the facts upon which the claim is based including the main allegations of negligence, the patient's injuries, present condition and prognosis, and financial loss.

#### **Personal Disclosure**

A direct request made by a patient, or his/her representative, for the disclosure of records containing person identifiable information.

#### **Third Party Disclosure**

A request made by a solicitor requesting records in respect of a claim against another party for the disclosure of records containing person identifiable information.

#### **Pre-Action Disclosure**

A request made by a solicitor acting either to investigate or notify a claim against the Trust for the disclosure of records containing person identifiable information.

#### **Patient's property**

This refers to any item belonging to the patient. This includes money, valuables and any other personal property.

#### **Part 36 Offer**

It is possible for either a Claimant or Defendant to place their opponent at risk of incurring costs and other financial penalties by making a formal offer to settle a claim, called a Part 36 Offer. A Part 36 Offer to settle can be made at any time; before or after proceedings have commenced.

## **Appendix B – Roles and Responsibilities**

### **Trust Board**

The Trust Board is responsible for ensuring that effective systems are in place for the management of claims. The Trust Board seeks assurance regarding the Trust's response to claims, through the Chief Executive and the Executive Director of Quality, Governance and Performance Assurance.

### **Quality Committee**

The Quality Committee undertakes objective scrutiny of the Trust's clinical governance and quality plans, compliance with external quality regulations and standards and key functions associated with this, including processes to ensure effective learning from adverse events, comprising of incidents, complaints and claims. The Committee scrutinises reports provided by the Legal Services Manager/Head of Legal Services, and supports the Board in gaining assurance on the effective management of claims.

### **Incident Review Group**

The Incident Review Group (IRG) is a working group that meets on a fortnightly basis, and which is responsible for reviewing and instigating appropriate action to address issues identified in relation to incidents, serious incidents, formal complaints and concerns, claims, Coroners inquests and clinical case reviews.

### **Chief Executive**

The Chief Executive is ultimately accountable for the implementation of the process for managing claims. As the Accountable Officer the Chief Executive provides the Trust Board with assurance regarding the Trust's response to claims.

### **Executive Director of Finance & Performance**

The Executive Director of Finance & Performance has responsibility to oversee the Trust's membership of the schemes, to ensure timely payments are made to the NHSLA conditional to the relevant schemes, and for updating the NHSLA on any new business developments which may impact on the level of Trust financial contributions.

### **Executive Director of Quality, Governance and Performance Assurance**

The Executive Director of Quality, Governance and Performance Assurance has responsibility for ensuring that adequate arrangements are in place to effectively manage claims, and for ensuring that an appropriate system is in place to manage risks arising from claims. The Director has responsibility for providing the Trust Executive Group and Trust Board with updates on significant developments and assurance on the claims management process.

### **Executive Medical Director**

The Executive Medical Director will be advised of all Clinical Negligence claims and will have oversight and approval of liability decisions, defence documents, letter of responses and settlement offers in respect of these claims.

### **Head of Legal Services/Trust Solicitor**

The Head of Legal Services has responsibility for the management of the Legal Services Team, which includes the claims management process. The Head of Legal Services has responsibility for the collation and analysis of claims related data and for providing detailed reports to the Incident Review Group and Quality Committee within their reporting schedules, and to Trust Executives, as required. This can be delegated to the Legal Services Manager as required. The Head of Legal Services has authority to make decisions on liability, approve settlements in relation to claims and sign legal documents on behalf of the Trust.

### **Legal Services Manager**

The Legal Services Manager has responsibility for the operational function of the Legal Services Team which includes the claims management process, and has direct responsibility for the management of clinical negligence claims, ensuring claims management protocols and timescales are adhered to. The Legal Services Manager has delegated authority to make decisions on liability, approve settlements in relation to claims and sign legal documents on behalf of the Trust.

### **Legal Services Team**

The Legal Services Team consists of a number of administrators and coordinators, each of which is allocated with specific aspects of legal service responsibilities. They support the Legal Services Manager in the operational delivery of team objectives and in the achievement of mandated performance standards.

**Local Security Management Specialist (LSMS)** - Where an incident of lost or damaged property is suspicious, the LSMS should be informed and a Datix report completed. It is the responsibility of the patient or their representative to report the loss to the police if it seems to have resulted from criminal action.

**Patient Relations Team** - The Patient Relations Team will provide assistance and support to patients in relation to the management of their property by the Trust. This will include providing information about the complaints procedure and liaising with relevant departments to facilitate investigations into missing property.

### **Managers**

All managers are required to co-operate with the Legal Services Team, by responding in a timely manner to requests for any information or support required during the course of their business. Managers may also be asked to participate in the investigation of claims, and it is expected that they will apply due diligence to this process, provide support to affected staff, and facilitate effective organisational learning and improvement.

### **Staff**

All Trust staff have a responsibility to co-operate with the Legal Services Team by responding in a timely manner to requests for any information and by active participation in a claims investigatory process.