

Claims Management Policy and Procedure	
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Controlled document

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1. INTRODUCTION

- 1.1 The Royal Devon and Exeter NHS Foundation Trust (hereafter referred to as the Trust) is committed to effective and timely investigation and management of any claim that includes allegations of clinical negligence, employer's or public liability. In the process of managing claims, the Trust will follow the requirements and note the recommendations of the NHS Executive, the [NHS Litigation Authority](#) (hereafter referred to as the NHSLA) in the management of all claims.
- 1.2 Everyone working within the Trust, including agency other locum staff and ex-employees, is expected to cooperate fully in the investigation, assessment and management of each claim and to inform the Legal Department about potential claims
- 1.3 **Failure to comply with this policy could lead to disciplinary action.**

2. PURPOSE

- 2.1 This policy applies to the management of the following types of claim:
- **Clinical Negligence** – covered by the [NHSLA's Clinical Negligence Scheme for Trusts](#) (CNST)
 - **Employer's Liability** – this type of claim includes employees' accidents. It is covered by the NHSLA's Liability to Third Parties Scheme (LTPS).
 - **Public Liability** – this type of claim includes accidents of patients, visitors and contractors. It is covered by the NHSLA's LTPS scheme as above.
 - **Trust property** – claims in respect of loss or damage to Trust property are covered by the NHSLA's RPST Property Expenses Scheme (PES). (claims under this Scheme are managed by the Trust's Finance Department)
- 2.2 See [Appendix 1](#) for a more detailed explanation of these terms.

3. DUTIES AND RESPONSIBILITIES OF STAFF

- 3.1 The individual, departmental and committee/group levels of responsibility for claims handling, policy development and day to day handling of claims is described below.
- 3.2 **Board of Directors**
- The Board of Directors will ensure that the NHSLA reporting requirements are adhered to, and will receive an annual report regarding all claims from the Medical Director. The Board of Directors will have overall responsibility for:
- Promoting a climate of openness
 - Being assured that clear explanations are provided to patients who have concerns/complaints
 - Ensuring that NHSLA reporting requirements for CNST and RPST are adhered to
 - Ensuring that annual reports for all claims are reviewed
- 3.3 **Nominated Board members**
- 3.3.1 The nominated Board member with responsibility for clinical negligence and personal injury issues will be the **Medical Director**, who will be responsible for:

- keeping the Board of Directors informed of major developments on claims-related issues.
 - ensuring that legal advice is available as required from solicitors with appropriate expertise in clinical negligence or personal injury law.
- 3.3.3 The **Director of Finance** will be responsible for managing Trust ‘insurance’ matters. He/she will be responsible for:
- Liaising with the NHSLA over the RPST and with any commercial insurance companies.
 - Dealing with claims the Trust wishes to make against the RPST PES in respect of loss or damage to Trust property or estate.
 - Advising staff on matters relating to ‘insurance’ by reference to the RPST rule book or the RPST Help Desk or by reference to our commercial insurers in the few cases where commercial cover has been obtained, e.g. vehicles.
 - Managing the Trust reserve in respect of Employer/Public Liability Claim.

3.4 **Divisional managers**

3.4.1 Divisional managers will ensure that:

- Untoward occurrences are reported in line with the Trust’s [Incident Reporting, Analysing, Investigating and Learning Policy and Procedures](#) Risk management issues which arise during the course of a claim are identified in line with the Risk Assessment Policy to ensure that required action, training and referral for audit and review is carried out
- Directorate staff connected to a claim are offered advice and support from, and provided with the opportunity to use, the Trust’s Staff Support and Counselling Service (see Section 10.1) (See [Supporting Staff Involved in an Adverse Event Procedure](#)).

3.5 **The Legal Department**

3.5.1 The **Trust Solicitors, Legal Claims Handlers** and **Legal Support Team** are responsible for:

- Managing clinical negligence and employer/public liability claims whether brought via solicitors or by Litigants in Person (i.e. people acting alone without a solicitor).
- The Legal Department has been granted a delegated authority by the NHS Litigation Authority to manage clinical claims with potential damages of up to £25,000 (or higher if approved). This includes an authority to settle. The Legal Department will update the NHSLA quarterly on these delegated authority claims. The NHSLA will audit the delegated authority arrangement.
- The Trust Solicitors and team will monitor the progress and outcome of claims and provide reports to the relevant committees as outlined in Section 11.4.
- The Trust Solicitors or deputies will attend the Trust’s Incident Review Group which will: receive reports from investigations, complaints and claims and following analysis, either escalate issues or provide assurance to the Safety and Risk Committee; ensure a systematic approach to the aggregation of incidents, complaints and claims and that learning is shared and action plans completed; and undertake spot audits on historic investigations, complaints and claims to evaluate the learning and changes in practice.

- On claims with potential damages of over £25,000, approval to admit liability, negotiate settlements, go to trial, settle Claimant's costs, etc, will be required from the NHSLA.
- The Trust Solicitors will be fully qualified solicitors and will comply with the Law Society's Continuing Professional Development requirements. The Legal Claims Handlers and rest of the legal team will receive supervision, departmental training.

3.5.2 [Appendix 5](#) outlines the role description in relation to claims management, including an excerpt from CNST Reporting Guidelines, April 2002, on analysis of claims.

3.6 **All Trust staff**

All staff are responsible for:

- Reporting untoward occurrences in accordance with the Trust's [Incident Reporting, Analysing, Investigating and Learning Policy and Procedures](#) thereby facilitating the early investigation of such occurrences that may give rise to a claim, or identification of risk management issues.
- Alerting the Legal Department to matters which may lead to a claim whether clinical negligence or employer/public liability.
- Co-operating fully in the investigation of any claim providing comments or statements as requested in a timely fashion. This applies to current and ex-employees. All NHS employees are covered by NHS Indemnity where they were acting in the course of their NHS employment at the time of the incident. (See Appendix 6)
- Alerting the Legal Department immediately should a claim form (issued by the court) or claimant's solicitor's letter indicating a possible claim in relation to their NHS work be addressed to them personally.
- Alerting the Legal Department immediately should they receive a request for medical records addressed to them personally in a matter which could potentially become a claim against the Trust.
- Keeping any 'privileged' documents filed separately from the medical records. Privileged documents are those produced in contemplation of litigation and will include correspondence with the Legal Department in investigating a claim.
- Adhering to the reporting requirements of the Medical Devices Agency (MDA). Following an untoward incident resulting from the use of a Medical Device, the incident must be reported to the Risk Management Department by completing the Trust incident form on DATIX. The device must be kept secure and intact and must not be returned to the supplier.
- Ensuring the safe keeping of any physical evidence which may be required in the investigation of a claim. Obtaining photographic evidence if appropriate where the physical environment is in issue and may subsequently change.
- Co-operating with the Risk Management Department in identifying the root causes of an incident that has resulted in a claim
- Taking the necessary action to manage any risks highlighted by a claim.

4. **THE TRUST'S APPROACH TO CLAIMS MANAGEMENT**

4.1 Any claims and potential claims will be investigated objectively and thoroughly in a manner which quickly uncovers the facts and identifies any risks which need to be managed. Findings from internal investigations, such as root cause analyses, will

be carried out in accordance with the [Incident Reporting, Analysing, Investigating and Learning Policy and Procedures](#).

4.2 The Trust acknowledges that:

- it is rarely the case that NHS staff set out to deliberately harm either themselves or others.
- staff are usually doing their best to carry out their work in a safe and effective manner in order to benefit patients.
- adverse events which lead to claims often occur due to system errors rather than due to an error on behalf of an individual alone.
- around two-thirds of claims against the Trust are subsequently withdrawn following further investigation and/or successful Letters of Response prepared with the assistance of staff.
- being involved in a case which is being investigated as a possible claim can be a stressful experience for both junior and senior staff.

5. OBJECTIVES

5.1 Adherence to the policy should ensure:

- that Trust staff are clear about the process for managing claims including their responsibilities in relation to this.
- that the Trust complies with the requirements for membership of CNST.
- that the Trust complies with the requirements of the [Pre-action Protocol for the Resolution of Clinical Disputes](#) and the [Pre-action Protocol for Personal Injury](#) so avoiding the cost penalties associated with non-compliance. (See [Appendix 2](#))

6. TIMESCALE TARGETS AND COMMUNICATING WITH STAKEHOLDERS (NHSLA), CLAIMANTS AND CLAIMANTS' SOLICITORS

6.1 There are a number of timescale targets which apply to the clinical claims management process and which therefore impact on the degree of urgency with which claims matters need to be addressed at different stages. The timescales and procedures for the exchange of information with other parties relating to the period within which a claim should be brought are known as the 'limitation' period and described further in [Appendix 3](#).

6.2 Currently the key timescale targets are:

- Provision of copy medical records under the [Data Protection Act 1998](#) (DPA), the [Access to Health Records Act 1990](#) (applies to deceased patients only) and the [Pre-action Protocol for the Resolution of Clinical Disputes](#) – within 40 days of receiving a properly authorised request or within 21 days for deceased patients if the record has been added to within the 40 days preceding the receipt of the request.
- Reporting a potential clinical negligence claim with a significant litigation risk to the NHSLA within 2 months of receiving an indication of the claim. The Legal Department needs to have reviewed the records, obtained clinicians' comments and produced a preliminary analysis report prior to reporting.
- Reporting a potential employer/public liability claim to the NHSLA – within 1 week of receiving an indication of claim. Report form and as much key documentation as possible to be sent.
- Report Letters of Claim to the NHSLA within 24 hours of receipt.

- Responding to the Claimant's solicitor's Letter of Claim with a Letter of Response (with either an admission or denial of liability) – 4 months after receipt of Letter of Claim. Usually there is time to investigate and form a view on liability in between the first alert (request for records) and service of the Letter of Claim.
- Acknowledging the service of formal proceedings (i.e. the Claim Form, Particulars of Claim, Schedule of Damages) – 14 days from receipt.
- Serving a Defence – 28 days from receipt of proceedings if an acknowledgement of service is filed, otherwise 14 days. An extension may be applied in certain circumstances.
- Reporting all legal proceedings including Part 36 offers to the NHSLA immediately

7. APOLOGIES AND EXPLANATIONS (SAYING SORRY)

7.1 The NHS Litigation Authority's current guidance ("Saying Sorry") can be found at .
<http://www.nhsla.com/Claims/Documents/Saying%20Sorry%20-%20Leaflet.pdf>

7.2 Clearly staff should not indicate to patients or their families that they believe that the Trust is liable in a matter or that they consider that compensation is due to them.

7.3 For the Trust to be liable and for compensation to be due, there must have been a breach of our duty of care to the patient, which, in addition, has caused compensatable damage. Often, on further investigation, it becomes clear that either there has not been an actual breach of duty, or, if there has, that it has not caused the damage, i.e. the damage would have happened anyway.

8. COMPLAINTS AND INCIDENTS

8.1 Where a complaint or incident includes or is followed by allegations of clinical negligence and/or a demand for compensation or is identified as carrying a significant litigation risk, the Complaints Manager, Risk Manager and Trust Solicitor will liaise in order to prepare a preliminary analysis and the Trust Solicitor will report the matter to the NHSLA if it falls within the reporting guideline.

8.2 The [DATIX](#) risk management database system is cross-referenced on receipt of a claim to check whether there are any linked complaints or incidents.

9. INVOLVING EXTERNAL AGENCIES

9.1 The Trust's [Incident Reporting, Analysing, Investigating and Learning Policy and Procedures](#) provides information regarding responsibilities for informing/involving external agencies after the occurrence of an adverse event.

9.2 During the course of claims investigations, it may also become evident that the involvement of other agencies is necessary and if so this will be determined and undertaken by the Medical Director, Director of Finance, Trust Solicitor, Head of Governance and Risk Manager, as appropriate.

9.3 Examples of external agencies are:

- The Police
- The Coroner
- Professional regulatory bodies
- National Clinical Assessment Authority

- National Patient Safety Agency
- Medical Devices and Healthcare Products Regulatory Agency
- Health and Safety Executive

10. SUPPORT FOR STAFF INVOLVED IN A CLAIM

- 10.1 It is recommended that any staff who are connected to a claim are offered advice and support from their line manager and provided with the opportunity to use the Trust's Staff Support and Counselling Services (refer to the Trust's [Supporting Staff Involved in an Adverse Event Procedure.](#))
- 10.2 The Trust's Legal Department will also provide advice and support throughout a claim.

11. CLAIMS DATA COLLECTION AND ANALYSIS

- 11.1 All claims submitted to the Legal Department will be input into the DATIX risk management database, and where the claim was preceded by a complaint or incident form, the record will be linked.
- 11.2 The Trust is committed to learning from incidents, complaints and claims through the analysis of data and identification of trends and a representative from the Claims Department will attend the meetings of the Incident Review Group to review risk activity.
- 11.3 Organisational learning outcomes will be communicated through the directorate governance process and cascaded down in order for system changes to be implemented at the appropriate level. During the course of the legal investigation process, when a breach of duty is identified, this will be notified to the appropriate Governance Lead for discussion and action planning where necessary and recorded on the DATIX system.
- 11.4 **Claims reports to the relevant committees**
An annual combined patient/staff analysis report will be submitted to the Board of Directors.

12. ARCHIVING ARRANGEMENTS

The original of this policy will remain with the Trust Solicitor in the Legal Department. An electronic copy will be maintained on the Trust Intranet (IaN). Archived copies will be stored on the Trust's "archived policies" shared drive, and will be held for 10 years.

13. PROCESS FOR MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE POLICY

- 13.1 In order to monitor compliance with this policy, the auditable standards will be monitored as follows:

No	Minimum Requirements	Evidenced by
1.	Reviews incoming post daily	Initials post and discusses if necessary
2.	Reviews NHSLA reports, Letter of Response and	File note to confirm review has

	compensation payments. Discusses with staff when breaches of duty are identified in claims investigations.	taken place.
3.	Spot checks of files.	File note and discussion.
4.	Annual PDRs	Documentation provided as evidence.
5.	Internal Audit will review the policy via interviews of key staff, obtaining such documentation and carrying out such testing of procedures and transactions as is necessary to provide evidence that suitable controls were in place and operating satisfactorily. Anomalies will be discussed with the Trust Solicitor and an action plan developed to close any highlighted gaps.	Internal audit and action plans
6	Protocol for Delegated Authority CNST claims, Appendix 2 of Clinical Negligence Reporting Guidelines (fifth edition)	

13.2 **Frequency**

Reviews of the above standards will be undertaken as required.

13.3 **Undertaken by**

Trust Solicitor.

13.4 **Dissemination of Results**

Discussions with staff and escalation to Medical Director/ HR Team, if serious.

13.5 **Recommendations/ Action Plans**

Implementation of the recommendations and action plan will be monitored by the Trust Solicitor.

13.6 Any barriers to implementation will be risk-assessed and added to the risk register.

13.7 Any changes in practice needed will be highlighted to Legal Department staff by the Trust Solicitor and Trust staff via the Governance Managers cascade system.

14. **REFERENCES**

The National Health Service Litigation Authority: *The National Health Service Litigation Authority Framework Document*. Available at: <http://www.nhs.uk> (Publications – Claims publications)

The National Health Service Litigation Authority (2013). *Framework Agreement Between the Department of Health and the NHS Litigation Authority 2013*. [online] Available at: <http://www.nhs.uk/aboutus/Documents/NHS%20LA%20-%20Framework%20Agreement%202013.pdf>

The National Health Service Litigation Authority (2012): *Clinical Negligence Scheme for Trusts*. [online]. Available at: <http://www.nhs.uk/Claims/Pages/Clinical.aspx>

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Ministry of Justice (2014) [Pre-action Protocol for the Resolution of Clinical Disputes](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rcd). [online] Available at: http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rcd

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Law Reform (Miscellaneous Provisions) Act 1934 (c.41). London: Stationery Office. Available at: <http://www.legislation.gov.uk/ukpga/Geo5/24-25/41/contents>

Fatal Accidents Act 1976 (c.30). London: Stationery Office. Available at: <http://www.legislation.gov.uk/ukpga/1976/30/contents>

Civil Procedure Rules

Ministry of Justice (2014). *Civil Procedure Rules*. [online]. Available at: <https://www.justice.gov.uk/courts/procedure-rules/civil>

NHS Executive (n.d) *NHS Indemnity – arrangements for handling clinical negligence claims against NHS staff*. <http://www.nhsla.com/claims/Documents/NHS%20Indemnity.pdf>

APPENDIX 1: THE NHS LITIGATION AUTHORITY (NHSLA)

1. THE NHS LITIGATION AUTHORITY (NHSLA)

1. The NHSLA requires the Trust to comply with CNST and RPST reporting guidelines which detail good practice in claims management. They encourage appropriate tasks to be handled by the Trust rather than by referral to solicitors, and also widen the definition of a claim to encompass complaints/ incidents/ inquests, if a significant litigation risk is presented. The timescales and requirements of the Civil Procedure Rules and the requirements of implementing sound governance regimes, e.g. incident reporting. Full details of the Scheme's coverage, membership rules and risk management procedure are available on the NHSLA website www.nhsla.com.

2. CLINICAL NEGLIGENCE SCHEME FOR TRUSTS (CNST)

2.1 General

- 2.1.1 This scheme has been running since 1 April 1995. Clinical negligence claims with an earlier incident date are dealt with under another scheme – the Existing Liability Scheme. The schemes are run by the NHS Litigation Authority.
- 2.1.2 Since 1 April 2002, the NHS Litigation Authority have held full financial and claims management responsibility for all claims falling within the scheme. In Spring 2002, the NHSLA approved a delegated authority for the Trust's Legal Department to deal with clinical negligence claims on its behalf that have potential damages of up to £25,000
- 2.1.3 The Trust no longer pays for any Defence costs, Claimant's costs or Claimant's damages itself. However its annual 'contribution' to the scheme increased significantly as a result and will be affected by the Trust's future claims record.

2.4 Reporting under the scheme

- 2.4.1 The NHS Litigation Authority needs to be informed about:
 - requests for compensation either made by patients themselves or via a solicitor where there is a significant litigation risk.
 - claims for compensation arising out of a complaints investigation where the Trust does appear to be liable.
 - complaints where the investigation reveals fault on the part of the Trust even if no claim for compensation has been made.
 - serious incidents where the investigation reveals a possible breach of duty and potential claim value of over £250,000. NHSLA to be alerted even if no claim has been received.
 - requests for records where a preliminary analysis suggests the possibility of a claim with a significant litigation risk
- 2.4.2 It is important that the Legal Department is alerted to all incidents or complaints which fall into the above categories.

3. RISK POOLING SCHEME FOR TRUSTS (RPST)

3.1 General

- 3.1.1 The NHS Executive issued guidance under [HSC \(1998\) 174 in October 1998 \(Department of Health, 1998\)](#) which instructed that NHS Trusts should no longer

insure commercially for non-clinical risks. The exceptions to this are very limited but at present include vehicles and PFI schemes.

3.1.2 [HSC \(1999\) 021 issued in February 1999 \(Department of Health, 1999\)](#) introduced a new non-clinical risk pooling scheme to be run by the NHS Litigation Authority – the main scheme comprises of two separate schemes:

- the Property Expenses Scheme (PES)
- the Liability to Third Parties Scheme (LTPS)

3.1.3. These are now known collectively as the Risk Pooling Scheme for Trusts (RPST). This Trust became a member in October 1999 when its commercial insurance policies expired. Depending on its incident date therefore a claim might be covered under the previous commercial policies (incident dates before 1 October 1999) or under the RPST (incident dates since 1 October 1999).

3.1.4 Certain ‘excesses’ apply to these schemes:

- Employer’s liability £10,000 each and every claim
- Public/Product liability £3,000 each and every claim
- Property damage buildings and contents £20,000

3.2 Reporting under the scheme

3.2.1 The NHS Litigation Authority requires to be informed about:

- claims where the potential value will exceed the excess
- cases within 20% of the excess
- all serious adverse incidents which have or are likely to result in
 - fatal injury
 - loss of limbs
 - likely Health and Safety Executive prosecution
 - head injury
 - absence of 10 consecutive working days
 - significant litigation risk

3.2.3 It is important that the Trust’s Legal Department is alerted to **all incidents** which fall into the above categories.

3.2.4 It is important that the Trust’s Finance Director is alerted to all incidents which may result in a claim against the Property Expenses Scheme, e.g. for property or equipment damage, damage to goods in transit, etc.

3.3 RPST standards

3.3.1 There has been some overlap in standards between the two schemes CNST and RPST which the NHSLA has now combined.

APPENDIX 2: THE PRE-ACTION PROTOCOL FOR THE RESOLUTION OF CLINICAL DISPUTES AND THE PRE-ACTION PROTOCOL FOR PERSONAL INJURY CLAIMS

1.1 The new Civil Procedure Rules <https://www.justice.gov.uk/courts/procedure-rules/civil> (which include the pre-action protocols were implemented in April 1999. The Rules require that the relevant protocols are used **prior** to legal proceedings being commenced. Cost penalties will apply where the pre-action protocols have not been complied with.

1.2 The protocols include a number of key steps and timescales which **must** be followed before proceedings are issued in the court including:

Pre-Action Protocol for the Resolution of Clinical Disputes

- The patient/their adviser (usually a solicitor) requests copy medical records whilst giving sufficient information to allow the Trust to commence its own investigation.
- The Trust provides copy medical records within 40 days. If an extension is necessary, this is requested as soon as possible from the claimant's solicitor.
- Following analysis of the records, and receipt of any expert advice, the patient/their adviser determines whether or not they consider that there are grounds for a claim. If the matter is to be pursued, they provide a Letter of Claim.

1.3 The Letter of Claim should contain a clear summary of the facts on which the claim is based, including the alleged adverse outcome and the main allegations of negligence. It should also describe the patient's injuries and present condition and prognosis. The financial loss incurred by the claimant should be outlined with an indication of the heads of damage to be claimed and the scale of loss.

1.4 The patient or their adviser may make an offer to settle at this stage by putting forward an amount of compensation which would be satisfactory. If so this should be supported by a medical report and a schedule of loss with supporting documentation.

- The Trust acknowledges receipt of the Letter of Claim within 14 days and identifies who will be dealing with the matter.
- The Trust (on claims with potential damages over £25,000, through the NHSLA) provides a Letter of Response within 4 months confirming whether or not liability is admitted or denied, or whether it is only partly admitted/denied, and why. A response should be given to any offer to settle made by the Claimant and if appropriate a counter offer may be made.
- If the parties reach agreement on liability but time is needed to resolve the value of the claim, they should aim to agree this within a 'reasonable' period.

1.5 **The Pre-Action Protocol for Personal Injury Claims** - Applicable to claims valued over £25,000 and/or where the incident was before 1 August 2013.

- The Claimant's legal representative may notify the Defendant as soon as they know a claim is likely to be made but before sending a detailed Letter of Claim.
 - [NOTE: In practice this rarely happens. The first notification of an employer or public liability claim is usually when the Trust receives a Letter of Claim. Fortunately the majority of these claims have already been reported as adverse events and have been investigated to some degree].
- Two copies of the Letter of Claim are sent to the Defendant (one copy to be passed immediately to the 'insurer'). Where possible the letter should indicate

which documents are considered relevant for early disclosure. The letter should contain a clear summary of the facts, the allegations and the injuries and losses.

- The Trust acknowledges the Letter of Claim within 21 calendar days.
- The Trust through the 'insurer' (whether NHSLA or commercial insurer) provides a 'Letter of Response' within three months of the date of sending the acknowledgement letter. The Letter of Response should include an admission or denial of liability (with reasons) along with copies of such documentation as have been requested and are available.
- The protocol encourages joint selection of experts to advise on the claim. The protocol promotes the practice of the Claimant obtaining a medical report and then disclosing it to the Defendant who may ask questions of the expert and/or agree it and does not then obtain their own report. There are some rules specified regarding the process for selecting and instructing experts.

Copies of the pre-action protocols are available from the Legal Department. Alternatively PDF copies are available on line from the Lord Chancellors Department website at www.lcd.gov.uk – select civil procedure rules from the home page then at the top of the page select pre-action protocols.

THE EMPLOYERS LIABILITY (EL) AND PUBLIC LIABILITY (PL) CLAIMS PORTAL.

1. The Ministry of Justice has reformed the way public and employer's liability claims valued up to £25,000 are managed.
2. The changes came into place on 1 August 2013 and relate to all claims in respect of incidents occurring on or after 1 August 2013 valued up to £25,000.
3. These claims are now managed via an electronic communication tool (The Portal).
4. Claims managed within the Portal are subject to very strict deadlines at the different stages, however the benefit is a regime of significantly reduced fixed costs.
5. All claims in the Portal are reported direct to the insurer if known. Therefore in the Trust's case the claims will be reported direct to the NHSLA using the Portal. The NHSLA will in turn notify the Trust of the claim by way of a Claim Notification Form.
6. The NHSLA has to confirm whether liability is accepted within strict deadlines in order for the claim to remain in the Portal. The timeframe is 30 working days for EL claims and 40 days for PL claims.
7. In order that the NHSLA can comply with the deadlines, the Legal Team has to investigate and provide relevant documentation along with an opinion on liability within 25 working days.
8. This will allow time for the NHSLA to request any further information and to liaise with the Trust regarding liability where necessary.
9. If liability is denied, the Claim exits the Portal and is managed according to the pre-action Protocol for Personal Injury Claims.
10. If liability is admitted within the timeframe, the claim remains in the Portal and can proceed towards settlement with the benefit of significantly reduced costs.

APPENDIX 3: LIMITATION

LIMITATION

1. Currently the [Limitation Act 1980](#) is the key legislation which applies. This legislation seeks to strike a balance between the competing interests of Claimants and Defendants. It seeks to avoid the litigation of claims which are too old and where the evidence may no longer be available whilst still allowing actions to proceed where the strict application of time limits would result in unfairness to the Claimant.
2. In practice the commencement of a claim means the 'issue' of the Claim Form by the Court. For personal injury and clinical negligence claims the Claimant should issue their Claim Form through the Court within a period of 3 years of the date of incident which allegedly caused them harm **or** within 3 years of their 'date of knowledge' if this can be proven to be later.
3. The exceptions to this are:
 - i) children – their 3 year period does not commence until they reach the age of majority at 18 years i.e. their primary limitation period expires at age 21.
 - ii) people under a 'disability', i.e. 'of unsound mind' who are incapable of managing their own affairs. Such people may bring an action at any time whilst they remain under a disability. In view of their ongoing disability the claim is usually brought on their behalf by a 'Litigation Friend'.
4. For claims for deceased patients being brought by their Personal Representative under the Law Reform (miscellaneous provisions) Act 1934 or the Fatal Accidents Act 1976 – the following applies:
 - If the person injured dies before the expiration of the 3 year period, the period applicable, as respects the cause of action surviving for the benefit of his estate by virtue of S.1 of the [Law Reform \(Miscellaneous Provisions\) Act 1934](#), shall be 3 years from the date of death or the date of the personal representative's knowledge, whichever is the later.
 - The time limit for bringing an action on behalf of dependants under the [Fatal Accidents Act 1976](#) for bereavement damages or a dependency claim is 3 years from the date of death, or from the date of knowledge of the person for whose benefit the action is brought, whichever is later.
 - However, an action for bereavement/dependency under the [Fatal Accidents Act 1976](#) shall not be brought if the death occurred when the person injured could no longer maintain an action to recover damages in respect of the injury ([Limitation Act 1980](#) S.12 (1)).

5. Date of Knowledge

- 5.1 Date of knowledge is when the claimant first had knowledge that the damage was significant and attributable in whole or part to the act or omissions of the Defendant.
- 5.2 Significant case law in recent years has led to the concepts of actual and constructive date of knowledge – i.e. when did the Claimant first obtain knowledge and when **should** they have first obtained knowledge.

6. The Court's discretion to disapply the Limitation Period

- 6.1 Even though the Defendant may seek to put up a 'limitation' defence – the court has the discretion to disapply the limitation period under Section 33 of the [Limitation Act 1980](#).
- 6.2 Before doing so the Court will consider the facts of the case, the reasons for the delay etc and whether or not the Defendant will be prejudiced if the action goes ahead.

APPENDIX 4: ROLES and RESPONSIBILITIES - THE DIRECTOR OF FINANCE

ROLES and RESPONSIBILITIES

THE DIRECTOR OF FINANCE

Role description in relation to 'insurance' matters.

Responsible for:

- Liaising with the NHSLA over the RPST and with any commercial insurance companies.
- Dealing with claims the Trust wishes to make against the RPST PES in respect of loss or damage to Trust property or estate.
- Advising staff on matters relating to 'insurance' by reference to the RPST rule book or the RPST Help Desk or by reference to our commercial insurers in the few cases where commercial cover has been obtained, e.g. vehicles.
- Managing the Trust reserve in respect of Employer/Public Liability Claim.

APPENDIX 5: ROLES and RESPONSIBILITIES - TRUST SOLICITORS, LEGAL CLAIMS HANDLERS SUPPORTED BY THE LEGAL SUPPORT TEAM

ROLES and RESPONSIBILITIES

TRUST SOLICITORS, LEGAL CLAIMS HANDLERS SUPPORTED BY THE LEGAL SUPPORT TEAM

Role description in relation to Claims Management

Responsible for:

- Managing clinical negligence and employer/public liability claims whether brought via solicitors or by Litigants in Person.
- Making disclosure of medical records to claimants' solicitors in respect of clinical negligence claims in accordance with the requirements of the [Data Protection Act 1998](#) and the [Access to Health Records Act 1990](#) and the Pre-Action Protocol for Clinical Negligence Claims.
- Carrying out preliminary investigation of clinical negligence claims by gathering documentation and/or physical evidence and preliminary comments from clinicians.
- Preparing a preliminary analysis report which considers breach of duty and causation, analyses the litigation risk and gives an initial evaluation of the claim. This analysis report will include root cause analysis (the Governance Manager's team may also have carried out root cause analysis at the adverse incident stage).
- Having responsibility for clinical negligence claims with potential damages of up to £25,000 (on behalf of the NHSLA) throughout the whole pre-action and legal process.
- Gathering documentation relevant to employer and public liability claims and liaising with the NHSLA claims investigator for these claims.
- Reporting claims to the NHSLA in accordance with the reporting guidelines for CNST and RPST LTPS.
- Liaising with the NHSLA Case Managers for CNST (on clinical negligence claims with potential damages over £25,000) to agree subsequent actions and where authorised carry out these actions on behalf of the NHSLA.
- Liaising with Trust staff at all stages of the claim as necessary to update or obtain further information and to suggest any risk reduction actions to staff and the Governance Manager.
- The Legal Department will establish and maintain the claims section of the DATIX risk management database showing all claims relating to the Trust, including information about the nature of each claim, financial data and other details. This will assist the Legal Department to provide relevant and timely information as required by the Trust, NHS Litigation Authority and NHS Executive. Due regard however will be paid to the confidentiality of data relating to individuals.
- Reporting to the Board of Directors annually regarding the Trust's position in respect of claims and updating on legal matters pertinent to the Trust.

- Providing a patient claims analysis report to the Governance Committee on a six monthly basis
- Providing a staff claims analysis report to the Health and Safety Committee on a six monthly basis
- Advising staff who report a matter which has the potential to become a claim.
- Supporting staff involved in a claim.
- Providing information for staff, on request, in relation to any aspect of claims management.
- Keeping up-to-date in respect of relevant litigation matters through legal journals and publications, attendance at training events, membership of the Law Society, Association of Litigation and Risk Management, etc.

OUT OF HOURS

For urgent advice out of hours, contact the On Call Manager via the switchboard

Excerpt from CNST Reporting Guidelines Fifth Edition (retrieved 2011)

3.8 The preliminary analysis should be structured and contain the following sub-headings:-

Synopsis and Chronology	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	Record those case management problems leading to harm, and 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 may be difficult to determine in many cases without further investigation.
Quantum	This should be estimated by the claims manager on the basis of information known at the time, using the Judicial Studies Board Guidelines supplemented by advice from the NHSLA. 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 see Notes on Reserving (Appendix 3) . Claims staff at the NHSLA will be pleased to advise by telephone.
Claimant's Funding	Public private, CFA [see 8.2] etc.?
Risk Management Implications	What can be learned for the future from the events in question? Who has been charged with this responsibility?
Action plan	The next steps recommended, e.g. obtaining witness evidence, expert opinion on causation, obtaining a condition and prognosis report etc. This section should include assessment of litigation risk as: Low where there is no liability on the part of any party to the claim or the allegations of negligence are not causative of the outcome alleged (nominal 25% liability)

Medium where the likelihood of the claimant's success is equivocal and there is a need for further investigation (nominal 50% liability)

High where the claim is viewed as a likely settler or where there has already been an adverse expert opinion, for example in an incident investigation (nominal 75% liability)

- 3.9** In order to achieve this process, Trusts should have in place a structure which allows the Claims and Litigation Manager or person carrying out these functions to take the following steps:-

Collection and collation of records including medical records, ancillary records if these are separated, incident reports, complaints files and any data held on computer files which are not routinely printed and stored in hard copy format.

Discussions with lead clinicians who should be 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.

Identification of all relevant staff and their contact addresses, telephone numbers and GMC or other professional reference numbers.

Following up of requests for information/assistance from the NHSLA.

Any adverse incident reports should be filed separately from the clinical records. These reports are discloseable but only following a specific request. If they are filed within the body of the clinical records they become discloseable at the time of the initial request for records and will need to be disclosed at that stage. Please pass them to NHSLA with your preliminary assessment once a claim is intimated.

APPENDIX 6: NHS INDEMNITY

NHS INDEMNITY

1. The NHS Executive issued updated guidelines on 'NHS Indemnity – arrangements for handling clinical negligence claims against NHS staff' under HSG(96) 48 on 8 November 1996
2. This guidance is still current and confirms that all NHS staff are covered under NHS indemnity for harm caused by any acts or omissions whilst carrying out their NHS work.
3. The guidance states that for those covered under NHS Indemnity the NHS body (now the NHS Litigation Authority) should accept full financial liability where negligent harm has occurred and should not seek to recover their costs from the health care professional involved.
4. If staff are to benefit from the protection offered by NHS Indemnity it is fair that in return they co-operate fully with the claims management process.
5. A very useful document is included with the guidance which includes Questions and Answers on various indemnity issues. The full text is available on line in the Documents section of the NHS Litigation Authority website at www.nhsla.co.uk under publications/claims publications/NHS Indemnity

APPENDIX 7: RAPID IMPACT ASSESSMENT SCREENING FORM

RAPID IMPACT ASSESSMENT SCREENING FORM

Name of procedural document	Claims Management Policy and Procedure
Directorate and Service Area	Legal Department, Medical Directorate
Name, job title and contact details of person completing the assessment	Mrs Sue Walsh, Trust Solicitor
Date:	3 June 2014

EXECUTIVE SUMMARY

This section summarises:

- the impacts identified for action
- mitigating action
- the likely severity of the impact as a result of that action (“result”).

Impact	Action	Result
No impacts identified		

(If you need to progress to a full impact assessment, please include this as an action, above.)

1. What is the main purpose of this policy / plan / service?

To inform staff of the Trust’s Claims Management Procedure

2. Who does it affect? Please tick as appropriate.

Carers Staff Patients Other (please specify)

3. What impact is it likely to have on different sections of the community / workforce, considering the “protected characteristics” below?

Please insert a tick in the appropriate box √

Protected Characteristics	Positive impact -- it could benefit	Negative impact -- it treats them less favourably or could do	Negative impact -- they could find it harder than others to benefit from it or they could be disadvantaged by it	Non-impact – missed opportunities to promote equality	Neutral -- unlikely to have a specific effect
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sex including Transgender and Pregnancy / Maternity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion / belief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual orientation including Marriage / Civil Partnership	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

In identifying the impact of your policy across these characteristics, please consider the following issues:

- **Fairness** - Does it treat everyone justly?
- **Respect** - Does it respect everyone as a person?
- **Equality** - Does it give everyone an equal chance to get whatever it is offering?
- **Dignity** - Does it treat everyone with dignity?
- **Autonomy** - Does it recognise everyone's freedom to make decisions for themselves?

If you have any negative impacts, you will need to progress to a full impact assessment.

In sections 4 and 5, please copy and repeat the tables below, for each “protected characteristic” considered. Alternatively, you can use one table for more than one “protected characteristic”, if the outcomes are similar.

4. If you have identified any positive impacts (see above), what will you do to make the most of them?

“Protected characteristic” affected:		
Issue		
Who did you ask to understand the issues or whose work did you look at?	What did you find out about?	What did you learn or confirm?
Action as a result of above		
Action	By who?	When?

5. If you have identified any missed opportunities (“non-impacts”), what will you do to take up any opportunities to promote equality?

“Protected characteristic” affected:		
Issue		
Who did you ask to understand the issues or whose work did you look at?	What did you find out about?	What did you learn or confirm?
Action as a result of above		
Action	By who?	When?

6. If you have identified a neutral impact, show who you have consulted or asked to confirm that this is the case, in the table below:

Who did you ask or consult to confirm your neutral impacts? (Please list groups or individuals below. These may be internal or external and should include the groups approving the policy.)
Governance Committee
Department Staff

If you need help with any aspect of this assessment, please contact:
Tony Williams Equality and Diversity Manager
 Ext: 6942 anthony.williams1@nhs.net

Please note:

This impact assessment needs to be sent, with the policy, to the Equality & Diversity Manager at the following stages: as part of consultation, prior to final ratification of the policy and when final ratification has been given.