

CLAIMS HANDLING POLICY

		POLICY	
Reference	SC/JW/601		
Approving Body	Patient Safety Quality Group		
Date Approved	September 2022		
For publication to external SFH website	Positive confirmation received from the approving body that the content does not risk the safety of patients or the public:		
	YES	NO	N/A
			X
Issue Date	September 2022		
Version	4		
Summary of Changes from Previous Version	<ul style="list-style-type: none">• Changed s.4.1 (“Roles and Responsibilities” > “Quality Commitee”) from “Director of Governance” to “relevant Director”• Changed s.4.2 (“Roles and Responsibilities” > “Individual Officers”) from “Director of Governance and Quality Improvement” to “Medical Director”		
Supersedes	3		
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Date of Environmental Impact Assessment (if applicable)	n/a		
Legal and/or Accreditation Implications	Non-compliance with NHSR Claims Reporting Guidelines may affect CNST and RPST Premiums		
Target Audience	All staff		
Review Date	30/09/2025		
Sponsor (Position)	Medical Director		
Author (Position & Name)	Senior Legal Advisor		
Lead Division/ Directorate	Governance		
Lead Specialty/ Service/ Department	Legal Services Department		
Position of Person able to provide Further Guidance/Information	Senior Legal Advisor		

Associated Documents/ Information	Date Associated Documents/ Information was reviewed
Not Applicable	
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1.0 INTRODUCTION

This policy regulates the management of all clinical negligence and personal injury claims brought AGAINST the Trust.

2.0 POLICY STATEMENT

The Trust is committed to an effective and transparent investigation of any claim including allegations of clinical negligence or personal injury so as to facilitate a timely response within the timescales stipulated by the Pre-Action Protocols for Personal Injury Claims and the current NHSR Claims Reporting Guidelines.

All members of staff are required to fully co-operate with the investigation and management of each claim in a manner consistent with the guidance in the Trust policy for Duty of Candour (Being Open).

3.0 DEFINITIONS/ ABBREVIATIONS

NHS Resolution (NHSR)

NHS Resolution – formerly NHS Legal Authority – are the insurers for the Trust.

Clinical Negligence (CNST)

These are defined as allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident, which carries significant litigation risk for the Trust. Such claims may be made by a patient (or their relative) acting in person or with the assistance of a solicitor.

Liability to Third Parties (LTPS)

These are defined as a demand for compensation, following an adverse incident resulting in damage to property and/or personal injury, from either members of the public or employees of the Trust. Such claims may be made by a member of the public acting in person or with the assistance of a solicitor or by a member of staff acting in person or with the assistance of a solicitor.

Property Expense (PES)

These are defined as claims for compensation made by the trust for accidental loss, damage or destruction of premises owned or occupied by the Trust including items of equipment owned by the trust.

The Trust is a member of the Property Expenses Scheme administered by the NHR Risk Pooling Scheme. Where loss or damage to property and contents takes place all appropriate action should be taken to lessen any further loss and to ensure that a safe environment is created.

If the loss or damage is substantial and likely to exceed the insurance excess the Claims Manager should be notified immediately. The relevant Director or Head of Service for the area in which the loss or damage occurred will be responsible for collating the required information. The Claims Manager will then report the loss to the Trust's insurers.

Early Notification Scheme (ENS)

This is a scheme, managed by the NHR in conjunction with the Royal College of Obstetricians and Gynaecologists' (RCOG), to ensure that NHR are informed of notifiable severe brain injury incidents in the maternity setting. Reporting became a requirement for incidents occurring after 1 April 2017.

4.0 ROLES AND RESPONSIBILITIES

Committees

4.1 Quality Committee

The Quality Committee will receive Quarterly reports on claims as a component of the Combined Incidents, Complaints and Claims Reports.

The claim related elements of the report will be provided by the Senior Legal Advisor and be presented to the QUAC by the relevant Director.

Individual Officers

4.2 Medical Director

The director with responsibility for clinical negligence and personal injury issues will be the Medical Director and they will keep the Board informed of major developments in claims related issues.

4.3 Senior Legal Advisor

Day to day management of claims (including liaison with the NHR, Solicitors acting for the Claimant and Trust, and where appropriate HM Coroner) will be carried out by the Senior Legal Advisor who will report to the Company Secretary.

The Senior Legal Advisor will investigate any allegations of negligence in conjunction with the relevant stakeholders (clinical staff or manager for the area in question) and the process of investigation will be determined by whether the claim is a clinical negligence claim or a non-clinical claim.

4.4 Head of Service

The allocation of responsibility for and implementation of, any remedial action arising out of particular claims will lie with the relevant Head of Service.

5.0 APPROVAL

Submitted to the Patient Safety & Quality Group for approval.

6.0 DOCUMENT REQUIREMENTS

On receipt of a claim the Senior Legal Advisor will immediately be responsible for conducting the initial investigation in conjunction with the relevant stakeholders (clinical staff or manager) unless a Serious Untoward Incident or High Level Investigation has already taken place.

The Senior Legal Advisor will adopt a root cause analysis method of approach to all investigations in conjunction with the relevant clinician or manager. The purpose of such an analysis is to identify the real cause(s) of the incident giving rise to the claim. It may also identify underlying system failures and other contributory factors that may have had an impact on the incident.

The actual process of investigation will be determined by whether the claim relates to clinical or non-clinical activity (Employers or Public Liability).

6.1 Clinical Negligence Claim

Acknowledge receipt of the claim and/or application for the release of medical records within 21 days.

Identify any existing incident or complaints file and assimilate into newly created Datix and Claim Files.

Identify and request copy medical records and x-rays.

Identify consultant with responsibility for patient and seek advice on the allegations of negligence. Assess whether statements are required from any individual members of staff.

Disclose copy medical records to the claimant's solicitors within the time period set out by the governing legislation. This will be within 30 days, in accordance with the General Data Protection Regulation.

Collate and analyse all the available information in order to assess whether the claim should be reported to the NHR in accordance with the current reporting guidelines and if so complete a CNST Claim Report Form and report the claim to the NHR within 1 month of receipt.

If the first notification of a claim is by way of service of proceedings or a formal letter of claim the matter must be reported to the NHSR immediately.

If the claim is not reported to the NHSR it should be kept under quarterly review for 2 years and then closed if no further contact is received or, the limitation period expires.

6.2 Employers' or Public Liability Claims

Acknowledge receipt of the claim within 21 days requesting any further information such as claimant's national insurance number that has not already been provided.

Ascertain if any earlier incident or complaints files and assimilate into newly created Datix/Claim Files. Obtain copies of any incident and RIDDOR report forms and other documents as specified in the NHSR Disclosure List.

Identify the relevant manager for the area where the incident took place and complete an investigation toolkit (Appendix 2) including:

- Obtain copies of any training records for the claimant and, if appropriate, copies of any risk assessments.
- Obtain copies of any medical certificates submitted by the claimant and details of their attendance.
- Obtain three months pre-incident and all salary details post incident from Pay Services.
- Identify any witnesses and obtain statements.
- If necessary arrange photographs to be taken of the incident site.

Assess the value of the claim and determine whether the matter should be reported to the NHSR under the Risk Pooling Scheme for Trusts (RPST).

If the claim is to be reported to the NHSR this must be done immediately and must include the NHSR Disclosure List.

If the claim is not reported to the NHSR it should be kept under quarterly review for 1 year and then closed if no further contact is received, or, the limitation period expires.

Where a claim has been received directly from the NHSR through the Portal a response must be provided within 30 working days for Employers Liability Claims and within 40 working days for Public Liability Claims to the NHSR disclosing all available documentation.

6.3 Early Notification Scheme

Reports of notifiable severe brain injury incidents in the maternity setting are made to RCOG Each Baby Counts programme.

The Legal Services Department is then informed within 14 days of the incident that a notifiable severe brain injury incident under the Early Notification Scheme has occurred.

On receipt of a notification under this Scheme, the Legal Services Department must then report the incident to NHS Resolution within 30 days of the incident.

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
Compliance with NHSR Claims Reporting Guidelines, including Early Notification Scheme	Senior Legal Advisor	File Audit	Monthly Review	Senior Legal Advisor
Volume and status of claims handled	Senior Legal Advisor	Quarterly reports on claims as a component of the Combined Incidents, Complaints and Claims Reports.	Quarterly	Quality Committee

8.0 TRAINING AND IMPLEMENTATION

8.1 Training

No formal training is required in respect of this policy. Legal Services will provide bespoke training if requested.

8.2 Implementation

Legal Services will apply the processes detailed in this policy in the investigation and management of all claims.

The Senior Legal Advisor will be responsible for overseeing compliance with the policy.

9.0 IMPACT ASSESSMENTS

This document is not subject to an Environmental Impact Assessment

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

- Civil Procedure Rules Pre-Action Protocol for the Resolution of Clinical Disputes
- Civil Procedure Rules Pre-Action Protocol for Personal Injury Claims
- NHR/NHSLA Clinical Negligence Reporting Guidelines

Related SFHFT Documents:

- Incident Reporting Policy and Procedures
- Policy for Duty of Candour (Being Open)

11.0 KEYWORDS

- CNST
- LTPS
- PES
- ENS

12.0 APPENDICES

- Equality Impact Assessment
- Non-Clinical Claims – Investigation Toolkit

APPENDIX 1 - EQUALITY IMPACT ASSESSMENT FORM (EQIA)

PLEASE COMPLETE ALL SECTIONS

Name of service/policy/procedure being reviewed: CLAIMS HANDLING POLICY			
New or existing service/policy/procedure: Existing			
Date of Assessment: 08/09/2022			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	N/A	N/A	N/A
Gender	N/A	N/A	N/A
Age	N/A	N/A	N/A
Religion	N/A	N/A	N/A
Disability	N/A	N/A	N/A
Sexuality	N/A	N/A	N/A
Pregnancy and Maternity	N/A	N/A	N/A
Gender Reassignment	N/A	N/A	N/A
Marriage and Civil Partnership	N/A	N/A	N/A
Socio-Economic Factors	N/A	N/A	N/A

(i.e. living in a poorer neighbourhood / social deprivation)			
What consultation with protected characteristic groups including patient groups have you carried out? N/A			
What data or information did you use in support of this EqIA? N/A			
As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments? N/A			
Level of impact <p>From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact:</p> <p>Low Level of Impact (<i>Delete as appropriate</i>)</p> <p>For high or medium levels of impact, please forward a copy of this form to the HR Secretaries for inclusion at the next Diversity and Inclusivity meeting.</p>			
Name of Responsible Person undertaking this assessment: John Bishop, Senior Legal Advisor			
Signature: -JPB-			
Date: 08/09/2022			

APPENDIX 2 – NON-CLINICAL CLAIMS – INVESTIGATION TOOLKIT

1 Accident/RIDDOR Forms	Please provide a copy with any available statements.
2 Attendance Records	Please provide copies for 12 months prior to accident date and since accident date.
3 Medical Certificates	Please provide copies for any period of absence since the accident date.
4 Previous Complaints	Please provide details of any complaints by claimant or colleagues in respect of similar incidents.
5 Employment History	Please specify start date and how long in particular post.
6 Job Description	Please provide a copy – please specify normal working hours.
7 Training Records	Please provide a copy.
8 Risk Assessments	Please provide copies of any risk assessments carried out before or after incident.
9 General Disposition	Please describe claimant's character.
10 Pay Services Contact	Please specify relevant pay services officer.
11 Occupational Health	Please specify if referred to OH/Current advice.
12 Current Health Position	Please specify if claimant working as normal – if not describe any reduced hours/activities.