



CLAIMS HANDLING AND MANAGEMENT POLICY

Policy Type	Non Clinical
Directorate	Corporate
Policy Owner	Director of Governance and Risk
Policy Author	Head of Legal Services
Next Author Review Date	1 st August 2023
Approving Body	Patient Experience & Safety Sub-Committee 6 th January 2021
Version No.	6.0
Policy Valid from date	1 st January 2021
Policy Valid to date:	31 st January 2024

‘During the COVID19 crisis, please read the policies in conjunction with any updates provided by National Guidance, which we are actively seeking to incorporate into policies through the Clinical Ethics Advisory Group and where necessary other relevant Oversight Groups’

DOCUMENT HISTORY

(Procedural document version numbering convention will follow the following format. Whole numbers for approved versions, e.g. 1.0, 2.0, 3.0 etc. With decimals being used to represent the current working draft version, e.g. 1.1, 1.2, 1.3, 1.4 etc. For example, when writing a procedural document for the first time – the initial draft will be version 0.1)

Date of Issue	Version No.	Date Approved	Director Responsible for Change	Nature of Change	Ratification / Approval
14 Nov 12	3.1		Executive Director of Finance and IM&T	Put into new template and few minor amendments for approval	
21 Nov 12	3.1		Executive Director of Finance and IM&T		Ratified by Risk Management Committee
28 Nov 12	3.1		Executive Director of Finance and IM&T		Ratified at Policy Management Group
3 Dec 12	4	3 Dec 12	Executive Director of Finance and IM&T		Approved at Executive Board
26 Aug 14	4.1		FT Programme Director and Company Secretary	Reviewed	Ratified by Risk Management Committee
17 Oct 14	5	17 Oct 14	FT Programme Director and Company Secretary		Approved at Policy Management Group
14 Nov 17	5		FT Programme Director and Company Secretary	Policy review date extended by one month	Corporate Governance & Risk Sub-Committee
12 Dec 17	5		FT Programme Director and Company Secretary	Policy review date extended by one month	Corporate Governance & Risk Sub-Committee
9 Jan 18	5		FT Programme Director and Company Secretary	Policy review date extended until the end of Feb 2018	Policy Management Group
13 Feb 18	5		FT Programme Director and Company Secretary	Policy review date extended until the 16 th May 2018	Policy Management Sub-Committee
08 May 18	5		FT Programme Director and Company Secretary	Policy review date extended until the end of June 2018	Policy Management Sub-Committee
14 Aug 18	5		FT Programme Director and Company Secretary	Policy review date extended until the 15 th Nov 2018	Policy Management Sub-Committee
24 June 19	5		FT Programme Director and Company Secretary	Policy review date extended until the 30 th Nov 2018	Policy Management Sub-Committee
March 2020	5.1		Director of Quality Governance	Policy review and consultation	
6 Jan 21	6.0		Director of Governance and Risk	Policy approved at	Patient Experience & Safety Sub-Committee

NB This policy relates to the Isle of Wight NHS Trust hereafter referred to as the Trust.

Contents

1	EXECUTIVE SUMMARY	4
2	INTRODUCTION	4
3	DEFINITIONS	4
4	SCOPE	5
5	PURPOSE/PRINCIPLES OF HANDLING A CLAIM	5
6	ROLES AND RESPONSIBILITIES.....	6
7	POLICY DETAIL/COURSE OF ACTION	7
	7.1 Triggers for invoking a claim	7
	7.2 Clinical Negligence Scheme for Trusts (CNST)	7
	7.3 Liabilities to third parties scheme (LTPS).....	7
	7.4 Property expenses scheme (PES).....	7
	7.5 Ex-gratia payments.....	8
	7.6 Timescales and procedures for the exchange of information with other parties	8
	7.7 Support mechanism for patients/relatives/carers and staff.....	8
	7.8 Claims data collection and analysis	9
	7.9 Links with incident management and complaints management.....	9
	7.10 Liaising with third parties.....	9
	7.10.1 NHSR.....	9
	7.10.2 Claimants	9
	7.10.3 Solicitors	9
	7.10.4 Coroner	10
	7.10.5 National Counter Fraud Service	10
	7.11 Lessons learned	10
	7.12 Confidentiality	10
8	CONSULTATION.....	10
9	TRAINING & DISSEMINATION PROCESS	10
10	MONITORING COMPLIANCE AND EFFECTIVENESS.....	11
11	APPENDICES.....	11

1 EXECUTIVE SUMMARY

- 1.1 The Trust recognises that the effective management of claims is an important part of the Trust's strategy for effective risk management.
- 1.2 This policy explains the procedure and operating systems for the handling and management of clinical negligence, employers & public liability and property expenses scheme claims received by the Trust.
- 1.3 It sets out the duties of Trust staff members to ensure that all claims are processed effectively and efficiently.

2 INTRODUCTION

The handling of claims is a fundamental principle of risk management – whereby the extent of the risk can be measured against the likelihood of its occurrence and lessons can be learned across the Trust.

The Trust is a member of NHS Resolution's (NHSR) risk pooling schemes and is required to manage claims in accordance with all guidance issued by NHSR and comply with their scheme rules which are as follows:

- Clinical Negligence Scheme for Trusts (CNST)
- Liabilities to Third Parties Scheme for Trusts (LTTPS) previously known as Risk Pooling Schemes for Trusts (RPST).
- Existing Liabilities Scheme (ELS) for incidents occurring before April 1995
- Property Expenses Scheme (PES)

NHSR provides the Trust with indemnity in accordance with the relevant scheme's rules. NHSR assume management and financial responsibility for all CNST and ELS cases with no excess being payable. An excess charge is payable to NHSR in relation to all LTTPS and PES cases.

As part of the Trust's commitment to being open, if, on investigation, a claim is found to be valid then early settlement will be actively sought.

This policy demonstrates how and who in the Trust will liaise with third parties outside the Trust, where necessary. These include the claimant, the Coroner, NHSR and any external legal advisors.

3 DEFINITIONS

Claim	A demand for compensation made following an adverse incident resulting in damage or loss to property and/or personal injury.
Claimant	A patient, or their representative, a staff member or member of the public who is pursuing a claim.
Clinical Negligence	An allegation that a healthcare professional has breached their duty of care to their patient by failing to exercise reasonable care and skill to the extent that no

	responsible body of clinicians would have taken the same action.
Personal Injury	Actual harm caused to a patient, staff member or visitor.
Employer's Liability	The Trust's liability to pay compensation to an employee for injury or loss suffered as a result of a failure to take reasonable care to provide safe systems and conditions of work.
Property Expenses claims	Claims for damage to Trust property for example accident loss or damage to Trust property from fire, flood or subsidence, etc.
Public Liability	The Trust's liability to pay compensation to a visitor who sustains injury or loss suffered as a result of a failure to take reasonable steps to provide safe premises for visitors.
Ex-gratia	Ex-Gratia Payments are 'goodwill' payments, made without the acceptance of liability, which are not covered by NHSR and are borne completely by the Trust.
Conditional Fee Agreements	Commonly known as 'no win, no fee' agreements or CFAs. They are agreements between a claimant and their legal advisers as to how they are paid for their legal services. If a claim is successful against the Trust, the Trust has to pay the Claimant's legal costs, including an insurance premium for the policy that underwrites the CFA.

4 SCOPE

This Policy applies to all clinical negligence, employers & public liability and property expenses scheme claims received by the Trust.

This Policy applies to all staff and extends to cover all areas where the Trust owes a duty of care and responsibility to employees, patients and visitors and the public in general.

5 PURPOSE/PRINCIPLES OF HANDLING A CLAIM

5.1 The basic principle is that the Trust should maintain an open and honest stance with all claimants. This includes patients, relatives, carers, staff, visitors, litigation friends and personal representatives (in the case of deceased patients).

5.2 Apologies and explanations are essential and can satisfy a claimant and thus prevent further action.

NHSR's guidance on saying sorry can be found here:

<https://resolution.nhs.uk/wp-content/uploads/2018/09/NHS-Resolution-Saying-Sorry.pdf>

5.3 It is both natural and desirable for those involved in any adverse incident to sympathise with the patient/claimant, or their relatives and to express regret as to the current position. Such apologies or expressions of regret do not constitute an admission of legal liability.

5.4 In relation to clinical claims the Trust's guidance on Duty of Candour can be found here: <http://intranet.iow.nhs.uk/Home/Corporate/Quality-Governance-Team/Duty-of-Candour>

5.5 Patients and/or their relatives increasingly ask for detailed explanations of what led to the accident or incident. It is a frequently expressed view that their desire for

information will help them feel some consolation, particularly, if lessons have been learned for the future. The Trust must appropriately discuss any issues regarding any accident or incident with patients and/or their families and encourages all staff to use appropriate channels of communication regardless of whether there is a possible claim.

6 ROLES AND RESPONSIBILITIES

Trust Legal Team

All CNST, LTPS and PES claims are handled by the Trust's Legal Team in conjunction with NHSR and its legal advisors.

Chief Executive

The Chief Executive is ultimately responsible for ensuring that all claims made to the organisation are dealt with effectively and efficiently.

The Trust Board

The responsibility of the Trust Board is to endeavour to be informed and ultimately assured that the claims management system within the organisation is working effectively.

Quality & Performance Committee

This committee has the overarching responsibility for all of the Trust's risk management including the management of claims. It will have the opportunity to analyse claims reported to it by the Legal Team via the Patient Experience & Safety Sub-Committee.

Care Groups/Directorates

They are responsible for reviewing claims information on a monthly basis, to ensure lessons are learned and future potential for similar claims is reduced. Monthly reports are provided to the Care Groups by the Legal Team.

Associate Directors/Managers/Consultants

All senior managers will ensure that their staff are aware of this policy and understand where to forward relevant communication/documentation.

Involved Staff

At the request of the Legal Team, staff involved in the circumstances giving rise to a claim are required to give comments, provide or clarify a witness statement; or advise regarding correspondence including Letters of Claim, Responses and Defences etc.

Information Governance Team

Action all requests for disclosure of medical records where a claim is being contemplated.

All staff

All staff when requested or on receipt of a claim or request for compensation must forward it to the Legal Team.

7 POLICY DETAIL/COURSE OF ACTION

7.1 Triggers for invoking a claim

- 7.1.1 For patients, relatives and carers the initial contact with the Trust is often via the Patient Advice and Liaison Service (PALS) **or** the Complaints process, and many issues are resolved to the claimants' satisfaction at this stage.
- 7.1.2 However, if the concern/complaint cannot be resolved through the Patient Experience Team and the patient (claimant)/or staff member (employment related) is adamant that they wish to pursue an action for compensation then the Legal Team should be immediately informed and the claims process invoked.

7.2 Clinical Negligence Scheme for Trusts (CNST)

All Clinical Negligence claims are managed in accordance with the CNST Scheme's Rules. The Legal Team is responsible for providing and gathering information, for example organising the copying of medical records (via the Information Governance Team), preparing evidence and witness statements, and investigating claims made by Litigants in Person. This work is undertaken in accordance with the timescales as laid out in the Civil Procedure Rules 1998 ('CRP') and the Clinical Negligence Pre-action Protocol. A summary of the process is detailed below:

- Claim acknowledged
- Disclosure request actioned via Information Governance
- Claim opened on the claims module of Datix Risk Management System
- Triangulation with patient safety incidents and complaints
- Reporting to NHR via their electronic Portal
- Informing and advising individual clinicians and relevant teams
- Liaising with NHR and their legal advisers
- Responding to Letters of Claim within 4 months
- Immediate notification to NHR of all issued claims

7.3 Liabilities to third parties scheme (LTPS)

- 7.3.1 Liabilities to Third Parties includes compensation for injuries to staff following an accident at work and public liability claims relating to compensation for injuries to patients/visitors following an accident on the Trust's premises.
- 7.3.2 LTPS claims reported to NHR will be managed by them through the Trust's Legal Team. As with CNST claims the Legal Team will gather information, evidence and witness statements etc.

7.4 Property expenses scheme (PES)

- 7.4.1 Property Expenses claims are in respect of damage to the Trust's property, for example accidental loss or damage to the Trust's property from fire, flood or subsidence, etc.

7.4.2 Investigations are carried out by the Legal Team and all claims for Property Expenses are submitted to NHR as part of the Trust's scheme membership arrangements.

7.5 Ex-gratia payments

7.5.1 Ex-gratia payments are 'goodwill' payments, made without the acceptance of liability, and tend to be for very minor injuries. Advice on Ex-gratia payments can and ought to be sought from the Trust's Legal Team.

7.5.2 Ex-gratia payments for any loss or damage to patient's property are dealt with through the Trust's Patient Property Team.

7.5.3 If any member of staff receives either verbal or written requests for ex-gratia payments they should relay the request with as much background detail as possible, to the Legal Team. The relative merits of any claim can then be assessed and the claimant advised of the outcome.

7.6 Timescales and procedures for the exchange of information with other parties

7.6.1 The CPR timescales for the disclosure and exchange of information should be met in a timely and just manner.

7.6.2 This should reflect the requirement of the CPR in the following ways and ensure that claims are settled as soon as possible:

- Encourage more pre-action contact with claimants;
- Better and earlier exchange of information;
- Improve investigation;
- Earlier settlement without the need for expensive litigation; and
- Court proceedings to run smoothly where there is a need for litigation.

7.7 Support mechanism for patients/relatives/carers and staff

7.7.1 It is imperative that all patient/relatives/carers who bring a claim feel supported throughout the claims process. The Trust supports an open and honest approach to any claim investigation and a commitment to sharing the lessons learned with patients, relatives, carers and staff.

7.7.2 It is especially important when the claimant wishes to act as a Litigant in Person that the Trust treats them fairly and provides guidance to them regarding the processes and procedures and gives them clear timescales as to when they can expect a response to their correspondence.

7.7.3 It is equally important that staff who are involved in any claim feel supported and aware of where to seek help and advice both within and outside the Trust. The Trust's managers have a responsibility to ensure that their staff are appropriately supported.

- 7.7.4 In the case of clinical negligence claims the Legal Team will discuss individual cases with the staff involved and they will also be asked to input into documents, for example Responses, draft Defences and all settlements prior to a case settling.
- 7.7.5 If a case is to go to trial, staff giving evidence will receive support from the Legal Team and the legal advisors appointed by NHSR as well as an appropriate manager/line manager, both in pre-trial meetings and at the trial itself. Additionally staff may wish to be accompanied by their union representative.

7.8 Claims data collection and analysis

- 7.8.1 On receipt of a claim, information including the details of the claimant, the incident date and allegations will be entered onto the Claims module of the Datix Risk Management system.
- 7.8.2 This system will be updated as the case proceeds through the relevant stages and will in turn be used to provide data for reports.
- 7.8.3 Trends and themes of claims are also assessed along with an analysis of learning points in settled claims.

7.9 Links with incident management and complaints management

- 7.9.1 The Legal Team sits within the Governance & Risk Department and there is therefore a close working relationship between those responsible for the day to day management of claims, complaints and incidents to facilitate effective management and the identification of trends and risks.
- 7.9.2 The Legal Team utilise Datix to link claims with incidents, complaints and inquests.

7.10 Liaising with third parties

7.10.1 NHSR

The Legal Team will refer all claims in accordance with NHSR's reporting guidance.

7.10.2 Claimants

Where claimants choose to act as 'litigants in person' the Legal Team will correspond with them personally at their chosen address.

In the case of claimants who are represented by Solicitors the Legal Team will deal directly with the firm of Solicitors and will not write directly to the claimant.

7.10.3 Solicitors

On the appointment of a panel firm by NHSR, the Legal Team will deal directly with the named Solicitors to manage the claim.

7.10.4 **Coroner**

The Legal Team will be the first point of contact for the Coroner.

7.10.5 **National Counter Fraud Service**

The Trust is totally committed to maintaining an honest, open and well-intentioned culture and is therefore dedicated to the elimination of any fraud within the Trust.

If Fraud or Corruption is suspected it will be reported to the Local Counter Fraud Specialist or Director of Finance or the National Fraud and Corruption reporting line on 0800 028 40 60

Please refer to the Trust's Fraud and Corruption Policy and Reporting Procedure for details, the policy is available on the Countering Fraud Intranet Page.

7.11 Lessons learned

Lessons learned from claims will be shared by the Legal Team with individual clinicians, Care Groups, relevant teams and the Board through the various reporting mechanisms adopted by the Legal Team.

7.12 Confidentiality

7.12.1 All claims documents and correspondence should be treated in a confidential manner in accordance with the Trust's Confidentiality Policy.

7.12.2 Claims documents should be retained in accordance with the NHS Retention and Storage Policy.

8 CONSULTATION

This document will be reviewed and approved in accordance with the Trust's Document Control Policy.

9 TRAINING & DISSEMINATION PROCESS

9.1 This Claims Handling & Management Policy does not have a mandatory training requirement or any other training needs.

9.2 When approved this document will be available on the Intranet and will be subject to document control procedures.

9.2 When submitted for inclusion on the Intranet this document will have fully completed document details and keywords for the Intranet search engine will be: 'claim', 'sue', 'litigation', 'legal', 'NHSR', 'NHSLA', 'indemnity' and 'Court'.

9.3 Notification of new and revised documentation will be issued on the Front page of the Intranet.

9.4 It is the responsibility of all staff to check the Trust intranet to ensure that the most recent version/issue of this document is being referenced.

10 MONITORING COMPLIANCE AND EFFECTIVENESS

- 10.1 Claims data will be provided to Directorate Board meetings on a monthly basis by the Legal Team
- 10.2 The Patient Experience & Safety Sub-Committee and the Quality & Performance Committee will also receive quarterly information on claims
- 10.3 Claims reports will be produced for review at the Trust's Board as instructed by the Director of Governance and Risk.
- 10.4 Ad hoc reports can be requested from the Legal Team by any Manager if there is a concern regarding trends of claims etc.
- 10.5 The Legal Team's compliance with its claims management processes will be audited bi-annually by the manger with day to day responsibility for the Legal Team.

11 APPENDICES

Appendix A - Financial and Resourcing Impact Assessment on Policy Implementation

Appendix B - Equality Impact Assessment (EIA) Screening Tool

Financial and Resourcing Impact Assessment on Policy Implementation

Document title	CLAIMS HANDLING & MANAGEMENT POLICY
-----------------------	--

Totals	WTE	Recurring £	Non Recurring £
Manpower Costs	0		0
Training Staff	0		0
Equipment & Provision of resources	0		0

Summary of Impact: N/A

Risk Management Issues: N/A

Benefits / Savings to the organisation: N/A

Equality Impact Assessment

- Has this been appropriately carried out? YES
- Are there any reported equality issues? NO

If "YES" please specify: **Use additional sheets if necessary.**

Please include all associated costs where an impact on implementing this policy has been considered. A checklist is included for guidance but is not comprehensive so please ensure you have thought through the impact on staffing, training and equipment carefully and that ALL aspects are covered.

Manpower	WTE	Recurring £	Non-Recurring £
Operational running costs			
Totals:	0	0	0

Staff Training Impact	Recurring £	Non-Recurring £
Totals:	0	0

Equipment and Provision of Resources	Recurring £ *	Non-Recurring £ *
Accommodation / facilities needed		
Building alterations (extensions/new)		
IT Hardware / software / licences		
Medical equipment		
Stationery / publicity		
Travel costs		
Utilities e.g. telephones		
Process change		
Rolling replacement of equipment		
Equipment maintenance		
Marketing – booklets/posters/handouts, etc		
Totals:	0	0



Equality Impact Assessment (EIA) Screening Tool

Document Title:	Claims Handling & Management Policy
Purpose of document	To explain the procedure and operating systems for the handling and management of clinical negligence, employers & public liability and property expenses claims received by the Trust
Target Audience	All staff
Person or Committee undertaken the Equality Impact Assessment	Rebecca Agnew

		Positive Impact	Negative Impact	Reasons
Gender	Men	<i>No impact</i>	<i>No impact</i>	
	Women	<i>No impact</i>	<i>No impact</i>	
Race	Asian or Asian British People	<i>No impact</i>	<i>No impact</i>	
	Black or Black British People	<i>No impact</i>	<i>No impact</i>	
	Chinese people	<i>No impact</i>	<i>No impact</i>	
	People of Mixed Race	<i>No impact</i>	<i>No impact</i>	
	White people (including Irish people)	<i>No impact</i>	<i>No impact</i>	
	People with Physical Disabilities, Learning Disabilities or Mental Health Issues	<i>No impact</i>	<i>No impact</i>	
Sexual Orientation	Transgender	<i>No impact</i>	<i>No impact</i>	
	Lesbian, Gay men and bisexual	<i>No impact</i>	<i>No impact</i>	
Age	Children	<i>No impact</i>	<i>No impact</i>	

	Older People (60+)	<i>No impact</i>	<i>No impact</i>	
	Younger People (17 to 25 yrs)	<i>No impact</i>	<i>No impact</i>	
Faith Group		<i>No impact</i>	<i>No impact</i>	
Pregnancy & Maternity		<i>No impact</i>	<i>No impact</i>	
Equal Opportunities and/or improved relations		<i>No impact</i>	<i>No impact</i>	

3. Level of Impact

If you have indicated that there is a negative impact, is that impact:			
		YES	NO
Legal (it is not discriminatory under anti-discriminatory law)			
Intended			

If the negative impact is possibly discriminatory and not intended and/or of high impact then please complete a thorough assessment after completing the rest of this form.

3.1 Could you minimise or remove any negative impact that is of low significance? Explain how below:	
3.2 Could you improve the strategy, function or policy positive impact? Explain how below:	
3.3 If there is no evidence that this strategy, function or policy promotes equality of opportunity or improves relations – could it be adapted so it does? How? If not why not?	
Scheduled for Full Impact Assessment	Date:
Name of persons/group completing the full assessment.	
Date Initial Screening completed	