

<b>Claims Handling Policy</b>	
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Sponsor/Executive:	Director of Finance
Responsible committee:	Executive
Ratified by:	Karen Moore, Claims Manager
Consultation & Approval: (Committee/Groups which signed off the policy, including date)	Health and Safety Committee 31 August 2023
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Purpose of the Policy:	This policy defines the framework for the investigation and management of claims and the duties of staff within the Trust. It sets out arrangements, which are minimum standards in accordance with the statutory rules (Civil Procedure Rules) including the Pre-Action Protocols and NHSR requirements and guidance.
If developed in partnership with another agency, ratification details of the relevant agency	N/A
Policy in line with national guidelines:	
<b>This is a controlled document.</b> Whilst it may be printed, the electronic version on the Trust's Intranet is the controlled copy. Any printed copies are not controlled	



Signed on behalf of the Trust: .....  
**Anna Hills, Chief Executive**

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## Version Control and Summary of Changes

Version	Date	Author	Comments
1.1		Complaints and Claims Manager	Minor change: Section 2.1 Date of NHSLA Risk Management Standards document updated
2.0		Complaints and Claims Manager	Minor change to section 2 (update to NHSLA Risk Management Standards) Appendix 1 – minor change, first paragraph updated (CNST reporting guidelines) Appendix 5 – minor change, commercial insurance, and contact for inquest support Appendix 6 – minor change, updated apologies, and explanations paragraph one Appendix 11 – changes to contacts within ASP.
3.0	Mar 2016	Claims & Litigation Manager	Grammatical changes throughout. Removal of reference to the NHS LA Risk Management Standards which are no longer in force. Inclusion of reference to the Supporting Staff in an Incident, Complaint or Claim Document Guide Changes to Serco Claims Team contacts. Changes to remove reference to the Legal Services Commission which is no longer in place for civil claims of negligence or personal injury Appendix 6 changes to include reference to Personal Injury Portal Claims Significant changes to Section 17: References
4.0	March 2023	Claims Manager	Reformatted to new template. Review of and updated key information.

### For further information contact:

Legal Services

[Legal.services@cpft.nhs.uk](mailto:Legal.services@cpft.nhs.uk)

## Equality Statement

Cambridgeshire & Peterborough NHS Foundation Trust (CPFT) aims to design and implement policy documents that meet the diverse needs of our service, population, and workforce, ensuring that none are placed at a disadvantage over others. It considers the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favorable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy, and maternity.

## Definitions that apply to this Policy

<b>Indemnifier</b>	NHS Resolution indemnifies the trust against clinical and non-clinical claims as well as claims made under the property expense scheme.
<b>Claimant</b>	A person or organisation claiming compensation. A Claimant acting without legal representation is termed a Litigant in Person.
<b>Defendant</b>	A person or organisation against which the claim is brought i.e., the Trust. Other parties (e.g., GPs, Community Trusts, or other Hospital Trusts) may be co-defendants.
<b>Adverse Incident</b>	An adverse incident is an event which causes or has the potential to cause, unexpected or unwanted effects that will involve the safety of patients, staff, users, and other people
<b>Pre-Action</b>	Actions taken concerning a claim before legal proceedings are issued. These are subject to the relevant pre action protocols (e.g., the Pre Action Protocol for Clinical Dispute Resolution).
<b>CPR</b>	The Civil Procedure Rules (CPR) are the rules of civil procedure used by the Court of Appeal, High Court of Justice, and County Courts in civil cases in England and Wales.
<b>Clinical Negligence Claim</b>	Defined by NHSR as: “Allegations of clinical negligence and/or 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”
<b>Non-Clinical Negligence Claim</b>	Defined by NHSR as “a demand for compensation made following an adverse incident resulting in damage to property and/or personal injury”
<b>Employers Liability Claims (non-clinical)</b>	<p>The Trust is under common law duty and a statutory duty to take reasonable care to provide competent staff, safe plant and equipment, safe premises, and safe working systems. The Trust may be liable to pay compensation to an employee for an injury or loss suffered because of a breach of their responsibilities.</p> <p>Employer Liability Claims are covered by NHSR’s Liabilities to Third Party Scheme (LTPS)</p>
<b>Public Liability Claims</b>	<p>Formal allegations from a member of the public or third party who has suffered a wrong or injury deemed to be under the Trust’s liability as a direct result of the Trust’s actions and services.</p> <p>Public Liability Claims are covered by NHSR’s Liabilities to Third Party Scheme (LTPS).</p>
<b>Stakeholder</b>	An individual or organisation which has an interest in a claim e.g., they are required to provide information for a claim’s investigation.

<b>Ex gratia payment</b>	These are payments that the Trust is not obliged to make or for which there is no statutory cover or legal liability, including damage to or loss of patients' property.
<b>Losses and special payments request</b>	This is a request for an ex-gratia payment. Any payment made following such a request is made without any admission as to liability.
<b>Complaint</b>	An expression of dissatisfaction about staff, facilities or services provided that requires a full investigation and whether found to be justified or not needs to be responded to in writing
<b>Datix</b>	Is a risk management system used by the Trust to record information on the following modules: <ul style="list-style-type: none"> <li>• Incidents</li> <li>• Risks</li> <li>• Complaints</li> <li>• Claims</li> <li>• Patient Advice and Liaison Service</li> </ul>

## Purpose of the Policy

**This policy defines the framework for the investigation and management of claims and the duties of staff within the Trust.** It sets out arrangements, which are minimum standards in accordance with the statutory rules (Civil Procedure Rules) including the Pre-Action Protocols and NHSR requirements and guidance.

### 1.0 Summary and Scope of the Policy

1.1 This Policy describes the process for managing claims involving the Trust under the relevant NHS Resolution (NHSR) scheme or equivalent insurance scheme. It details both the duties of staff in assisting with claims enquiries and how staff will be supported.

### 2.0 Introduction

2.1 Cambridgeshire & Peterborough NHS Foundation Trust (CPFT) is committed to an effective, timely and transparent investigation of any claim that includes allegations of clinical negligence personal injury, or loss or damage to property.

2.2 The Trust adheres to the Pre action Protocol and CPR requirements when managing its claims. All members of staff are required to fully cooperate with the investigation and management of each claim with emphasis on:

- Encouraging openness in line with the Trusts A Culture of Candour Policy.
- Proactively identifying clinical and non-clinical incidents which may give rise to civil claims via a clear triangulation of complaints received and subject access requests made.
- Managing claims from the outset such that any which cannot realistically be defended are settled with the least amount of staff impact and costs exposure.
- Providing a key resource to support and advise staff assisting with claims enquiries.
- Working with NHSR to ensure a proportionately robust approach is taken to defensible claims.
- Ensuring that any healthcare governance and risk management issues that may emerge during the claims process are addressed promptly and the outcomes used to facilitate wider organisational learning.

### 3.0 Duties within the Organisation

- 3.1 **The Trust Board** has legal responsibility for Trust policies and for ensuring that they are carried out effectively.
- 3.2 The **Director of Finance** has responsibility for managing the payment of claims in accordance with the Trust's Standing Financial Instruments. Further responsibilities include managing the Trust reserve in respect of Employer/Public liability claims. Has accountability for the proper and effective handling of claims within the Trust.
- 3.3 The **Claims Manager** has responsibility for the management of all claims in accordance with the Claims Management Policy and the reporting procedures by:
- Monitoring progress and outcomes of claims and providing confidential reports and/or feedback to relevant committees and personnel.
  - Managing all personal injury claims in accordance with the Pre-action Protocol for Personal Injuries reporting guidelines for non-clinical claims (RPST) to NHSR
  - Undertaking and managing "site visits" to investigate all employer and public liability claims, gathering documentation relevant to these claims.
  - Management of the secure NHSR Extranet system to download and upload claims documentation for reporting, action, and progression.
  - Providing help and support to all staff in relation to all claims management.
  - Alerting and consulting with the Trust's Communications Team about any potential risk of adverse Trust publicity.
  - Management of all clinical negligence claims against the Trust in accordance with the Pre-Action Protocol for the Resolution of Clinical Disputes
  - Management of all formal Trust Inquests in liaison with Trust Solicitors.
  - Ensure all risk management issues/remedial actions identified during a claim are referred to and reported appropriately for action. Formally identified risk issues are managed in line with the Trust's risk management process.
  - Ensure the Trust's Executive Team is provided with reports.
- 3.4 **Senior Managers** are responsible for ensuring:

- Staff are supported appropriately during the claim process. Where staff have been adversely affected, managers must follow the Trust's policy for Supporting Staff involved in an incident, complaint or claim Policy.
  - Those untoward occurrences are reported in line with the Trust's Incident Reporting Policy and the Investigations policy.
  - All identified risk management issues pertaining to their service during a claim are actioned appropriately and in accordance with the Trust's risk management process/Policy.
    - Those identified risk management issues, trends and lessons learned during and following the outcome of a claim are managed appropriately and provided for learning through wider staff training.
- 3.5 The **Patient Safety** Team has responsibility for maintaining an overview of incidents; complaints; claims and Patient Advisory and Liaison Service information so that trends can be identified, action plans monitored, and learning agreed upon and disseminated to appropriate stakeholders; identifying and managing any high or extreme risks identified by claims or other risk information, adding these to the risk register and monitoring the management of these risks; auditing the claims process.
- 3.6 The **Patient Advice and Liaison Service/Complaints Team and the Information Governance Team** are responsible for alerting the Claims Manager to any complaints and/or Access to Records Requests which could result in a claim being made against the Trust.
- 3.7 **Service Directors and Heads of Service** are responsible for ensuring:
- staff compliance with Health and Safety regulations/legislation, the investigation of incidents, serious untoward incidents and complaints is carried out,
  - the support of the investigation of claims,
  - support to staff involved in claims investigations,
  - the implementation of recommendations identified during claims investigations.
- 3.8 **Clinical Governance Teams** are responsible for alerting the Claims Manager to any incidents which could result in a claim being made against the Trust. They are responsible for communicating lessons learned from claims investigations within their services and identifying opportunities for Trust wide learning.
- 3.9 **ALL Staff** must ensure information requested by the Claims Manager for NHSR is provided on time.

They are responsible for searching and copying records and documents requested as part of a claim's investigation.

They are further responsible, for supporting staff involved in claim investigations.

They must maintain regular contact with the staff to ensure they are actively and compassionately supported through the claims process. This support will need to be responsive to the staff member's individual needs. Regular contact should be maintained to ensure the appropriate support is offered and available throughout the process specifically, statement writing and pre-court, during court and post court. Consideration should be given to signposting to the legal team for advice or referral to additional health and wellbeing services throughout the process.

## 4.0 Claim Types and NHSR Schemes

### 4.1 Clinical Negligence Claims

A clinical negligence claim is defined as '*allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury.*' Clinical negligence claims are covered by the **CNST scheme** if the incident took place on or after 1 April 1995. Where the incident took place before this date it will be covered by the Existing Liabilities Scheme (**ELS**).

Clinical negligence claims may be made by the service user or following a death, by their next of kin. Common examples of allegations include but are not limited to:

- medication errors,
- failure to provide appropriate care.
- inappropriate advice.
- failure to obtain consent.

### 4.2 Non-clinical Negligence claims

Most claims are non-clinical negligence claims which fall into one of four categories and are covered by the **LTPS scheme**:

#### 4.2.1 Liabilities to Third Parties Scheme (LTPS)

**Employers' Liability** – claims for compensation for injuries or ill health arising out of work/employment.

These can include claims relating to:

- Injuries because of assault by service users or visitors.
- Work related, bullying or stress related claims.
- Manual handling injuries.
- Industrial injuries due to exposure to substances, fire incident, plan/equipment failure.
- Injury from slips, trips, and falls.
- **Public Liability** - claims for injuries to members of the public (including patients and visitors) following an accident on Trust property.
- **Employment Tribunal and/or Personal Injury Claims relating to Employment Tribunal Claims** – employment tribunal claims are managed by the Human Resources team. However, personal injury claims may arise

following an employment tribunal.

- **Property Expenses Scheme (PES)** - accidental loss or damage to Trust property from fire, flood, or subsidence.

4.3 **Ex-gratia payments** – Payments that the Trust is not obliged to make and for which there is no statutory cover or legal liability.

Types of ex gratia payment:

- loss of/damage to personal effects.
- personal injury.
- settlements on termination of employment.
- maladministration cases.
- any other type of payment not listed above.
- Ex-gratia payments are managed by the Trust, not NHR.

## 5.0 Delegation Limits

5.1 The Trust Board has a responsibility to the Department of Health and Social Care for the management of claims. The Trust Board recognises the importance of consulting closely with NHR on any claims that are reportable to them under the CNST, LTPS or PES Schemes.

5.2 This financial responsibility will be delegated in the first instance to the Finance Director and/or Medical Director, who will have the power to agree to an admission of liability in all claims to any value where such an admission is authorised by NHR.

5.3 In the absence of authorisation, NHR will not reimburse the Trust either for the compensation awarded or for any costs generated. Such payments will fall outside of the scheme and will have to be found within the Trust's internal financial resources.

5.4 All payments in the settlement of claims will be entered in summary form in the Register of Losses and Special Payments.

## 6.0 Claims Excess

6.1 The standard excess for claims (per scheme) is:

Type of Claim	Excess
Clinical Negligence	£0
Employers' Liability	£10,000
Public Liability	£3,000

PES Schedule 2 - Property Damage Expense	Buildings £20,000 Contents £20,000  Cap on claims of buildings and contents of £1m
PES Schedule 8- Contract Works Expense	Damage to existing structures £20,000

## 7.0 Stakeholders

- 7.1 The Claims Manager will investigate any allegations of negligence in conjunction with the relevant stakeholders and the process of investigation will be determined by whether the claim is a clinical negligence claim or a non-clinical claim.
- 7.2 Stakeholders include but are not limited to the Service Director, Head of Service, Locality Manager and Matron. Also, any staff required to give a statement as part of a claim investigation.
- 7.3 Stakeholders must be adequately informed at key stages of a claim. Information provided to stakeholders will be such as to enable them to perform their roles. Where external communication is by email it must be encrypted. Communication by post or telephone is also acceptable. See the Trust's Subject Access to Records / CCTV (including Rights of Data Subjects) & Data Protection Act 2018 Policy, the Electronic Communications Policy, and the Information Security Policy for Details.
- 7.4 Where Risk Management issues have been identified the Clinical Governance Leads, the Health & Safety Team and other relevant staff will be stakeholders.
- 7.5 In all claims, NHSR (and any appointed solicitors) will be stakeholders. All new claims must be registered securely online using NHSR's Claims Reporting System and thereafter, documents should be sent electronically using the Documents Transfer System.
- 7.6 Where the claim relates to a death, the coroner may be holding an inquest during the subsistence of the claim. The coroner is not a stakeholder in this policy because a Coroner is precluded from considering matters of negligence and is not entitled to documents that were prepared in contemplation of litigation and are subject to privilege.

## 8.0 Notification of a Clinical Negligence Claim

- 8.1 The Trust can be notified of a Clinical Negligence Claim or a Potential claim in the following ways:
- An Electronic Incident Report Form
  - A subject access request for disclosure of medical records.
  - A Letter of claim.
  - Service of court proceedings.
  - Evidence at an inquest that appears likely to result in a claim.

- A Complaint.

8.2 This is not an exhaustive list. If you are in doubt, please contact the Legal Services Team. All staff should forward any correspondence related to a potential or actual claim as soon as possible to the CPFT legal inbox. A standard response to potential claimants by the service is below:

*If you want to make a claim against the Trust for this matter, please correspond with the Trust's legal team at [legal.services@cpft.nhs.uk](mailto:legal.services@cpft.nhs.uk)*

*Or write to:*

*Cambridgeshire and Peterborough NHS Foundation Trust  
Legal Services Team  
Elizabeth House  
Fulbourn Hospital  
Fulbourn  
Cambridge  
CB21 5EF*

The first step is to send a formal letter of claim setting out the circumstances of the claim, the allegations in respect of breach of duty of care, position on causation, the value of a claim, detail of heads of losses (compensation), details of the injuries (as appropriate), and any funding arrangements to support the claim process.

All claimants are advised to speak to independent legal advisors as claims involve legal tests such as duty of care and causation. The Trust's Legal team will then report the claim to its insurers (NHS Resolution) who will investigate the claim and provide a response within 4 months of receipt.

## **9.0 How are claims received?**

9.1 Depending on the type of claim, a claimant or their legal representative will send a Letter before Action (clinical), Letter of Claim (clinical and non-clinical), or Claim Notification Form via the MOJ Portal (non-clinical) to the Trust/NHSR. It is rare but the Trust may also receive court papers (directly from the court) which will be addressed to the Chief Executive and sent to the Trust Headquarters or the CPFT Legal inbox. CPFT provide a wide range of services in many locations so on occasion these documents can be sent to services or members of staff directly.

9.2 Upon receipt of these documents, you **MUST** immediately scan and email ([legal.services@cpft.nhs.uk](mailto:legal.services@cpft.nhs.uk)). The "originals" must be marked "confidential" and forwarded to the Legal Services Team as soon as possible. Do not acknowledge any documents to the claimant's solicitor or the court. This will be actioned by the Claims Manager.

### 9.3 Clinical Negligence Claims

To investigate and comply with NHR reporting guidelines, the Claims Manager will take the actions in the Clinical Negligence Claims flowchart (Appendix 1).

- 9.4 The Claims Manager must report all new CNST claims using a Clinical Claims Report Form, which is submitted to NHR via NHR's Claims Reporting System. Where possible a Useful Documents Guide must be completed when reporting a claim to NHR. However, NHR accepts that it may not be possible to collate all the relevant documentation/information when initially reporting the claim, in such cases, NHR requires that any outstanding information/updated documentation be sent within 2 weeks of reporting the claim.

This documentation may include but is not limited to:

- Copies of claimant/claimant solicitors' correspondence
- Internal reports/comments prepared by clinicians.
- Full complaints file
- Electronic Incident Reporting Form
- Trust Policies or Procedures

### 9.5 Non-Clinical Negligence Claims

The Claimant's solicitor will usually notify the Trust of a claim by a Pre-Action Letter of Claim or CNF (if the claim has been submitted via the portal).

The Claims Manager will take the actions in the Non-Clinical Negligence Claims flowchart (Appendix 3) to investigate and comply with NHR reporting guidelines.

This documentation may include but is not limited to:

- Incident report form (IRF)
- Contemporaneous Witness Statements
- RIDDOR form (where the claimant suffered an injury resulting in absence >7 days)
- Serious Incident Report
- Any Health and Safety related records concerning an incident
- Any notes or records of "lessons" learnt from an incident and report of changes implemented because of those lessons
- Medical records including any records which may be kept separately from the main bundle of records.

## 10.0 Timescales and procedures for the exchange of information

- 10.1 Day to day management of claims will be conducted by the Claims Manager. Investigations will be appropriate to the severity of the claim, but every claim is important and will be investigated as such.

- 10.2 Within 21 days of receipt of a letter of claim the Claims Manager will identify if the claim is against the Trust, and, if so, acknowledge the receipt of the claim to the claimant's solicitor.
- 10.3 The Claims Manager will instigate an initial investigation and document evidence gathering exercise.
- There are additional reporting timescales that the Claims Manager must comply with. These are detailed in NHSR's Rules and Reporting Guidelines.
  - The information should be transferred to NHSR electronically by the Claims Reporting System (when reporting a new claim) and/or the Document Transfer System (if the claim has been reported previously).
  - NHSR will consult with the Claims Manager and obtain the Trust's agreement before making any admissions on liability. The Claims Manager will seek instructions from the relevant Directors of the service, the Finance Director, and the Medical Director.
- 10.4 Once the claim is concluded, the file will then be archived and destroyed in accordance with the guidance in the Records Management Code of Practice. Where a personnel file is to be copied, equalities monitoring information should only be copied and shared where it is relevant to the claim, or it identifies potential lessons learnt. For example, if an allegation of racial discrimination was made as part of a claim, then equality monitoring information may be relevant.

All documentation will be copied and held by the Claims Manager on individual claim files.

- 10.5 NHSR seeks early notification of a letter of claim where the following features arise:
- Fatal accidents.
  - MP involvement.
  - Media attention.
  - Human Rights issues.
  - Multi-party actions.
  - Multiple claims from a single cause.
  - Novel, contentious, or repercussive claims.
- 10.6 In addition to formal letters of a claim being received, the Trust will also notify NHSR of serious adverse incidents and/or serious adverse outcomes representing a significant litigation risk before an actual demand for compensation is made.
- These may become known through:
- Normal in-house Incident recording/investigation
  - Complaints which look highly likely to lead to claims.
  - Other matters identified through Risk Management processes.
- 10.7 The Claims Manager will report claims to NHSR and undertake all associated administration and liaison with NHSR, Panel Solicitors, NHS England or Clinical

Commissioning Group officers, Claimants' Solicitors, and others, as necessary.

## 11.0 Being Open and Duty of Candour

- 11.1 Where the facts of an incident indicate liability on the part of the Trust, this should not prevent staff from undertaking remedial action properly and effectively. It should not inhibit frank and open discussion with patients. NHR advocates the giving of apologies and explanations.
- 11.2 Duty of Candour is a statutory and contractual requirement which does not require a breach of duty giving rise to a clinical negligence claim.
- 11.3 Being Open and Duty of Candour is integral to the incidents, complaints and claims processes and are a fundamental part of the Trust's transparent, fair blame and learning culture. Having this culture is critical to ensure the Trust continually learns.
- 11.4 Further details on Being Open and the Duty of Candour can be found in the Trusts Being Open and Duty of Candour Policy.
- 11.5 NHR: "It is both natural and desirable for clinicians who have provided treatment which produces an adverse result, for whatever reason, to sympathise with the patient or the patient's relatives; to express sorrow or regret at the outcome; and to apologise for shortcomings in treatment. It is most important to patients that they or their relatives receive a meaningful apology. We encourage this and **stress that apologies do not constitute an admission of liability**. In addition, it is not our policy to dispute any payment, under any scheme, solely on the grounds of such an apology."

## 12.0 Information on Claims

- 12.1 The Claims Manager will maintain a database of all clinical negligence and personal injury claims. This database will facilitate the provision of relevant and timely information as required by the Services and NHR.
- 12.2 The Claims Manager will ensure the secure storage of current claims files and files that have been closed and archived. Following a claim being closed this information will be archived and kept for 10 years.

## 13.0 Confidentiality

- 13.1 The Trust will ensure that confidentiality in relation to all information gathered as part of the investigation and held by the Trust, and that which is forwarded to NHR is complied with and will also ensure compliance with information held in accordance with the UK General Data Protection Regulation, Data Protection Act 2018, and the Access to Health Records Act 1990. In addition, the Trust will ensure that the Pre-Action Protocol for the Resolution of Clinical Disputes is complied with and that records are provided within 40 days of the request.



## **14.0 Litigation**

- 14.1 As claims work is subject to litigation, the Claims Manager's requests for records and information must be responded to promptly. If for any reason a prompt response is not possible, the Claims Manager must be informed in writing by e-mail. All claims are potentially subject to litigation and any delays may result in financial penalties.
- 14.2 Some claims proceed to litigation and may proceed as far as a court hearing. Employees will not bear any financial or legal responsibility for a claim even if they are personally named in the Particulars of Claim (a document that a claimant files with the court and serves on the defendant setting out the details of the claimant's case). As part of the litigation process, the Trust will be asked to sign several documents including the Defence, the List of Documents and the Counter Schedule. A Statement of Truth accompanies these documents. Only designated officers of the Trust may sign a Statement of Truth. These are the Chief Executive, an Executive Director, or Deputy Director of Corporate Affairs (pp by Legal Services Lead if necessary). Any member of staff who receives a Statement of Truth or any document requiring a signature must forward it immediately to the Claims Manager.

## **16.0 Communications**

- 15.0 All approaches by the media regarding claims or potential claims, whether ongoing or closed, must be directed to the Communications team. The Communications team will consult with the Claims Manager who will contact NHSR. Working together they will determine a response. Staff should not make any comments to the media unless authorised to do so by the Communications team who in turn will have cleared the response with NHSR.

## **16.1 Risk Management Report & Lessons Learnt**

- 16.2 Risk management issues will be considered for every claim, especially where NHSR Solicitors' Risk Management Reports on Claims have been received. The sharing of lessons learnt post investigation is a critical part of claims management. These will be disseminated throughout the organisation.
- 16.3 The Claims Manager will report to the relevant stakeholders any issues, identified from a claims investigation, which need to be addressed either immediately or as the result of the investigation's findings.
- 16.4 Before closing a file, the Claims Manager shall ensure that all risk management issues have been reported to the appropriate manager and that documentary evidence of any actions taken is received.
- 16.5 The Claims Manager will contribute to the safety and quality reports for the Trust regarding incidents, complaints, and claims.

## **17.0 Support for Staff**

- 17.1 Staff physical and psychological health and well-being are important. The Trust recognises the upset and distress that can be caused to staff through their involvement in the investigation and response to a claim. The litigation process can be lengthy, and staff may find it stressful and upsetting. The Trust is committed to providing all appropriate support to staff and, where a claim arises from an incident or complaint, support may already have been offered and arranged at the earlier investigation stage.
- 17.2 Directors of Services, Service Managers, Heads of Department, Clinical Directors, and Senior Clinical staff have a responsibility to ensure that their staff are appropriately supported both in terms of their emotional health and wellbeing and the claims process. The Line Manager, Matron, Service Lead or Clinical Director should be the first point of contact for an individual seeking support.
- 17.3 Staff involved in a claim investigation may want further information regarding the claims process and what is expected of them. The Claims Manager is available to provide advice and support throughout the claims process. They will provide ongoing support to staff, using the method most suited to the individual's needs. The Claims Manager as appropriate, will accompany the staff to meetings with panel solicitors, claims conferences and should the claim proceed to this stage, to pre-trial meetings and trial. Any member of staff called as a witness will be fully prepared and supported by the Claims Manager and the Panel Solicitors.
- 17.4 If an individual requires additional support, they will escalate this to the individual's manager to ensure that additional sources of support are offered from, for example, the Occupational Health Team, Staff Counselling Service, and support from the Freedom of Speak Up Guardian.

## **18.0 Monitoring Compliance and Effectiveness**

### **Duties outlined in this Policy will be evidenced through monitoring of the other minimum requirements**

Where monitoring identifies any shortfall in compliance the group responsible for the Policy (as identified on the policy cover) shall be responsible for developing and monitoring any action plans to ensure future compliance.

## **19.0 Due Regard and NHS Constitution**

This policy describes the process for managing claims against the Trust. During the consultation process, nothing was identified as directly affecting persons with protected characteristics as defined by the Equality Act 2010. Therefore, this policy is determined as being equality neutral.

In respect of the Public Sector Equality Duty, appropriate consideration of the Trust's Equality, Diversity and Human Rights Policy will be given whilst implementing this policy for example when supporting staff involved in any claim.

## **20.0 References and Associated Documentation**

This policy was drafted with reference to the following:

Civil Procedure Rules (CPR)

NHSR CNST Membership Rules

NHSR LTPS Membership Rules

Pre-Action Protocol for Personal Injury Claims.

Pre-Action Protocol for the Resolution of Clinical Disputes

Pre-Action Protocol for Low Value Personal Injury (Employers Liability and Public Liability) Claims

## Appendix 1

### Procedure for the Management and Investigation of Clinical Claims

#### PRE-ISSUE CLINICAL CLAIMS

Receipt of Letter of Claim which confirms intended claim against the Trust

The Claims Manager reports to **NHSR** within 24 hours, with relevant documents & previous correspondence

Acknowledge receipt of Letter of Claim to Claimant Solicitor (or Litigant in Person) within 14 days and advise that it has been passed to **NHSR** who will act on behalf of the Trust

Forward copy of Letter of Claim to appropriate clinician(s) and Heads of Service, and Directorates to notify the Claim is at the formal stage and to ensure staff are fully supported.

Legal Services Team to liaise with **NHSR** to provide information to enable a Letter of Response within 4 months.

Receipt of Court Proceedings or Part 36 offers must be reported to **NHSR** within 24 hours

Independent expert medical reports regarding liability and causation sent to key staff for comment, and comments forwarded to **NHSR** / Panel Solicitor

Letter of Response without Admission is sent to the claimant solicitor panel firm

No admission necessary

If apparent admissions will be made:

Letter of response with admissions is sent to the Service Director for operational sign-off.

- The Claims Manager will liaise with panel firm to successful defend/settle a claim. Outcome of claim will be notified to all staff involved.
- Settled claims will be added to spreadsheet and circulated on a quarterly basis.
- **NHSR**/panel firm/Legal Services may identify litigation risks which require action through the Trusts risk management process.
- Action taken by the Services to address highlighted risks which have resulted in admission of liability.

## Appendix 2

### General Procedure for the Management and Investigation of Non-Clinical Claims

#### 1 Personal Injury Claims.

- 1.1 These claims can be either from a member of staff and come under Employer's Liability or from a patient or visitor to the Trust and come under Public Liability Claims.
- 1.2 No admission is made until after a full investigation has been undertaken.

#### 2 The Employers' Liability (EL) and Public Liability (PL) Claims Portal

- 2.1 As part of a package of reforms, the Ministry of Justice announced that from **1 August 2013** EL and PL claims valued up to £25,000 will be managed by insurers and compensators using a web-based portal process.
- 2.3 The portal is a secure electronic communication tool designed to facilitate communication between claimant representatives and insurers/indemnifiers and compensators.
- 2.4 The portal radically changed the way EL and PL claims are managed by introducing much shorter timescales and a regime of fixed legal costs.
- 2.5 **How does it work?**

All employers and public liability claims under LTPS, valued up to £25,000, will be notified directly to NHS Resolution via the portal and NHS Resolution must acknowledge receipt within 24 hours.

On EL claims the defendant has 30 days to provide a response on liability via the Portal and 40 days on PL claims. If the decision is not provided in time, the claim exits the portal process and costs may increase.

The shortened timeframes mean that prompt information gathering, investigation and document management are vital.

Where it looks likely that a claim is one to defend, then the defendant will allow the claim to "time out" of the portal and the Claims Notification Form acts as a letter of claim (subject to the pre action protocol time frames). The defendant has 3 months from the date of submission to provide its response on liability. Fixed costs pursuant to CPR P45 will still apply (where the claim remains below £25,000), but it will no longer be subject to the lower "portal costs".

The Health & Safety Team will need to make an early judgement as to whether an incident is likely to give rise to a claim; to ensure claims investigations and document-keeping are robust, responses from those best placed within the divisions are prompt and balance the costs and benefits of early admission (i.e., within the portal/pre issue) against a robust defence of the Trusts position.

## **2.6 The portal has three stages:**

Stage 1 – Notification of the claim to the NHS Resolution and a liability decision within 30 days (EL) or 40 days (PL).

Stage 2 – Medical report, offers to settle and negotiation.

Stage 3 – Access to the courts where settlement cannot be agreed upon.

Claims where liability is denied or where contributory negligence is alleged will exit the portal.

The key is to keep indefensible claims in the portal. The Trust needs to work together with the NHS Resolution to ensure that incidents are quickly investigated, and evidence gathered to make the right decision within the deadlines.

### Appendix 3 - NON-CLINICAL NEGLIGENCE CLAIMS FLOWCHART

- Incident Occurs
- Incident Report Form completed.
- If incident involves an injury classified as moderate or above, manager commences investigation and gathers evidence/disclosable documents.
- If in doubt, the manager to make judgement call (with support from Legal Services or H&S Team if required) on whether litigation risk is high enough to investigate.



#### **NHSR notified of Claims via Claims Portal**

- Legal Services Lead will request all relevant documentation from the Service – Complaints and Patient Safety Team.
- Claims Manager to notify all relevant people that a Claim has been received.
- Claims Manager to obtain the Claimant's wages for 13 weeks prior and post the date of the accident



#### **NHSR**

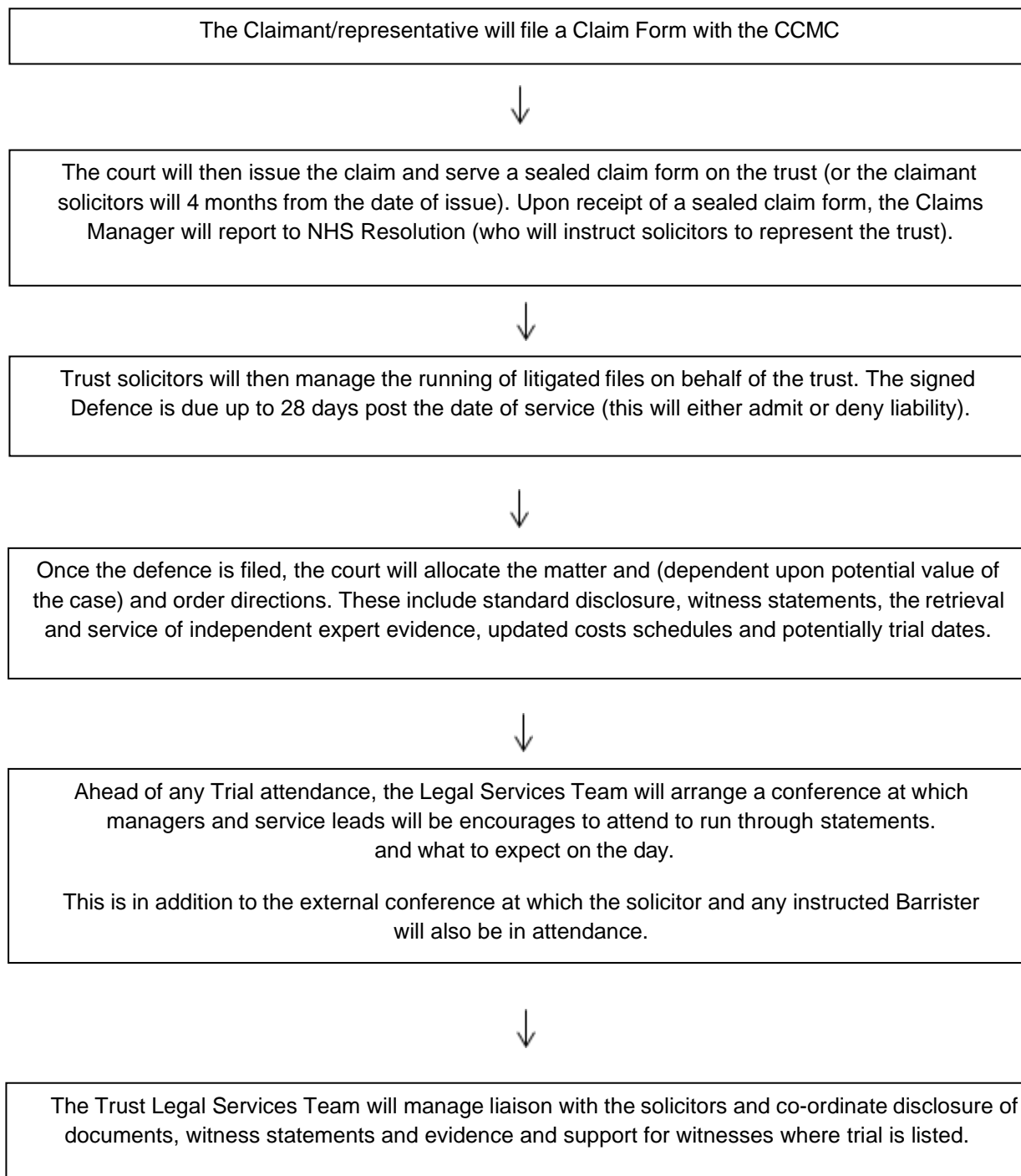
- NHSR to admit/deny liability within 30 days for Employer Liability Claims and 40 days for Public Liability Claims.
- If NHSR is unable to make or support the liability decision within set timescale, i.e., because the disclosure documents have not been provided, the claim exits the portal and costs increase significantly.



## Appendix 4

### Civil Litigation Timeline – bringing a clinical negligence/personal injury claim

#### POST ISSUE CLINICAL and NON-CLINICAL CLAIMS



## Appendix 5

<b>WITNESS STATEMENT TEMPLATE</b>	
Name and Occupation:	
Date and Location of Incident:	
Injured Party:	

<b>STATEMENT</b>

This statement (consisting of ..... page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.

Signed:		
Print Name:		Date:

**Witnessed by:**

Signed:		
Print Name:		Date:

Page number..... of .....

Continuation Statement of (Name):

## Appendix 7 - Monitoring Compliance and Effectiveness

Duties outlined in this Policy will be evidenced through monitoring of the other minimum requirements

Where monitoring identifies any shortfall in compliance the group responsible for the Policy (as identified on the policy cover) shall be responsible for developing and monitoring any action plans to ensure future compliance

Minimum Requirements to be monitored	Evidence from self assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
Action to be taken, including timescales	11.0 Timescales and Procedures	Audit of ten claims which have been selected by Risk Management	Claims Manager	Annually
How the organisation communicates with relevant stakeholders, such as <u>staff</u> , claimants, NHS R, solicitors, HM Coroner, etc.	8.0 Stakeholders	Audit of ten claims which have been selected by Risk Management	Claims Manager	Annually

## Appendix 8 -The NHS Constitution

**The NHS will provide a universal service for all based on clinical need, not the ability to pay. The NHS will provide a comprehensive range of services**

<b>Shape its services around the needs and preferences of individual patients, their families, and their carers</b>	<input type="checkbox"/>
<b>Respond to different needs of different sectors of the population</b>	<input type="checkbox"/>
<b>Work continuously to improve quality services and to minimise errors</b>	✓
<b>Support and value its staff</b>	<input type="checkbox"/>
<b>Work together with others to ensure a seamless service for patients</b>	<input type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	<input type="checkbox"/>
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment, and performance</b>	✓

## Appendix 9

### Due Regard to Screening Template

<b>Section 1</b>			
<b>Name of activity/proposal</b>		Claims Management	
<b>Date Screening commenced</b>			
<b>Directorate / Service carrying out the assessment</b>		Corporate/ Legal team	
<b>Name and role of the person undertaking this Due Regard (Equality Analysis)</b>		Karen Moore, Claims Manager	
<b>Give an overview of the aims, objectives, and purpose of the proposal:</b>			
<b>AIMS:</b> This policy describes the process for managing claims involving the Trust under the National Health Service Resolution (NHSR) scheme or equivalent insurance scheme.			
<b>OBJECTIVES:</b> Due regard and equality analysis			
<b>Section 2</b>			
<b>Protected Characteristic</b>	<b>If the proposal/s has a positive or negative impact please give brief details</b>		
Age	No impact		
Disability	No impact		
Gender reassignment	No impact		
Marriage & Civil Partnership	No impact		
Pregnancy & Maternity	No impact		
Race	No impact		
Religion and Belief	No impact		
Sex	No impact		
Sexual Orientation	No impact		
Other equality groups?	None Identified		
<b>Section 3</b>			
<b>Does this activity propose major changes in terms of scale or significance for CPPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major effect on people from an equality group/s? Please <u>tick</u> appropriate box below.</b>			
Yes		No	
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B		Low risk: Go to Section 4. <b>X</b>	
<b>Section 4</b>			
<b>If this proposal is low risk, please give evidence or justification for how you reached this decision:</b>			
The policy is neutral and has no impact on protected groups			
<b>Signed by reviewer/assessor</b>		<b>Date</b>	
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>		<b>Date</b>	

## Appendix 10

### Stakeholders and Consultation

#### Key individuals involved in developing the document

Name	Designation
Karen Moore	Claims Manager

#### Circulated to the following individuals for comment

Name	Designation
Rachel Stevens	Associate Director of Legal Services

## Appendix 11

### DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p><b>Data Privacy impact assessments (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</b></p> <p><b>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Information Governance must be involved.</b></p>		
<b>Name of Document:</b>	<b>Claims Management Policy</b>	
<b>Completed by:</b>	<b>Karen Moore</b>	
<b>Job title</b>	<b>Claims Manager</b>	<b>Date</b>
<b>Screening Questions</b>	<b>Yes / No</b>	<b>Explanatory Note</b>
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to conduct the process described within the document.	NO	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to conduct the process described within the document.	NO	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	NO	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	NO	
5. Does the process outlined in this document involve the use of modern technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	NO	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?		
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For example, health records, criminal records or other information that people would consider to be particularly private.	NO	
8. Will the process require you to contact individuals in ways which they may find intrusive.	NO	
<p><b>If the answer to any of these questions is 'Yes', please contact the Information Governance Team at <a href="mailto:CPFTInformationGovernance@cpft.nhs.uk">CPFTInformationGovernance@cpft.nhs.uk</a></b>  <b>In this case, ratification of a procedural document will not take place until review by the Head of Information Governance.</b></p>		
<b>Data Privacy approval name:</b>		
<b>Date of approval</b>		