

CLAIMS POLICY

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POLICY SUMMARY	
The purpose of this policy is to set out the Trust policy and procedure for the processing, monitoring and control of all litigation claims brought against the Trust with the minimum of delay and financial ensuring the Trust operates in accordance with relevant legislation, best practice, NHS Litigation Authority requirements and other appropriate Trust policies.	
The Trust monitors the implementation of and compliance with this policy in the following ways;	
Monitoring of implementation and compliance with this policy and associated procedural guideline will be undertaken by Executive Director of Governance as outlined in the section 7.0 of this policy.	

Services	Applicable	Comments
Trustwide	✓	
Essex MH&LD		
CHS		

**The Director responsible for monitoring and reviewing this policy is
Executive Director of Corporate Governance**

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

Claims Policy

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

CLAIMS POLICY

Assurance Statement

This Policy and associated Claims Procedure demonstrates assurance that the Trust has a robust process in place for the management of claims.

1.0 INTRODUCTION

- 1.1 This document is the policy of Essex Partnership University NHS Foundation Trust (the 'Trust') and should be referred to when dealing with Litigation and potential Litigation Claims received by the Trust.
- 1.2 This policy and the relevant procedural guidelines have been drafted with guidance from the NHS Litigation Authority (NHSLA) [the Trust's Insurers]
- 1.3 A review date has been set for both this corporate policy and the procedural guidelines that support it. The review date is the latest date at which this document will be reviewed, unless changing laws and central policy require an earlier review

2.0 DUTIES

- 2.1 The overall accountability for the claims process rests with the Trust Board of Directors.
- 2.2 Responsibility for the management and processing of Litigation claims, and liaison with the NHSLA within the Trust lies with the Legal Department. The department has day to day management of the process.
- 2.3 The Interim Executive Director of Corporate Governance and Strategy will be responsible for monitoring compliance with this policy and its associated procedures.
- 2.4 The Legal Services Department will produce timely and appropriate reports informing the Executive Operational Sub-Committee of the status of all claims against the Trust on a regular basis.

The Trust's Legal Services Department is responsible for ensuring any identified lessons learned are reported via the Learning Oversight Sub-Committee, who will ensure that the relevant Directorates develop the necessary action plans to reduce future risk and share these across the Trust and with partner organisations ensuring they are appropriately monitored.

- 2.5 Every Service Manager has a responsibility to liaise with the Legal Services Department in response to a claim in a timely manner in accordance with instructions.

- 2.6 At any stage a claim may generate media interest. The Assistant Director of Communications will be responsible within the Trust for agreeing and issuing any draft press statements, which in appropriate cases will be agreed with the NHSLA.
- 2.7 Settlements of claims will be facilitated by the Legal Services Department following authorisation from the relevant Service Executive Director.
- 2.8 Powers to authorise payments made by the Trust are delegated to the following:
- Legal Services Department up to £10,000 plus costs
 - Individual Executive Directors up to £100,000 plus costs
 - Chief Executive or the Chief Finance Officer up to £250,000 plus costs
 - The Trust Board over £250,000 plus costs
- 2.9 At all stages of the claims process reference will be made to guidance from the NHSLA practice (including compliance with Pre-Action Protocols) and advice from agencies, such as Solicitors, acting on the Trust's behalf.
- 2.10 The Trust's Risk Department, Serious Incidents Department, Complaints Department and /Patient Experience Department and the Local Security Management Specialists (LSMS) will ensure all incidents (including those that have the potential to develop into claims) are investigated in line with Trust policies and procedures. They will ensure, with the Trust's Legal Services Department that any investigations into these incidents are shared in support of claims management.
- 2.11 All Trust staff have a responsibility to assist and co-operate in a timely manner with the investigation and progress of claims as required.

3.0 DEFINITIONS

There are three NHSLA schemes that are applicable to the Trust:

- 3.1 Clinical Negligence Scheme for Trusts (CNST)
The CNST handles all clinical negligence claims against NHS member bodies where the incident in question occurred on, or after 1 April 1995 (or when the body joined the scheme, if that is later). The costs of the scheme are met by membership contributions. The projected claim costs are assessed in advance each year by professional actuaries. Contributions are then calculated to meet the total forecast expenditure for that year. Individual member contribution levels are influenced by a range of factors, including the type of trust, the specialties it provides and the number of "whole time equivalent" clinical staff it employs.

When a claim is made against a member of CNST, the NHS body remains the legal defendant. However, the NHSLA takes over full responsibility for handling the claim and meeting the associated costs.

The Legal Services Manager/ Risk/Claims Manager will ensure that all appropriate documentation is forwarded to the NHSLA when claims are reported.

The NHSLA have the final decision on the outcome of CNST claims but will work with the Legal Services Manager/Risk/Claims Manager to achieve the best possible outcome for all parties.

3.2 Liabilities to Third Parties (LTPS)

The LTPS typically covers employers' and public liability claims from NHS staff, patients and members of the public. These range from straightforward slips and trips to serious workplace manual handling, bullying and stress claims. LTPS covers claims arising from breaches of the *Human Rights Act*, the *Data Protection Act* and the *Defective Premises Act* as well as defamation, unlawful detention and professional negligence claims. LTPS also extends to cover the personal liabilities of the members of NHS Boards, including Non-Executive Directors. Personal injury cover is unlimited in value and there is no limit on the number of claims members may make in any membership year.

The Legal Services Department will ensure that all appropriate documentation is forwarded to the NHSLA when claims are reported.

Claims are subject to excesses, with member bodies responsible for handling and funding below-excess claims themselves. Like CNST, LTPS contributions are calculated on an annual basis using actuarial methodologies.

The NHSLA have the final decision on the outcome of LTPS claims but will work with the Legal Services Department to achieve the best possible outcome for all parties

3.3 Property Expenses Scheme (PES)

PES provides cover for “first party” losses for material damage to buildings and contents from a variety of causes, including fire, theft and water damage. Claims are subject to excesses, with member bodies responsible for handling and funding below-excess claims themselves.

Like CNST and LTPS, PES are funded by contributions from members and contributions are calculated on an annual basis using actuarial techniques.

3.4 Existing Liabilities Scheme (ELS)

In addition the NHSLA handle clinical negligence claims made against the NHS England where the incident took place before April 1995. It is not a membership scheme, as it is funded centrally by the Department of Health and since April 2000 all ELS claims have been handled centrally by the NHSLA. Claims under the ELS will often be made against NHS bodies which no longer exist, because of subsequent restructuring within the NHS. The legal defendant in such an ELS claim will be the legal “successor body” to the now-defunct NHS body. In the case of incidents taking place in the early

1990s, the successor body may be an NHS trust if the hospital where the incident took place was part of one of the early NHS trusts.

If the Trust is notified that a patient intends to make a claim relating to an incident before April 1995, it will follow the same reporting guidelines.

4.0 PRINCIPLES

- 4.1 This policy and its associated procedural guidelines must be read by any member of staff who is, or may become, involved in any form of claim against the Trust or themselves personally.
- 4.2 The procedural guidelines accompanying this policy must be followed by all staff at all times
- 4.3 It is the policy of the Trust that all cases involving litigation are concluded swiftly, with the minimum of avoidable expense, and to the satisfaction of both the Trust and, where achievable, the Claimant. This applies to any claim to include clinical negligence; personal injury (employee and public) and property claims
- 4.4 The Trust is committed to a “lessons learnt” strategy to identify trends and risk issues highlighted by any claims in order to avoid and or reduce the chance of any future recurrence

5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

- 5.1 The Executive Director of Corporate Governance is responsible on behalf of the Board for reviewing this policy and procedural guideline a minimum of every 3 years and for monitoring implementation and effectiveness. This includes monitoring compliance with all of the following:
- Roles and Responsibilities
 - Support offered and provided to staff
 - Process for managing claims including NHSLA Schemes and action taken within timescales
 - Communication
 - Process for Investigation
 - Process for aggregation and analysis of data
 - Process for learning from Claims
- 5.2 The results will be shared with the Quality Committee who will identify and monitor any action required following the audit.
- 5.3 The Policy and Procedural Guidelines will be disseminated to all staff via the Trust Intranet site.

6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

The National Health Service Litigation Authority Framework Document
NHSLA Clinical Negligence Scheme for Trusts Membership Rules 2001, revised
May 2014

NHSLA - Clinical Negligence Reporting Guidelines April 2014

NHSLA – LTPS Membership Rules Revised October 2014

NHSLA – Liability to Third Parties Scheme Claims Reporting Guidelines

NHSLA CNST & LTPS Investigation Packs

All NHSLA documentation available from www.nhsla.com (*Publications – Claims Publications*)

Department for Constitutional Affairs, Pre-Action Protocols for the Resolution of Clinical Disputes – https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rcd

Department for Constitutional Affairs, Pre-Action Protocol for Personal Injury Claims. https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic

Data Protection Act 1998

Access to Records Act to Health Records Act 1990

Caldicott Principles – Department of Health Report on the Review of Patient Identifiable Information, Caldicott Committee 1997

Freedom of Information Act 2000

7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES

Claims Procedure

Adverse Incident Policy & Procedure

Complaints Policy & Procedure

APPENDICES

Appendix 1 - NHSLA Reporting Guidelines – April 2014

<http://www.nhsla.com/claims/Documents/Reporting%20Guidelines.pdf>

Appendix 2 – CNST Scheme Rules – Revised May 2014

<http://www.nhsla.com/claims/Documents/CNST%20Rules.pdf>

Appendix 3 – LTPS Claim Scheme Rules – Revised 1 October 2014

<http://www.nhsla.com/claims/Documents/LTPS%20Scheme%20Rules.pdf>

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