

CLAIMS PROCEDURE

POLICY REFERENCE NUMBER:	CPG10	
VERSION NUMBER:	2	
KEY CHANGES FROM PREVIOUS VERSION	Addition of Appendix 1, Inquest Funding Form in procedure; Addition in Procedure of process for meeting with staff on receipt of a claim; Minor amendments to consistency of name referring to Legal Services Department; Addition of Serious Incidents team for consultation; Addition of new process on receipt of claim section 3.0 in policy; Addition of process details for Inquest Funding section 5.0	
AUTHOR:	Legal Services Manager	
CONSULTATION GROUPS:	<ul style="list-style-type: none"> • Clinical Governance/Corporate Governance • Risk Management/Compliance • Estates & Facilities • Information Governance • Serious Incidents 	
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POLICY SUMMARY		
The purpose of this procedural guideline document is to ensure that the principles set out in its accompanying policy are detailed in a way that is understood by all staff thereby ensuring that the policy can be fully implemented, monitored and reviewed within the Trust.		
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 the Chief Executive Officer as outlined in the section 10.0 of this policy.		
Services	Applicable	Comments
Trustwide	✓	
Essex MH&LD		
CHS		

The Executive Director responsible for monitoring and reviewing this policy is Chief Executive Officer

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

NHS LITIGATION AUTHORITY CLAIMS PROCEDURAL GUIDELINES

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

NHS LITIGATION AUTHORITY CLAIMS PROCEDURAL GUIDELINES

1.0 INTRODUCTION

- 1.1 These procedural guidelines support the Trust policy on Claims.
- 1.2 These guidelines should be applied to all claims received by Essex Partnership University NHS Foundation Trust (the 'Trust').
- 1.3 These procedural guidelines set out processes for involving third parties such as the NHS Resolution (NHS R), Solicitors, Claimants, the Coroner and the processes for reporting to the Property Expenses Scheme (PES), the Liabilities to Third Parties Scheme (LTPS) and the Clinical Negligence (CNST and ELS).

2.0 NHSLA SCHEMES

- 2.1 There are three NHS R schemes that are applicable to the Trust:
 - Clinical Negligence Scheme for Trusts (CNST)
 - Liabilities to Third Parties Scheme (LTPS)
 - Property Expenses Scheme (PES)
- 2.2 Full details of the scheme rules are detailed in section 3.0 of the CP10 Claims Policy.

3.0 THE PROCEDURE

- 3.1 All correspondence received and relating to a legal claim against the Trust should immediately be forwarded to the Trust's Legal Services Department or emailed to epunft.claims@nhs.net.
- 3.2 It will be responsibility of the Legal Services Department to acknowledge the letter from the claimant's Solicitor, or the claimant directly where they are unrepresented, within the timeframes of any Pre-Action Protocols.
- 3.3 It will be the responsibility of the Legal Services Department to notify the NHS R Non Clinical Division or the Clinical Negligence Scheme (CNST) of receipt of a claim within 21 days.
- 3.4 The Legal Services Department will send notification to the Executive Director, Team Manager and lead clinician responsible for the area against which the claim is made within 5 working days of receipt.
- 3.5 The Legal Services Department will liaise with the relevant team managers/clinicians involved in the care and/or any staff (corporate or clinical) that may have been witness to any of the particulars of the claim and

schedule a meeting within 10 working days of receipt of the claim. This meeting is for the purpose of:

- Advising staff of support mechanisms and to allow for full and open discussion regarding the claim particulars.
- Establishing evidence to either support the denial or enable early admissions to save on unnecessary legal costs.
- Assist and advise on witness statements
- Agree relevant information for collation

The Legal Services Team will advise in this communication the documents that will be required to be brought to the scheduled meeting.

3.6 The Legal Services Department will liaise with the Complaints, Risk, Local Security Management (LSMS) and Serious Incidents Teams at the outset of processing a claim to ensure that any internal investigations that may have taken place in respect of the original incident are collated and provided, as appropriate, to the NHS R / panel solicitors.

3.7 It will be the responsibility of the designated staff member(s) identified in section 3.5 to collate all the relevant material required by the Legal Services Department who will then validate and forward it to the NHS R or panel solicitors. Collated information must be brought to the scheduled claims meeting as detailed in section 3.5 or submitted to the Legal Services Department prior to the scheduled meeting for review and to support discussions. Standard information required may include all or some of the following, dependent upon the type of claim:

- Complaint information
- Datix Incident Information and associated reports (i.e. RIDDOR, 7-day reports, etc.)
- Witness Statements (which must be signed and dated)
- Incident Investigation reports, appendices and working files
- Inquest files and outcome reports
- Photographs of area concerned
- Payroll information of staff involved
- Sickness absence information
- Records of staff compliance to training programmes
- Duty rotas
- Patient records (consent may be required)
- Staff personnel records (consent may be required)
- Staff personal details (i.e. National Insurance Number; Date of Birth, etc.)
- Occupational Health Records
- Relevant Trust policies and procedures
- Any other written documentation relating to the claim

This list is not exhaustive and should only be used as a guide.

- 3.8 Copies of this information and of any relevant clinical / personnel records will be secured and scanned / stored by the Legal Services Department for the duration of the claim and thereafter in line with Records Management Code of Practice for Health and Social Care 2016.
- 3.9 The Trust's insurers, the NHS R will complete all investigations and provide to the claimant's Solicitor a statement regarding liability and future action to be taken.
- 3.10 Once NHS R has informed the Trust of liability matters / future action the Legal Services Department will continue to collate and provide all necessary evidence / information to support NHS R and/or panel solicitors, in order to achieve a speedy and satisfactory conclusion of the claim.
- 3.11 The Legal Services Department will act as the point of contact between all parties involved in the processing of the claim:
- NHS R and / or the designated Panel Solicitors
 - Claimant Solicitor / Claimant
 - All staff involved with the processing of the claim within the Trust
 - Payroll Agencies
 - Occupational Health Agencies
 - 3rd party organisations
- This list is not exhaustive and should only be used as a guide.*
- 3.12 Once a claim has been concluded, and NHS R have provided the Trust with an official closure notification, the file will be electronically scanned and archived onto the Trust shared drive and kept in line with Records Management Code of Practice for Health and Social Care 2016, which requires litigation files to be kept for 10 years following final closure of a case.
- 3.13 The Legal Services Department will provide a bi-monthly report on the claims, trends in their nature and their numbers to the Health, Safety & Security Committee and the Learning Oversight Sub-Committee. The Committee's will ensure that the relevant Directorates develop any necessary action plans to reduce future risk/prevent future occurrence, share these across the Trust and with partner organisations ensuring the appropriate measures have been taken.

4.0 SUPPORTING STAFF

- 4.1 The Trust has a policy and procedure in place for Workforce Well-being policy and procedure. This provides guidance for arrangements for supporting staff, in line with this policy. It is essential to ensure that immediate and ongoing support is available for staff when they are involved in a claims process.
- 4.2 Staff may require differing levels of support during what may be a traumatic time, the Legal Services Department will advise attendees at the initial meeting as per section 3.5 of the Trust's support arrangements for those involved directly or indirectly in a claim on the support options available. Staff that may become involved at a later date will be advised as relevant.

Manager's also have responsibility to support their staff on an individual basis. Immediate support must be offered through a 1:1 and ongoing support through regular supervision and 1:1s as necessary.

- 4.3 The Wellbeing Policy and Procedure provides for a personal support line service to staff. Should it be identified that a staff member involved needs additional support or is experiencing difficulties, the manager must make the staff member aware of the service and how to access it. Support offered must be recorded in the staff members' personal file.

Contact information of the employee assistance program is as below:

Help Employee Assistance Programme

The Employee Assistance Programme (EAP) is designed to provide you with independent, free and confidential information, advice and support to help you improve your wellness and wellbeing.

They can offer free telephone counselling or face to face sessions on a variety of topics. The service is FREE to all EPUT staff members and available to contact 24 hours a day, 7 days a week.

Help EAP is provided by an external company and so all contact remains confidential.

Telephone: 0800 731 8627

Website: <https://eput.helpeap.com/>

Or occupational health:

Serco ASP Occupational Health & Wellbeing Service

Telephone: (Office hours) 0345 643 4368

Telephone (out of hours): 0330 008 5906

Email: ang-sa.Occupationalhealth@nhs.net

- 4.4 Claims are usually brought against the Trust who indemnify staff by way of our membership to the NHS R schemes as detailed in section 3.0 of the CP10 Claims Policy. If the Legal Services Department are notified or identify any staff member who is at any risk of personal criminal proceedings or action by any regulatory body they will be advised to contact their trade union for support and seek independent advice. The relevant Executive Director for the area that the claim relates to will also be informed.
- 4.6 This section 4.0 applies to staff involved in legal proceedings, other than staff that bring a claim against the Trust who will have access to the usual employment support mechanisms through the usual channels rather than via the Legal Services Department.

5.0 INQUEST FUNDING

- 5.1 NHS R can provide discretionary funding of legal representation at inquests where it is likely that a subsequent civil claim will be pursued.
- 5.2 The Serious Incident Team in liaison with the Legal Services Department are responsible for identifying those incidents where the Trust may be likely to receive a subsequent claim and will complete Appendix 1 – Inquest Funding Request Form with details of the incident and the risks of a claim being brought. On completion of the Appendix 1 – Inquest Funding Request Form, the Serious Incident Team will obtain the authority of the Executive Nurse for inquest funding to be sought and submitted to NHS R. Once this authority is obtained the Appendix 1 – Inquest Funding Request Form must be emailed to epunft.claims@nhs.net for submission to NHS R by the Legal Services Department.
- 5.3 The Legal Services Department will register the claim with NHS R and register on their files/DATIX that an Inquest Funding application has been made.
- 5.5 The Legal Services Team will liaise with the Serious Incidents Team on receiving notification from NHS R of any approval of funding and advise of the limit of funding or of a denial of the request. Costs in excess of the inquest funding agreed will be a direct cost incurred by the Trust. Additional costs will be funded by the Legal Services Department's legal costs budget and the Serious Incidents Team must ensure that the Legal Services Department are kept fully up to date on any costs above the funding limit.
- 5.6 The Serious Incidents Team will be provided with details of the allocated panel solicitors and put in direct contact for the purposes of the process of representation at inquest. The Legal Services Department must be kept apprised on any significant matter at all times such as any admissions/denials of liability or offers of settlement. The Legal Services Department are responsible for liaising with the relevant Executive Director for the area the claim relates to for their opinions on admissions/.denials/offers of settlement and confirming with the Serious Incident Team, NHS R or the panel solicitors as is most appropriate in each individual case.
- 5.7 Once the inquest has been held and the case becomes a formal claim either by the Trust making admissions, offering settlement or denying liability the Legal Services Department will resume full handling of the matter and the procedure will be followed in accordance with this procedure.

6.0 CONFIDENTIALITY

- 6.1 All exchanges of information carried out as part of legal proceedings will be subject to the relevant data protection legislation and the common law duty of confidentiality, as applicable.

7.0 LIAISON WITH STAKEHOLDERS

- 7.1 Any liaison relating to legal matters with third parties such as the NHS R, Claimant, and Solicitors will be undertaken solely by the Trust's Legal Services Department. Communication will be timely and undertaken in an appropriate manner. All communication will be recorded in the claims files/Datix.
- 7.2 Liaison with internal stakeholders such as relevant staff members will be undertaken by the Trust's Legal Services Department who are responsible for ensuring that communication is timely and undertaken in an appropriate manner. All communication will be recorded in the claims files/Datix.

8.0 LINKS WITH INCIDENTS AND COMPLAINTS MANAGEMENT

- 8.1 To ensure effective communication across the Trust, any incident or complaint received by the Risk Team, LSMS, Complaints Department or Serious Incidents Team that could lead to a potential claim for compensation (including financial remedy as defined by the Ombudsman) will be shared with the Trust's Legal Services Department.
- 8.2 The Trust's Legal Services Department will run a routine query from DATIX to review incidents / complaints / inquests when they receive notice of a claim / potential claim.
- 8.3 Results of subsequent investigations undertaken by the Risk, LSMS, Serious Incidents or Complaints Teams will be forwarded to the Trust's Legal Services Department for information.

9.0 INVESTIGATIONS

- 9.1 It is expected that all claims received by the Trust will previously have been reported to the Risk Department on the DATIX Incident form in line with the Adverse Incident Policy CP3 and that appropriate investigations will have already been completed with action plans developed. This investigation will have identified causal factors and action plans will have been instigated and will be of an appropriate level depending on the severity of the incident.
- 9.2 The Trust's Legal Services Department will gather the results of all such investigations from DATIX, where available.
- 9.3 For all claims the Trust's Legal Services Department will seek co-operation from the relevant department within the Trust in gathering all of the relevant information required by the NHS R including, but not limited to:
- Identification of causal factors
 - Witness statements (signed and dated)
 - Feedback to interested parties (e.g. claimant and all staff involved)
 - Identification of actions / lessons learned for escalation to the appropriate Trust committees
 - Debriefing of staff

- Involvement and communication with all applicable external stakeholders.
- Evidence of completion of action plans
- This list is not exhaustive and should only be used as a guide.

All such investigations will be carried out in co-operation with and subject to advice from the NHS R, their representatives / appointed panel Solicitors.

- 9.4 The Trust's Risk, LSMS, Complaints and Serious Incidents Teams will follow up all action plans resulting from Incident Investigations until their completion. Where additional actions are identified by the Legal Services Department following a claim they will notify the appropriate Executive Director, the Health Safety and Security Committee or the Learning and Oversight Sub-Committee to ensure 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.
- 9.5 Implementation of action plans generated following investigations will be monitored by the relevant Directorates and the Committees detailed in 9.4.

10.0 REFERENCE TO OTHER POLICIES / GUIDANCE

- 10.1 When using these procedural guidelines reference should be made to the following:
- Complaints Policy and Procedure
 - Adverse Incident Policy and Procedure
 - NHS Resolution Reporting Guidelines

11.0 MONITORING IMPLEMENTATION AND EFFECTIVENESS OF THE NHS LITIGATION AUTHORITY CLAIMS POLICY AND PROCEDURAL GUIDELINES

- 11.1 The Chief Executive Officer 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 NHS R Schemes and action taken within timescales
 - Communication
 - Process for investigation
 - Process for aggregation and analysis of data
 - Process for learning from claims
- 11.2 The results will be shared with the Quality Committee who will identify and monitor any action required following the audit.
- 11.3 The policy and procedural guideline will be disseminated to all staff via the Trust's Intranet site.

12.0 APPENDICES

Appendix 1 – Inquest Funding Request Form

END

SAMPLE ONLY