

LEGAL SERVICES PROCEDURE

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PROCEDURE SUMMARY

The purpose of this procedure is to provide guidance to all members of staff and officers of the Trust on how to apply for legal advice services provided via the Legal Services Team.

It describes the procedure for obtaining legal advice for all clinical/corporate matters.

The Trust monitors the implementation of and compliance with this procedure in the following ways;

Monitoring of implementation and compliance with this protocol will be undertaken by the Legal Services Team as outlined in the protocol.

Services	Applicable	Comments
Trustwide	✓	
Essex MH&LD		
CHS		

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

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

LEGAL SERVICES PROCEDURE

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**LEGAL SERVICES PROCEDURE****1.0 INTRODUCTION**

- 1.1 By the nature of the Trust's business and in its position as a public authority legislative compliance is a statutory duty.

Many legislative duties and functions are discharged on a daily basis through staff being aware of and complying with their own responsibilities as employees, and in acting in accordance with their own professional codes of conduct, as well as through the development and implementation of policies and procedures. There are however, occasions where it will be necessary to obtain legal advice.

2.0 SCOPE

- 2.1 This procedure applies to all Essex Partnership University NHS Foundation Trust staff. It identifies the system for identifying and accessing legal advice, including access to panel solicitors, avoiding unnecessary expenditure where the appropriate information or expertise exists already within the Trust. It applies to all circumstances where legal advice is required in any issue connected to the business of the Trust. The purpose of obtaining legal advice is to ensure that the activities and actions of the Trust are lawful, and to support Trust employees in carrying out their duties.

3.0 AREAS OF SPECIALIST ADVICE

- 3.1 The Trust has many areas that may require legal advice, examples include:

- Clinical Governance
- Commercial activities
- Contracts
- Coroners Inquests
- Corporate Governance
- Employment
- Equality & Human Rights
- Health & Safety
- Health & Social Care
- Mental Health Act
- Insurance
- Litigation
- Finance
- Fraud
- Mental Capacity
- Mental Health
- Risk Management
- Specialist Services

This list is not exclusive or exhaustive.

- 3.2 In circumstances where specialist advice is sought, staff should consult with their seniors in the first instance as specialist departments within the Trust may be able to offer initial guidance and to agree a proposed course of action.
- 3.3 In circumstances where specialist departments are unable to provide guidance, the relevant Director/Executive Director must be consulted and agreement obtained to outsource the query to panel solicitors for advice.
- 3.4 To determine whether professional legal advice is required consideration should be given to the following:
- Lack of clarity relating to statutory duty of legislative compliance
 - Assistance on interpretation and implications of relevant new and/or existing legislation/guidance.
 - Actual or risk of potential litigation
 - Lack of clarity around statutory position, powers or responsibility

4.0 ACCESSING LEGAL ADVICE

- 4.1 This procedure must be adhered to by all members of staff and officers of the Trust wishing to access legal advice and guidance.

Staff Members

- 4.2 Staff requiring legal advice must refer their queries to the Legal Services Team in accordance with the Legal Services procedure by completing Appendix 1 and emailing this to the Legal Services Team at [REDACTED]
- 4.3 Where a member of staff needs legal advice on any matter, they are required to discuss the need for legal advice with their line managers and relevant service Directors and seek approval to escalate such matters to the Legal Services Team. The Legal Services Team will be satisfied that escalation has taken place appropriately if the relevant authorised person as below has given approval / is copied into any email request for advice.
- 4.4 **Designation**
- Chief Executive Officer
 - Executive Chief Operating Officer and Deputy CEO
 - Executive Chief Finance Officer and Resources Officer
 - Executive Medical Director
 - Executive Nurse
 - Executive Director of Strategy and Transformation
 - Executive Director of People and Culture
 - Associate Director of Planning
 - Legal Services Manager
 - Director of Nursing and Quality
 - Associate Director of Human Resources
 - Director of Estates and Facilities
 - Head of Property and Development

Deputy Director of HR
Legal Services Co-Ordinator
Claims Advisor
Litigation Assistant
FOI and DPA Lead

- 4.5 When authorisation has been obtained in accordance with paragraph 4.3 above, staff can then contact the Legal Services Team at [REDACTED] with a fully completed Legal Query Form, Appendix 1. The relevant authorised person for the services making the enquiry needs to be copied in to the request as confirmation of their agreement to raise a legal query which may incur a fee for the Trust. The Legal Services Team will either provide the necessary guidance or act as the point of contact between staff and Solicitors and ensure that the relevant advice is sought / provided.

Assistant / Associate Directors / Heads of Department

- 4.6 Authorised persons (see 4.4 above) can refer all legal matters directly to the Legal Services Department in the first instance by completing the legal query form in Appendix 1.
- 4.7 Assistant / Associate Directors / Heads of Department not included in paragraph 4.4 should not approach the approved panel law firms directly without the prior authorisation of the Legal Services Team.

Instructions and Timeline

- 4.8 It is imperative that instructions are complete and clear to ensure that targeted and relevant legal advice is provided in a time efficient manner. Therefore, all instructions to the Legal Services Team on appendix 1 must:
- include as much background information as possible
 - provide a summary of the issues to be dealt with
 - attach all supporting documentation
 - specify the legal guidance advice sought/queries to be raised
- 4.9 Where instructions are received by the Legal Services Team over the telephone, the person making the enquiry will be asked to follow-up their enquiry by completing Appendix 1 and sending an email to [REDACTED] in order to ensure there is a formal audit trail of the correspondence and clarity as to the advice sought and documentation provided.
- 4.10 The Legal Services Team will make every effort to respond to queries as soon as possible, however it should be noted that given the nature of the legal work, response times can vary considerably depending on the complexity of the query. If the Legal Services Team is not given enough time to deal with the query, this will need to be outsourced to one of the panel law firms causing the Trust to incur unnecessary legal expenses.

- 4.11 It is therefore imperative that legal queries are raised with the Legal Services Team immediately upon arising or at the earliest opportunity thereafter to afford the Legal Services Team the necessary response time.
- 4.12 Paragraphs 4.10 to 4.11 shall not apply to urgent queries requiring immediate action and for which evidence of urgency is provided.

Specialist Areas:

Estate & Property Legal Matters

- 4.13 All estate and property matters will be handled by the Director of Estates and Facilities or the Head of Property and Development (or a person authorised by the Director) in the first instance. The Director of Estates and Facilities will liaise directly with the Trusts authorised panel solicitors as appropriate, in agreeing what matters are to be outsourced to any of the panel law firms and what are to be handled in-house by Estates experts.
- 4.14 The Legal Services Team will continue to be responsible for centrally recording, reviewing and processing invoices for legal matters raised with the Trust's panel law firms and will seek confirmation from the Director of Estates and Facilities (or persons authorised by the Director) for accuracy of charges made. Panel solicitor are instructed to send invoices for all work undertaken to the Legal Services Team for verification/monitoring of spend.

Contractual Matters

- 4.15 All legal matters relating to the contracts to which the Trust is a party shall be referred to the Legal Services Team to be outsourced to a panel law firm, as appropriate.
- 4.16 When a legal query arises in respect of any existing contract and/or other legal document, a copy of the relevant contract and /or legal document (together with any other supporting documentation) shall be provided to the Legal Services Team alongside a completed Legal Query Form, appendix 1 as paragraph 4.8.

Employment Law matters

- 4.17 All employment law matters, which fall under the remit of the Executive Director of People and Culture will be handled by the Deputy Director Communications directly (or a person authorised by them).
- 4.18 The Legal Services Team will continue to be responsible for centrally recording, reviewing and processing invoices for legal matters raised with the Trust's panel law firms and will seek confirmation from the Deputy Director of Human Resources (or persons authorised by the Director) for accuracy of charges made. Panel solicitor are instructed to send invoices for all work undertaken to the Legal Services Team for verification/monitoring of spend.

Inquests

- 4.19 All inquests will be handled by the Head of Incident Management and Mortality in the first instance.
- 4.20 The Legal Services Team will act as a central point of contact to set up instructions with panel law firms to seek legal advice, guidance and / or representation and apply for any Inquest Funding via our insurers NHS Resolution if a potential claim is expected or to assist with legal representation where risks other than a claim are identified.
- 4.21 The Head of Incident Management and Mortality (or a person authorised by them) will complete the Legal Query Form SI Team at Appendix 2 for Inquest Funding requests ensuring that the information provided sufficiently details the risk of a claim being brought against the Trust.
- 4.22 If the request is for Inquest Funding from the Trust insurers NHS Resolution and is approved;
- * The Legal Services Team will instruct the panel solicitors appointed by NHS Resolution to deal directly with the Head of Incident Management and Mortality (or a person authorised by them). Inquest Funding is generally for an approved maximum, if this maximum is reached at any point the Head of Incident Management and Mortality (or a person authorised by them) will liaise with the Legal Services Team and the instructed panel solicitors for a scope of costs to be agreed by all parties.
- If the requested is rejected;
- The Legal Services Team will liaise with the Head of Incident Management and Mortality (or a person authorised by them) for instruction on whether to submit a request for Legal advice/representation as per paragraph 4.23.
- 4.23 If the request is for legal representation where there is a risk to the Trust, such as reputational risk, the Head of Incident Management and Mortality (or a person authorised by them) will complete the Legal Query Form at appendix 1 and follow the procedure detailed in 4.3 – 4.5.
- 4.24 The Legal Services Team will instruct panel solicitors to deal directly with the Head of Incident Management and Mortality (or a person authorised by them), any increase in the scope of costs during the process must be conveyed and agreed with the Legal Services Team to ensure that invoice records can be maintained correctly. The Legal Services team will consult with the Director of Nursing on any increase in costs.

Mental Health Act Matters

- 4.21 All legal matters relating to the Mental Health Act shall be referred to the Legal Services Team to be outsourced to a panel law firm, as appropriate with paragraph 4.3.

- 4.22 When a legal query arises in respect of a Mental Health Act query copies of all relevant legal documents (together with any supporting documentation) shall be provided to the Legal Services Team by completing appendix 1 and sending in email to [REDACTED].

Civil Claims

- 4.23 All legal matters relating to any civil claims/actions against the Trust must be referred to the Legal Services Team [REDACTED] who will process and if necessary outsource to a panel law firm for guidance on how to proceed.

5.0 COMMUNICATION WITH PANEL SOLICITORS

- 5.1 In all instances, requests for external legal advice must be first requested via the Trust's Legal Services Team. Staff must not contact external panel solicitors directly, with the exception of the authorised persons listed in the above section 4.4 of this procedure.
- 5.2 Any costs incurred which have not been authorised by the Legal Services Department may result in those legal charges being charged to individual budgets.

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