

The Newcastle upon Tyne Hospitals NHS Foundation Trust

Claims Management Policy

Effective: November 2010

Review: November 2012

1. Introduction

Claims management and claims monitoring is a fundamental tool of risk management, the aim of which is to collect information about claims which will help to facilitate wider organisational learning.

2. Summary

The policy contains guidance on how claims are to be dealt with within the organisation involving third parties such as the NHS Litigation Authority (NHSLA), solicitors and claimants. It includes the reporting procedure for the Clinical Negligence Scheme for Trusts (CNST), Liabilities to Third Parties Schemes (LTPS) and Property Expenses Scheme (PES).

3. Responsibilities

3.1 Trust Board

The Chief Executive is ultimately responsible for claims management and the Medical Director has executive responsibility for managing effective claims management.

3.2 Senior Management

The Director of Quality and Effectiveness manages the Clinical Governance and Risk Department of which the Litigation function forms a part.

3.3 Legal and Committee Services Manager

The Legal and Committee Services Manager has day to day responsibility for the management of the litigation function and reports directly to the Director of Quality and Effectiveness. The responsibilities include ensuring that all claims are investigated and managed as outlined in the policy and to the correct timescales, preparing reports as required and coordinating the completion of actions required.

4. Summary of Schemes

4.1 Clinical Negligence Scheme for Trusts (CNST)

The Clinical Negligence Scheme for Trusts handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995 (or when the body joined the scheme, if that is later). Although membership of the scheme is voluntary, all NHS Trusts (including Foundation Trusts) and Primary Care Trusts (PCTs) in England currently belong to the scheme.

4.2 Liability to Third Parties Scheme (LTPS)

The liabilities to third parties scheme (LTPS) and property expenses scheme were established in 1999 to provide a means for NHS Trusts to fund the cost of legal liabilities and property losses and to encourage and support the effective management of risks and claims.

4.3 Property Expenses Scheme (PES)

The Property Expenses Scheme covers "first-party" losses by NHS bodies such as property loss or damage. It is a voluntary scheme, funded through members contributions.

5. Procedure Notes

Claims received will be managed and investigated as outlined below for all potential severities of claim, all claims being investigated and managed in the same way, irrespective of severity.

5.1 Clinical Negligence Scheme for Trusts

- Whenever a letter is received from a solicitor indicating that a claim is being lodged against the Newcastle upon Tyne Hospitals NHS Foundation Trust, members of staff should not make any kind of response or comment but immediately pass the letter to the Legal Department, Freeman Hospital.

On receipt of the letter of claim into the Legal and Committee Services Manager's office, the following actions will be taken:

- Date-stamp receipt of letter.
- Identify the location of the relevant casenotes/other documents.
- Identify all medical and other staff involved in delivering the care at the time of the allegation and seek their comments.
- Open a litigation file allocating a reference number.
- Acknowledge receipt of claim correspondence to claimant's solicitor within 2 working days indicating that the Trust or Solicitors acting on our behalf will be in contact.
- Photocopy three sets of casenotes and paginate.
- Request a schedule of all radiology, scans and images.
- Refer to the Trust's solicitors enclosing a copy of the first letter of contact from the claimants solicitors together with one set of copied

casenotes. Copy records must be provided to the claimant's solicitors within 40 days of the request subject to payment of the fee.

- Request a report from all relevant staff. If advice or assistance is required in the preparation of the report, please refer to the Legal and Committee Services Manager.
- Hold original casenotes relating to litigation in the Legal Filing Cabinets located in the Legal and Committee Services Office, Freeman Hospital, with restricted access only.
- A preliminary analysis, if appropriate, should be completed by the Trust's nominated solicitors after the request for disclosure.
- Monitor response from Trust solicitor relating to the decision to defend or settle.
- Monitor details relating to possible quantum, timescale and length of action.
- Monitor case, recording any notification of court hearings or payment into court.
- Monitor and record all outcomes.
- Collate statement of costs including damage awards, claimant and defence charges.

5.2 Public Liability Claims

- Whenever a letter is received from a solicitor indicating that a claim is being lodged by a member of the public against the Newcastle upon Tyne Hospitals NHS Foundation Trust, no response or comment should be made but the letter should immediately be passed to the Legal and Committee Services Manager, Freeman Hospital.
- Claims in this category will be referred immediately to the NHSLA.
- This process will involve liaising with relevant Departmental Heads and other senior personnel to collate statements and reports.

5.3 Employment Liability Claims

- Whenever a letter is received from a solicitor indicating that a claim is being lodged by a present or past employee of the Newcastle upon Tyne Hospitals NHS Foundation Trust, no response or comment should be made but the letter should immediately be passed to the Legal and Committee Services Manager, Freeman Hospital.
- Claims in this category will be referred immediately to the NHSLA.

- This process may involve liaising with the Occupational Health Department, Heads of Department and other Trust employees relating to the collation of relevant statements and reports.

5.4 Property Expenses Scheme

- The Director of Estates and Facilities, deals with all Property Expenses.

Claims e.g. fire, flood and all property claims should be immediately notified to the Director of Estates and Facilities, Freeman Hospital.

- Claims relating to damage or theft of property should be immediately notified in writing to the Director, Estates and Facilities who will in turn report the claim to the NHSLA. The Trust's current excess is £20,000. Incident report forms must be completed in respect of claims.
- The Head of Department will immediately prepare a report for the Director of Estates and Facilities regarding the exact nature and cause of the damage or loss and statements obtained from any witnesses. The Director of Estates and Facilities will then pursue any follow-up action. This should be completed within one month of a loss.
- The Finance Department will be informed of the potential value of the claim.
- Invoices should be obtained through supplies where possible for the cost of purchase replacement of the property damaged. Consideration should be given to 'hidden' costs relating to a claim such as overtime worked to rectify the damage/situation, cost of equipment hired e.g., dryers to dry a flooded room. This should be supported by documentary evidence and if appropriate, photographs.

5.5 Small Claims

Small Claims are managed by the Operational Services Manager for all sites and all such claims should be forwarded to that person.

6. Communication with Stakeholders

6.1 All stakeholders including the appropriate Solicitor and the NHS Litigation Authority should be informed of developments as detailed above. It is the responsibility of the Legal and Committee Services Manager to ensure that appropriate communications are undertaken to the agreed timescales.

6.2 Notification to National Health Service Litigation Authority (NHSLA)

- It is the responsibility of the Trust solicitor to ensure that appropriate reporting forms are completed and sent to the Legal and Committee Services Manager and forwarded to the NHSLA.

- It is the responsibility of the Trust solicitor to ensure that the correct and appropriate category of the claim has been registered with the NHSLA following the agreement of the Legal and Committee Services Manager. The copy of the completed claim form is to be held at the Trust.
- It is the responsibility of the Trust on solicitor's advice to ensure all required information, copy reports and other appropriate correspondence is forwarded to the NHSLA, together with a summary of the claim prepared by the Trust solicitor within the recorded timetable.
- It is the responsibility of the Trust to refer all Public Liability/Employment Liability claims to the NHSLA.
- The decision of the NHSLA will be communicated to the relevant parties' e.g. Finance, Estates, Head of Department. Reimbursement will be sent to the Finance Department for processing.

7. Claims Data Collection and Analysis

The Trust uses a proprietary software system (Datix) to collect and store all data relating to claims management within the Trust.

This information is used to provide trends and analysis to Directorates on request and inform discussion and learning from the claims management process.

Specific claims data is also provided for meetings with senior Trust management and Directorates as part of the Clinical Standards and Practice Review meetings which are held on an ongoing rolling basis. The minutes of these meetings are submitted to the Clinical Governance and Quality Committee which are, in turn, submitted to the Trust Board.

As part of the Quality and Performance Account the number of new claims received per month is reported to the Trust Board and a monthly statement of new and closed claims together with the running total is provided to senior Trust management.

Information on claims is also submitted to and discussed at the Integrated Governance Group as part of the process for encouraging learning and promoting improvements in practice based on the aggregated analysis of incidents, complaints and claims by identifying any trends and themes as outlined in the Aggregated Data and Learning from Incidents, Complaints and Claims policy .

8. Learning from Litigation

- Committee with overarching responsibility for claims management.

The Corporate Governance Committee has responsibility for considering issues arising from the claims and Inquest processes. It

also has responsibility for the review of actions to be taken following claims received.

These issues are identified at the Integrated Governance meetings which are held with representatives from the litigation, risk management, Health & Safety and complaints functions and forwarded to the Clinical Risk Group for discussion and dissemination to all Directorates and Departments.

- Meetings with Clinical Directorates.

There is a rolling programme of meetings with Clinical Directorates chaired by the Medical Director and attended by Clinical Directors and senior colleagues together with the Director of Quality & Effectiveness and Legal and Committee Services Manager together with the NHSLA Panel Solicitors when all claims in relation to that Directorate are discussed with a risk management perspective.

- Integration of the Litigation function and risk management.

Litigation, risk management and health and safety are functions managed by the Director of Quality & Effectiveness within the Clinical Governance & Risk Department and there are quarterly Integrated Governance Group meetings where issues relating to Claims, Incidents and Complaints are identified and discussed and appropriate referral undertaken.

- Inquests

The Legal and Committee Services Manager manages the Inquest process and issues arising from Inquests are considered as set out above.

- Training

Training for Investigation of Claims is delivered on an as required basis to nominated staff as outlined in the Mandatory Training Policy and may include individual sessions or training delivered by the Trust Solicitors.

9. Confidentiality

All documents in relation to claims management are confidential and the Trust's policy on confidentiality (see Confidentiality and Security Data Accreditation Policy) must be adhered to.

10. Support Mechanism for Claimants and Staff

It is important to consider not only how the claimant feels in such situations but also the members of staff being claimed against as this can be an extremely stressful experience. Briefing meetings will be held prior to any attendance at court as a witness. A range of support mechanisms are provided by the Trust

(see Supporting Staff Involved in Traumatic Stressful Incidents, Complaints or Claims Policy).

11. Monitoring Compliance

Compliance with this policy will be monitored by the Legal and Committee Services Manager. The Legal and Committee Services Manager will present a quarterly summary of litigation cases and ongoing claims together with details of allegations and procedural changes to the Corporate Governance Committee. In addition the Legal and Committee Services Manager contributes to the Integrated Governance report by reporting numbers of claims and salient issues for organisational learning which will be presented to the Clinical Risk Group.

An annual audit will also be undertaken to ensure that the processes for managing claims are effective and in line with policy and reported to the Corporate Governance Committee.

The Corporate Governance Committee will review the quarterly reports and annual audit report, identify actions to be taken and monitor the action plans through to completion.

**THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST
IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Policy Title:	Clinical Negligence Claims Policy	Policy Author:	Steve Kirkup
		Yes/No?	You must provide evidence to support your response:
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems.	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	
4(a).	Is the impact of the policy/guidance likely to be negative? <i>(If “yes”, please answer sections 4(b) to 4(d)).</i>	No	
4(b).	If so can the impact be avoided?		
4(c).	What alternatives are there to achieving the policy/guidance without the impact?		
4(d).	Can we reduce the impact by taking different action?		

Comments:	Action Plan due (or Not Applicable):
	N/A

Name and Designation of Person responsible for completion of this form: Steve Kirkup, Legal & Committee Services Manager Date: 03.12.2009

Names & Designations of those involved in the impact assessment screening process: Steve Kirkup, Legal & Committee Services Manager

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)