

# OP31 Legal Services Policy



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## **Attachments:**

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[Attachment 2 - Standards of preparation, support and signposting for staff in relation to legal proceedings \(including giving evidence at Inquests\)](#)

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## 1.0 Policy Statement (Purpose / Objectives of the policy)

- 1.1 The Trust is committed to the timely and effective resolution of all claims brought against it. To this end the Legal Services Managers will manage all Clinical Negligence Scheme claims [CNST], Liabilities to Third Party claims [LTPS] and Property Expenses scheme claims [PES] in accordance with NHS Resolution [NHSR] procedures and the Civil Procedure Rules.
- 1.2 Staff must be aware of the procedure for handling CNST, LTPS and PES claims within the Trust ([Attachment 1](#)) in the event that they may become involved in the claims process.
- 1.3 In adhering to this Policy, all applicable aspects of the Conflicts of Interest Policy must be considered and addressed. In the case of any inconsistency, the Conflicts of Interest Policy is to be considered the primary and overriding Policy.

## 2.0 Definitions

- 2.1 The definitions for the claims procedures are contained within [Attachment 1](#).

## 3.0 Accountabilities

### 3.1 Trust Board

The Trust Board is responsible for ensuring that correct procedures are in place to meet the requirements of the guidance referred to above. These responsibilities will be discharged by the Legal Services Managers through the Group Company Secretary and the Chief Nurse. The Trust Board has for the analysis of all claims. The Trust Management Committee has overarching responsibility for this policy.

### 3.2 Chief Executive

The Chief Executive is the Board member ultimately responsible for clinical negligence, personal injury and property expenses claims within the Trust. He will advise the Board of any major contentious issues and, in particular, where a claim receives media interest.

### 3.3 Chief Nurse

The Chief Nurse has responsibility for compliance with the claims procedures.

### 3.4 Group Company Secretary

The Group Company Secretary is responsible for the operation of the Legal Services Team and the use of resources by the Legal Services Managers. They are accountable for supporting both the Chief Executive and Trust Board members in their risk management activity relating to clinical, corporate and financial risks and those associated with claims and litigation, with support and input from the Legal Services Managers.

### 3.5 Legal Services Managers

The Trust's Legal Services Managers are responsible for the day to day

management of the Legal Services Team and resources, and for the operations and work-flow of claims. They are accountable for ensuring compliance with this policy, including compliance with the processes set out in [Attachment 1](#). In addition, the Legal Services Managers provide legal advice and specialist training to the organisation in relation to medical law, clinical negligence and the prevention of and learning from compensation claims.

### 3.6 **Directorate and Divisional Managers/ Management Teams**

The Trust's Directorates and Divisional Managers will be responsible for assisting the Legal Services Managers in carrying out their enquiries as and when they arise in respect of personal injury claims, clinical negligence claims and inquests within the time limits specified by the NHR and other stakeholders.

## 4.0 **Policy Detail**

4.1 Under the Pre-Action Protocol for the Resolution of Clinical Disputes and Pre-Action Protocol for Personal Injury Claims, the Trust is required to maintain effective and efficient arrangements for the storing of patients' records, diagnostic reports and radiology e.g. x-rays and scans and to retain them, and make them available in accordance with the guidance of the Department of Health.

4.2 Under the NHR Early Notification Scheme the Trust is required to report all maternity incidents that occur on or after 1 April 2017 which are likely to result in severe brain injury.

4.3 The Legal Services Managers will manage all clinical negligence, personal injury and property expenses claims in accordance with the NHR guidance.

## 5.0 **Financial Risk Assessment**

1	Does the implementation of this policy require any additional Capital resources	No
2	Does the implementation revenue resources of this policy require additional revenue resources	No
3	Does the implementation of this policy require additional manpower	No
4	Does the implementation of this policy release any manpower costs through a change in practice	No
5	Are there additional staff training costs associated with implementing this policy which cannot be delivered through current training programmes or allocated training times for staff	No

## 6.0 **Equality Impact Assessment**

An Equality and Diversity risk assessment has been undertaken and no Equality and Diversity Risks have been identified for staff patients or the public as a result of

the implementation of this policy.

An equality analysis has been carried out and it indicates that:

Tick	Options
X	A. There is no impact in relation to Personal Protected Characteristics as defined by the Equality Act 2010.

## 7.0 Maintenance

- 7.1** This policy will be reviewed no later than June 2026 by the Legal Services Managers and approved in line with the Trust process outlined in OP01 Policy. Thereafter the policy will be reviewed and updated every three years as a minimum.
- 7.2** The policy may be revised earlier than the review date to take account of any changes in the law, or NHSR guidelines.

## 8.0 Communication and Training

- 8.1** The Legal Services Managers will provide training on the claims procedure ([attachment 1](#))

## 9.0 Audit Process

Criterion	Lead	Monitoring	Frequency	Committee / Group
NHSR schemes relevant to the organisation	Legal Services Manager	Audit of claims covering a twelve month period	6 monthly	Trust Board
Actions to be taken including timescales	Legal Services Manager	Audit of claims covering a twelve month period against timescales in <a href="#">attachment 1</a> , section 7 of policy	6 monthly	Trust Board
How the organisation communicates with relevant stakeholders	Legal Services Manager	Audit of claims covering a twelve month period against timescales in <a href="#">attachment 1</a> , section 7 of policy	6 monthly	Trust Board

Different levels of investigation appropriate to the severity of event	Legal Services Manager	Audit of claims covering a twelve month period against timescales in <a href="#">attachment 1</a> , section 7 of policy	6 monthly	Trust Board
How action plans are followed up	Legal Services Manager	Audit of claims covering a twelve month period against timescales in <a href="#">attachment 1</a> , section 7 of policy	6 monthly	Trust Board

## 10.0 References:

Clinical Negligence Scheme for Trusts - Membership Rules [Revised April 2013]  
 Clinical Negligence Reporting Guidelines. [5<sup>th</sup> edition 2008] 6<sup>th</sup> edition April 2014  
 Clinical negligence litigation - a very brief guide for clinicians [2003] PES, LTPS:

Membership Rules [2012]

LTPS claims reporting guidelines 2014 NHSR Disclosure List 2014

Witness statement template [2014] LPTS Document Guide [2014] CNST

document Guide [2014] CNST claim form report [2014] NHSR LPTS pack [2014]

### [Early Notification Scheme \(EN\) member guidance – June 2017](#)

The NHS Constitution: The NHS belongs to us all [2010]

Department for Constitutional Affairs [DCA]. 'Pre-action Protocols for the Resolution of Clinical Disputes'. *DCA website page*. Available at: [www.dca.gov.uk](http://www.dca.gov.uk)

Department for Constitutional Affairs [DCA]. 'Pre-Action Protocol for Personal Injury Claims'. *DCA website page*. Available at: [www.dca.gov.uk](http://www.dca.gov.uk)

Ministry of Justice. [2013]. *Civil Procedure Rules*. Ministry of Justice. Available at: [www.justice.gov.uk](http://www.justice.gov.uk)

Chief Medical Officer. [2003]. *Making Amends: A consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS*. London: Department of Health. Available at: [www.dh.gov.uk](http://www.dh.gov.uk)

Mental Capacity Act 2005 [www.justice.gov.uk](http://www.justice.gov.uk)

Data Protection Act 2018

NHS Redress Act 2006

Management of Health and Safety Policy [HS01](#)

Being Open (Duty of Candour) Policy [OP60](#)

Risk Management and Patient Safety Reporting Policy [OP10](#)

NHSR Risk Management Standards 2013/2014 [www.nhs@resolution.uk](mailto:www.nhs@resolution.uk) CNST

Maternity Standards 2013/2014 [www.nhs@resolution.uk](mailto:www.nhs@resolution.uk)

NHSR Guidelines on the Duty of Candour 2014/ Apologies and Explanations

[2007] [www.nhsla.com](http://www.nhsla.com)  
NHSR procedure on reporting inquests where inquest funding is necessary  
January 2023.

**Part A - Document Control**

<p><b>Policy number and Policy version:</b></p> <p>OP31</p> <p>Version 8.0</p>	<p><b>Policy Title:</b></p> <p><b>Legal Services Policy</b></p>	<p><b>Status:</b></p> <p>Final</p>		<p><b>Author: Legal Services Manager</b></p> <p><b>Chief Officer Sponsor: Group Company Secretary</b></p>
<p>Version / Amendment History</p>	<p>Version</p>	<p>Date</p>	<p>Author</p>	<p>Reason</p>
	<p>8.0</p>	<p>Sept. 2023</p>	<p>Legal Services Manager</p>	<p>Full review minor amendments</p>
	<p>7.3</p>	<p>May 2023</p>	<p>Legal Services Manager</p>	<p>Extension</p>
	<p>7.2</p>	<p>July 2020</p>	<p>Legal Services Manager</p>	<p>Addition of Attachments 2 and 3</p>
	<p>7.1</p>	<p>March 2020</p>	<p>Legal Services Manager</p>	<p>Review due – minor changes</p>
	<p>7.0</p>	<p>Jan 2018</p>	<p>Legal Services Manager</p>	<p>Full Review due</p>
	<p>6.1</p>	<p>Nov 2017</p>	<p>Legal Services Manager</p>	<p>Update of Attachment 1</p>
	<p>6</p>	<p>Jan 2015</p>	<p>Legal Services Manager</p>	<p>Review</p>
	<p>5</p>	<p>June 2013</p>	<p>Legal Services Manager</p>	<p>NHSLA Review</p>
	<p>4</p>	<p>August 2012</p>	<p>Legal Services Manager</p>	<p>Minor Amendments NHSLA</p>
	<p>4</p>	<p>Nov 2011</p>	<p>Legal Services Manager</p>	<p>Review</p>
	<p>3</p>	<p>Oct 2009</p>	<p>Legal Services Manager</p>	<p>Review</p>
	<p>2</p>	<p>March 2008</p>	<p>Legal Services Manager</p>	<p>Review</p>
<p>1</p>	<p>March 2005</p>	<p>Legal Services Manager</p>		

<b>Intended Recipients: All Trust Staff</b>	
<b>Consultation Group / Role Titles and Date: Group Company Secretary, Legal Services Managers</b>	
<b>Name and date of Trust level group where reviewed</b>	Trust Policy Group – September 2023
<b>Name and date of final approval committee</b>	Trust Management Committee – October 2023
<b>Date of Policy issue</b>	November 2023
<b>Review Date and Frequency</b> (standard review frequency is 3 yearly unless otherwise indicated – see section 3.8.1 of Attachment 1)	September 2026 (Every 3 Years)
<b>Training and Dissemination: No training issues To be placed on Trust intranet</b>	
<b>To be read in conjunction with:</b> <a href="#">OP10 Risk Management and Patient Safety Reporting Policy</a> <a href="#">OP08 Complaint Management Policy</a>	
<b>Initial Equality Impact Assessment (all policies): Completed Yes</b> <b>Impact assessment (as required): Completed Yes</b> If you require this document in an alternative format e.g., larger print please contact Policy Management Officer 85887	
<b>Monitoring arrangements and Committee</b>	See policy
<b>Document summary/key issues covered:</b> Policy and attachments describe the processes for managing clinical negligence, personal injury claims and inquest notifications.	
<b>Key words for intranet searching purposes</b>	



# OP31 Attachment 1: Clinical Negligence, Personal Injury and Property Expenses Claims Handling Procedure

## 1.0 Introduction

- 1.1 The procedure details the management of clinical negligence, personal injury and property expenses claims and makes staff aware of their responsibilities and the procedures for handling claims within the Trust. The Trust is committed to the effective and timely investigation and response to any claim ensuring that lessons are learned where things go wrong to maintain consistent and high-quality services, a key element of risk management.
- 1.2 The procedure is designed to ensure that the process for managing claims meets the standards and requirements of the National Health Service Resolution (NHSR) reporting guidelines for non-clinical and clinical negligence claims, as well as the Civil Procedure Rules which relate to Pre-Action Protocol for the Resolution of Clinical and Non Clinical Disputes.

## 2.0 Definitions

- 2.1 A claim is an allegation of clinical negligence and/or a demand for compensation made following an adverse incident resulting in personal injury.
- 2.2 A claimant is a person who has entered into legal proceedings against the Trust or is pursuing compensation. The Trust is the defendant to the legal proceedings.
- 2.3 The NHSR operates the **Clinical Negligence Scheme for Trusts (CNST)**, of which the Trust is a member. Under this scheme the NHSR in conjunction with the Legal Services Managers deal with the payments of clinical negligence claims awarded/settled against the Trust and where necessary appoints panel solicitors to assist in the handling of claims.
- 2.4 The Trust is a member of the **Liability to Third Parties Scheme (LTPS)** which is also managed by the NHSR. Under this scheme the NHSR, in conjunction with the Legal Services Managers, deal with the payment of non-clinical claims awarded/settled against the Trust and where necessary appoint panel solicitors to assist in the handling of claims.
- 2.5 **The Property Expenses Scheme (PES)** is operated by the NHSR of which the Trust is a member. The Trust can claim for reimbursement of expenses arising from loss or damage to its property e.g. fire, flood and theft.
- 2.6 Anyone receiving a service provided by the Trust who believes that they have suffered loss or detriment to their health or wellbeing resulting from the delivery of that service may make a claim. This may relate to clinical care or treatment provided to a patient, or injury/loss to a patient, visitor or member of staff sustained as a result of an incident/accident.
- 2.7 Indemnity and the legal processes under this policy apply to **Vertically Integrated Primary care** practices from the date of transfer into RWT services. Indemnity and processes under this policy does not apply to claims occurring

prior to the transfer date or where the incident or claim does not relate to RWT commissioned NHS funded care.

- 2.8 The triggers which invoke the claims procedure include a request for medical records by a patient's solicitor indicating that a potential claim is being contemplated; a **Letter of Claim or Particulars of Claim** served by the claimant's solicitor; where a patient or their relative makes a complaint and indicates that they will be seeking legal action, or where an incident or complaint shows that a patient received treatment or care below the accepted Trust/national standard.

### 3.0 Accountabilities

- 3.1 **The Legal Services Managers** are responsible for the management and handling of clinical negligence, personal injury and property expenses claims brought against the Trust, and for the reporting and conduct of the claim in line with the NHR standards and Civil Procedure Rules. The Legal Services Managers are responsible for managing claim requirements in conjunction with managers and staff including the Assurance and Complaints departments.
- 3.2 **Divisional Managers** are responsible for nominating appropriate staff to undertake investigations following serious incidents, providing relevant reports to the Trust's groups and/ or committees in relation to incident risk management (see OP10 for further details).
- 3.3 **The Legal Services Managers** will notify the Divisional Managers of claims that are received relating to their divisions. **Divisional Managers** will provide the Legal Service Managers with any divisional papers relevant to the claim including any complaint and incident reports (if not **LSMs** will consult with the Healthcare Governance Managers as to the progress of investigations where inquest notifications have been received during the RCA process). The Legal services managers will enquire with Healthcare Governance Managers (HGM's), whether an RCa process have been finalised.
- 3.3.1 The Legal Services Managers will discuss claims with lead clinicians, Senior Managers and the Divisional Management Teams to obtain their views and comments, deal with court proceedings and alternative disputes resolution, enter into negotiations in conference with counsel and solicitors, in conjunction with the NHR and their solicitor.
- 3.3.2 The Legal Services Managers will deal with any queries from a claimant about their claim through their solicitor or legal representative.
- 3.3.3 The Legal Services Managers are the point of contact for advice in regard to inquests, liaising with the Coroner's office as the channel through which the Coroner submits their requests for statements from staff. The Legal Services Managers will manage all inquests on behalf of the Trust and provide details of all learning experiences arising from the hearings.
- 3.4 The Trust, as a public body, has a duty to co-operate with the Police. There are, however, procedures to be followed when dealing with requests for information. Many routine requests are handled by staff on a regular basis in line with data protection/ information sharing rules, and where queries arise

these must be addressed to the Legal Services Managers or Data Security & Protection team.

3.5 The full co-operation of all staff is essential to ensure the successful handling of any claim made against the Trust. As part of their responsibilities, staff involved in a claim will respond within a given timescale to any requests for information, documentation, reports or statements requested by the Legal Services Managers.

3.6 Following an incident investigation, staff must notify the Legal Services Managers of any adverse incidents where the following criteria have been met:

- A potential large value claim may arise (damages of over £250,000)
- Where a group action (multiple claimants) is possible
- Where a fatality or serious injuries have been sustained in an accident
- Where a cohort of patients have been adversely affected by the negligence/professional misconduct of a clinician or team;

These matters may need to be reported to the NHR immediately.

3.7 In addition the Legal Services Managers must be notified where a complaint investigation indicates that an admission of liability has been made.

#### **4.0 Delegation Limits**

4.1 The NHR has responsibility for the financial management of all clinical negligence claims. It also has responsibility for the financial management of all reportable LTPS and PES claims above the excess levels.

4.2 The Trust Board has responsibility for the financial management of LTPS and PES claims under the relevant excess, which is delegated to the Legal Services Managers, who will give approval to settlement of claims, admissions of liability or going to trial. All payments in settlement of LTPS claims are entered in the register of losses and special payments by the NHR.

#### **5.0 Period within which a claim may be brought - This is referred to as the 'Limitation Period'**

5.1 To bring a clinical negligence claim or personal injury / public/employers liability claims the Claimant must issue proceedings through the Court within a period of 3 years of the date of incident which allegedly caused them harm or within 3 years of their 'date of knowledge' if this can be proven to be later. The two main exceptions to this are: children their 3-year period does not commence until they reach the age of 18, or people under a 'disability' i.e.: 'lack of mental capacity' who are incapable of managing their own affairs such people may bring an action at anytime whilst the disability exists.

#### **6.0 Procedure Detail - Investigation and Claims Handling Process**

6.1 This procedure contains guidance on how claims are to be dealt with within

the Trust and the action taken by the parties involved.

- 6.2 Where a member of staff receives a letter requesting disclosure of records or a letter of notification of a claim, they must notify the Legal Services Managers immediately by telephone extension 85956/85957 on the same day as receiving the letter or hand deliver it to the Legal Services Manager.

**6.3 Legal Services Managers process for managing Clinical Negligence Scheme for Trusts claims:**

Upon receipt of a pre-action request for disclosure of medical records the Legal Services Department will:

- Record the claim on the Datix claims module and the Claims Action Tracker
- Disclose the relevant records including any electronically held records
- Take steps to determine if an incident investigation has been carried out and obtain copies of associated documentation
- Take steps to determine if a complaint has been received and obtain copies of all relevant documentation within the specified time limits
- Request from the relevant directorate/division any additional relevant documentation
- Seek preliminary opinion from the relevant clinical area on the claim

Once all relevant documentation has been obtained the Legal Services Managers will:

- Complete a claim form report in respect of CNST matters.
- Report the matter to the NHR adhering to the report to me guidelines found within the NHR extranet website.
- Report matters relating to the Early Notification Scheme which relates to Maternity Incidents that occur on or after 1 April 2017.
- Refer the matter to the relevant Healthcare Governance Manager for reporting and investigation if the claim has not previously been reported as an adverse incident despite meeting the reporting requirements set out in OP10 or if there are any identified risks arising from the claim

Upon receipt of a letter of claim and/or proceedings the Legal Services Department will:

- Carry out any steps detailed above if not already completed
- Report the matter to the NHR by using the report to me system portal on line
- Acknowledge the letter of claim
- Notify the relevant directorate/department/clinical lead
- Send to the NHR via the reporting system applicable within the specified time limit

Timescales for carrying out these steps are detailed in locally agreed protocols.

#### 6.4 Legal Services Managers process for managing Liability to Third Parties Scheme claims:

Upon receipt of a LTPS letter of claim or notification from the NHR the Legal Services Department will:

- Record the claim on the Datix claims module and the Claims Action Tracker applicable to claims reported pre and post 1<sup>st</sup> August 2013
- Acknowledge the letter of claim where the accident occurred prior to 1<sup>st</sup> August 2013
- Take steps to determine if an incident investigation has been carried out and obtain copies of associated documentation
- Request from the relevant directorate/division any additional relevant documentation (including any documentation included on the NHR Standard Disclosure List)

Once all relevant documentation has been obtained the Legal Services Managers will:

- Complete the NHR investigation pack and submit all relevant documentation informing the NHR of the decision on liability.
- Complete a claim report form and submit the same to the NHR along with all relevant documentation
- Refer the matter to the relevant Healthcare Governance Manager for reporting and investigation if the claim has not previously been reported as an adverse incident despite meeting the reporting requirements set out in OP10

Timescales for carrying out these steps are detailed in locally agreed protocols.

#### 6.5 Internal property expenses claims management process:

These claims are not subject to a defined reporting process but will be reported to the NHR by the Legal Services Managers, who will thereafter work in conjunction with the NHR to resolve the claim.

#### 6.6 External Timescales and Procedures for the Exchange of Information with Other Parties

##### Clinical Negligence Claims:

Action	Time limit
<b>Request for disclosure of records received</b>	
Provision of medical records	Within 40 days of receiving an authorised request for disclosure

Claim Report Form (CN)	Within 30 days of receipt of request for records
NHSR investigation pack (PI)	Within 25 days of receiving the CNF portal notification from the NHSR
Report matter to the NHSR if the requirements of section 4.1 of the CNST reporting requirements are met	Within 2 months of receipt of request for records
<b>Formal letter of claim/proceedings received</b>	
Acknowledge the claimant's solicitor's Letter of Claim.	Within 21 days of receiving a letter of claim
Forward letter to the NHSR and report case to NHSR if not previously reported	Within 24 hours of receiving a letter of claim
Provide a claim report to NHSR	Within 2 months following receipt of a letter of claim
Forward any Part 36 offers, nomination of expert letters or notice of intention to commence court proceedings to NHSR	Within 24 hours of receiving the notification from claimant solicitors
Early notification scheme form received from Maternity	Within 30 days of incident notify NHSR

### Personal Injury Claims:

Action	Time limit
<b>Letter of Claim received</b>	
Acknowledge the claimant's solicitor's Letter of Claim, this is only applicable where the date of incident is pre 1 August 2013	Within 21 days of receipt
Undertake a claim report/review	Within 30 days of receipt
Report to NHSR	Within 40 days of notification

Provide NHR pack (ministry of justice personal injury portal claims only)	Within 30/40 days of notification
Forward any Part 36 offers, nomination of expert letters or notice of intention to commence court proceedings to NHR	Within 24 hours of receipt

**Inquests:**

Forward a full disclosure of medical records including electronically held records to the Coroner's Office.	Within 28 days of notification from Coroner's Court
To provide to the Coroner's Office a report from clinician's where requested.	Within 28 days of notification from Coroner's Court
Report to NHR where Inquest funding criteria met	Within 28 days of inquest hearing date notification

**7.0 Lessons to be learnt from Claims**

The Legal Services Managers will keep under review all evidence relating to the claim and will identify to the relevant Divisional Management team, Divisional Management Staff and Senior Management any case where it is identified that the Trust can learn from the claim. As a minimum this will be done:

- When the claim report is completed
- When expert evidence and/or witness statements are exchanged
- When an admission of breach has been made
- At the conclusion of the case and or settlement

Where claims have not previously been reported as an incident or where the claim exposes risks which were not addressed as part of the incident investigation. This process will ensure that all claims are subject to an investigation appropriate to the level of severity of the event. Action plans prepared in response to these additional risks will be followed up in accordance with the process for follow up of adverse incident action plans as described in OP10.

At the conclusion of each claim a report will be provided to the relevant directorate and division summarising the claim. This report will identify any areas of learning (where they have not previously been identified and addressed) as well as areas of good practice.



## 8.0 Claims Data Collection and Analysis

- 8.1 A claims database is maintained on the Datix system. A quarterly report on claims is provided to the directorates and divisions from the Datix system as part of the Integrated Governance Report.
- 8.2 The Legal Services Managers provide a 6 monthly report on claims to the Trust Board, detailing the number of claims and inquests on-going, closed claims and trends.
- 8.3 A 6 monthly report is presented to the Quality Group and Trust Board for information.
- 8.4 A quarterly report will be provided on claims and inquest matters detailing the numbers of on-going, new and closed claims analysing trends where applicable to PSIRF.

## 9.0 Supporting staff

If a claim concerns a member of staff, the Legal Services Managers will notify them and support them through the legal process.

The Legal Services Managers will support any member of staff during the preparation of a witness statement and the giving of evidence in court or Coroner's Court. Members of staff may be required to attend legal conferences when necessary for the proper conduct of the case, and act as witnesses where the Trust is defending a claim. The Legal Services Managers will support the member of staff during meetings with solicitors and counsel and at legal conferences. The member of staff will be given the opportunity to have a representative supporting them throughout the claims process, if they wish (refer to OP10 for specific detail relating to support offered/available to staff in the case of litigation, inquests, evidence/statement provision).

Line Managers must provide an opportunity for the staff members to discuss their concerns about being notified of a claim or an inquest as soon as possible and the Legal Services Managers can be informed so that they can address any issues the member of staff might have about the claim or inquest. The purpose of this is to support the member of staff, discuss the need for any further support they might need. On-going support required by staff will vary depending on the circumstances and the individual involved. Should any health and wellbeing issues arise as a result of the member of staff being involved in a claim or an inquest then a referral to the Occupational Health Department or other support agency must be considered. Where a staff member is experiencing difficulties associated with the being involved in a claim or an inquest, the manager along with the member of staff, will consider appropriate support input and where necessary, reasonable adjustments or assistance as may be necessary for them.

The Legal Services Managers will keep the member of staff informed of the progress of a claim or inquest and advised them of the outcome.



## 10.0 The Role of Clinicians

- 10.1 A claim may relate to specific care or treatment carried out by a certain clinician or clinicians. The Legal Services Managers will write to the clinician[s] asking for them to provide a statement of their factual involvement based on the allegations of negligence. They will also need to assist the Legal Services Managers throughout the claim in providing any additional information, documentation or comments on any issues related to the claim. The clinician[s] will attend where necessary a meeting with solicitors appointed by the NHR, attend a meeting with counsel, and should the case proceed to trial attend court to give evidence.
- 10.2 The Legal Services Managers will notify staff who attended to a patient's care and treatment where a clinical negligence claim has been received. This will always include the Consultant in charge of the patient's treatment at the time in question. Such staff will be requested to provide comments and documentation as quickly as possible once legal procedural timescales have begun to run.
- 10.3 The Legal Services Managers may approach a clinician who has had no involvement in the claim as an in-house expert to advice on breach of duty and causation.

## 11.0 Confidentiality

- 11.1 Patient confidentiality is paramount in dealing with all claims which must be dealt in accordance with the Data Protection Act 2018. No information relating to patients or staff involved in any claim may be disclosed to a third party unless there is lawful authority to do so. If staff are approached by a patient, solicitor or other representative in respect of a claim or information request, advice must be sought from the Legal Services Managers before information is provided.

## 12.0 External and Internal Consultation and Communication with Stakeholders

- 12.1 The Legal Services Managers work with the NHR on the management of claims, and liaise with the Integrated Care System (ICS) on claims under the Existing Liabilities Scheme (ELS) and any other healthcare provider where they are also a party to the legal action.
- 12.2 The Legal Services Managers will report to and liaise with any other internal or external stakeholder as required. This will include any other healthcare providers, commissioners, the Health and Safety Executive, police, etc.
- 12.3 In certain circumstances external agencies may become involved in an investigation and a decision as to when this might be necessary will be made by the Legal Service Managers.

## 13.0 Equality Impact

- 13.1 An Equality and Diversity risk assessment has been undertaken, in line with

the Trust's Development and Control of Trust Policies OP 01 and no equality and Diversity Risks have been identified for staff patients or the public as a result of the implementation of this policy. The management and review of this policy will be undertaken as set out in the OP01 document.

#### **14.0 Dissemination**

- 14.1 The dissemination of this policy throughout the organisation will be via publication on the intranet and staff training via induction and one to one sessions. Directorates and departments are responsible for making their staff aware of their roles, responsibilities and the procedure for dealing with clinical negligence, personal injury and property claims brought against the Trust.

#### **15.0 Training**

- 15.1 The Legal Services Managers will provide training to all staff involved in the legal process. This will be undertaken during local induction days and at the request of managers and staff. The Legal Services Managers will also hold team meetings on a monthly basis. Training can be provided on a range of legal topics including litigation processes, statement writing, consent and inquest preparation.
- 15.2 For advice about the claims process contact the Legal Services Managers on 01902 695956/01902 695957.

# OP31 Attachment 2: Standards of preparation, support and signposting for staff in relation to legal proceedings (including giving evidence at Inquests)

## 1. Introduction

In all instances, Legal Services Team members are acutely aware of the requirement to nurture a positive, supportive relationship with staff involved in legal proceedings, given that the nature of the legal process can be very daunting and anxiety provoking for staff. This Annex to OP31 sets out the standards and actions expected of the Legal Services team, line and professional managers and the occupation health and human resources staff in the Trust. In addition, where the Trust has engaged external legal input, additional preparation and support will be provided by Counsel.

It is also recommended that all staff and those involved in support refer to the 'Witness attendance in Court' Guidance ([OP31, Attachment 3](#)) for further insights into staff responses to involvement in legal processes.

## 2. Summary of support

### 2.1 Legal Services Team

The Legal Services Team (LST) will provide the following.

- Initial contact with the member of staff.
- When providing information about the input and level of detail required from the witness, the LST will include information regarding other sources of help, support and briefing including the leaflet regarding contact with other professionals who have previously been witnesses in legal proceedings and who are willing to relate to them the experience and preparation required.
- Offer briefings and preparation time with staff as indicated by the proceedings and as agreed with the member of staff.
- Offer to signpost staff to other avenues of help and support should they require additional help, support or health input.
- Record in the legal record relating to the proceedings the briefings, preparation time and any additional offers made and/or any offers declined by the member of staff.
- Alert staff line managers and/or professional leads in cases where the LST have unresolved concerns relating to the health and well-being of the member of staff and/or their fitness to bear witness, provide evidence or

any other involvement in the legal process.

- Alert the Trust Head of Communications and Chief Executive Officer (CEO) to any public hearing or proceedings of a contentious nature and/or where it may have an adverse impact on the reputation of the Trust.

## **2.2 The member of staff will be required to do the following.**

- Engage with those involved to prepare and support them through the process.
- Raise any issues or concerns with those involved at the time and address them.
- Participate as required in the process.
- Provide appropriate professional contributions to the proceedings taking heed of and acting in accordance with providing briefings preparation and any code of conduct that applies, and in line with the legal process.
- In some cases, staff may have the opportunity if released, to observe the legal process in another case prior to their participation, or seek help from a colleague who has observed and/or taken part in the same or similar proceedings. This would be arranged either through the Legal Services Team (e.g. attending Coroners Court) with the agreement of the line manager/professional lead, or through the line manager/professional lead in the case of contact with a member of staff with prior appropriate experience.

## **2.3 The line manager and/or professional lead/senior/supervisor will do the following.**

- Be aware of the staff involvement in a legal case.
- Monitor the health and well-being of the staff member and refer them for further help and support as appropriate.
- Be aware and briefed on the staff member's briefings and preparation.
- Offer the opportunity to undertake or signpost to others to undertake a debriefing following the case.
- Continue to monitor the health and well-being of the member of staff in case of, for example, signs of post-traumatic impact.
- Provide such support on a continual basis from the notification to hearing date and thereafter as required.

## 2.4 Occupational Health (OH)

OH will provide health and well-being support appropriate for the member of staff.

## 2.5 Human Resources (HR)

HR will facilitate any additional support for the staff health and well-being where it cannot be sourced through the occupational health service.

## 3. In case of dispute

### 3.1 Potential situations of dispute

On occasion, there may be members of staff whose view is that they have not been sufficiently prepared for a legal process, or that in that process they experience difficulties in providing their evidence or information, or who subsequently may feel they weren't sufficient prepared, or who exhibit signs of post-trauma impact, or whose performance may be viewed as putting the reputation of the organisation at risk.

In such cases, it is important that the member of staff, the line and professional leads around them, their colleagues and, where there is further contact, the LST provide either a de-brief or review and share any lessons to be learned with those involved and/or provide further help and support for the member of staff.

**Issues relating to the extent or quality of the preparation** must be raised in the first instance with the LST, or with the Group Company Secretary if there is an issue with the Legal Services Team member. If this cannot be resolved, see Section 4.

**Issues relating to the performance of the member of staff in the legal process** must be addressed with the member of staff. If this cannot be resolved see Section 4.

**Issues relating to alleged lack of preparation** must be raised with the area of issues whether legal services input, line manager and/or professional support, or access to help and support through referral on. If this cannot be resolved then see Section 4.

**Issues relating to signs of post-trauma impact and signposting/referral for OH input** must be addressed with the line manager/professional lead concerned, or if it relates to the OH support, with the OH team. If it cannot be resolved see Section 4.

**Issues relating to the reputation of the Trust** must be raised with the appropriate part of the Trust as per above. If it cannot be resolved then it should be referred to the Group Company Secretary (in the case of the

LST) or the appropriate line or professional manager. If it cannot be resolved then see Section 4.

## **4. Dispute resolution**

### **4.1 Issues that cannot be resolved locally**

In the case of such instance occurring then the appropriate Trust Policy will be followed where there is:

- Unacceptable behaviour or unacceptably poor work standards;
- A breakdown in a key working relationship;
- An incident or risk.

An incident or risk will be reported using the Datix system and investigated and reported on in line with Trust processes.

### **4.2 Staff performance at hearings**

Although staff performance and conduct in public legal processes have a potential impact on the reputation and public perception of the Trust, it must be recognised that staff, especially qualified and registered professional staff, are ultimately responsible for their own preparation and conduct. They also have a shared responsibility to act on information and support provided and to raise any issues relating to their health and well-being with their manager as soon as possible.

## **5. Lessons learned**

### **5.1 6 Monthly Review**

The Group Company Secretary and Chief Nursing Officer will review this process annually and provide any improvements from lessons learned as part of the Legal Service Report to the Trust Board.

## OP31 Attachment 3: Witness attendance at court

This guidance is provided to add to the new [OP31 Attachment 2](#) Legal Services Policy relating to the attendance of witnesses in respect of Legal Claims and Inquest matters.

This guidance provides further information for all staff who may be involved in the preparation for hearings and the support of monitoring of such staff.

### 1 Witnesses

#### **a) Witnesses who are confident and feel that they know what to expect**

Such witnesses tend to be senior professionals attending court hearings.

The Legal Services Managers (LSMs) will ascertain whether they have been to court to give evidence before. If not, the LSMs will ask whether they are aware of the court process.

The LSMs can assist with writing witness statements for inquests by sharing with staff any issues raised by the Coroner, any concerns raised by the family, and any issues which the LSMs feel may be relevant to the inquest.

#### **b) There will be a pre-inquest or pre-trial meeting (for personal injury claims) is to discuss with witnesses the following:**

i). Their evidence, by going through their witness statement and discussing the implications as to the matter before the court.

ii). Any documents (e.g. RCA, Datix, medical records, risk assessment form etc.) obtained during the course of the LSMs investigation that might be relevant. The LSM will inform witnesses of any predictable lines of questioning that may be put to them during cross examination whilst they are giving on oath.

iii) What giving evidence on oath means for the witness, e.g. for example expressing opinions, making assumptions or responding to hypothetical questions.

#### **c) Witnesses who are frightened / worried about giving evidence, but do not inform anyone of this.**

Such witnesses can be unpredictable, bottling up their feelings about being in court.

As in section 1a, potential witnesses will be asked at an early stage (witness statement taking stage) and at the pre-inquest stage or pre-trial stage how confident they are, whether they have any concerns, whether there is a need for further meetings, and what preparatory steps are required by them for giving evidence.

In some cases, such witnesses will struggle and/or 'fall apart' either just before giving evidence or when they start giving evidence.

For example, one witness, who had a number of stressful life events immediately prior to attending an inquest, gave the wrong evidence. This happened despite the support outlined above, including reviewing their statement several times prior to the hearing; the witness had given no indication that they were feeling nervous. Had the witness shared their anxieties more support would have been given.

#### **d) Traumatized witnesses**

Rarely, witnesses can be traumatised by the incident, by the ensuing investigation, or by the legal hearing. Often it is some time after the legal process that such signs

emerge. Unless the witness divulges their reaction or feelings during the process, the LSM is unlikely to be aware of such a reaction.

Presently, witnesses are advised to consult with their Manager or Clinical Director for support and or referral to the appropriate departments if this should happen.

**e). Hostile witnesses/witness who do not come to proof.**

Although very rare, there has been the odd occasion where witnesses respond or talk about tangential matters rather than the facts of the case – in such situation during the course of their sworn evidence, the LSM would try and steer them back to their evidence relating to the matter in hand.

**2. The Law/Legal implications**

In the Magistrates Court or Crown Court, you cannot lead a witness or speak for a witness, and you cannot coerce a witness. Witnesses are expected to speak for themselves.

Therefore LSMs, Managers and Senior Professionals cannot instruct witnesses on what to say.

**3. Preparation**

Preparation of witnesses prior to any trial or hearing is important as they should be aware of what their evidence will relate to.

Witnesses are prepared once it is known they will be giving evidence, and anyone who is likely to be vulnerable will be supported by their Line Manager or a Senior Professional.

**a) Different types of support**

Support in collating their evidence i.e. enquiries that LSM'S assist with.

**i. Preparing their witness statement**

LSMs and Counsel (where engaged) support witnesses in preparing their statements for any court hearings and provide assistance where necessary. There are different types of statement dependent on the nature of the case, the claim, or for an inquest.

- For inquests, the Coroner will wish to hear the facts leading to a patient's death only.
- For personal injury (PI) claims, a County court will want to hear what happened and what the witness saw.
- For clinical negligence claims, a Court will need to hear what the witness did.

**ii. Attending court to give evidence**

LSMs offer further support such as a verbal conversation and pre inquest / pre-trial meetings.

In all cases witnesses are advised to contact their Line Manager or we will contact the Ward Sister/Matron for support.

- For PI trials a witness is likely to be fully supported by the LSMs and their



Line Manager. LSMs may re-visit the scene of the incident with the witness to refresh the witness's memory and they may carry out site visits to view defects and establish the context for incidents, where reconstruction is a necessity.

- For inquest matters witnesses are advised to ask their Manager to accompany them to the inquest hearing and/or bring with them a fellow colleague.
- Where necessary, more than one pre inquest meeting will be held, and on occasions where Solicitors are representing the Trust, a pre-inquest meeting will be held with the LSM and the Solicitor representing the Trust prior to the hearing. On occasions where a complex matter is to be heard a further meeting is held with witnesses a day before the inquest hearing.
- Clinical negligence trials will involve a series of meetings with trial Counsel prior to the final hearing, however, witnesses will be supported by their Line Manager.

In complex matters further support is offered immediately before the hearing.

This may involve a group meeting with other witnesses and, or discussions as to evidence before the court in terms of obtaining opinions going through documents and providing assurance in giving evidence.

These meetings can be subject to time constraints given that timescales are dictated by the Court process. For example; Coroners list all hearings within 6 weeks of the initial notification, providing 28 days for the service of statement and then a 2 week period before the hearing.

### iii. **Continuity of support at the hearing**

Nervous witnesses often require a friendly face at the court. All witnesses are advised to bring their Line Manager or a colleague. This level of support is, on occasions, impossible to achieve due to limited availability however it is essential they receive this support prior to the hearing. Should matters be left to the day of the hearing as a result of time constraints or leave, witnesses in such circumstances are advised to arrive at the hearing early.

There is often limited time in going through their evidence, and often witnesses are advised to attend early.

### iv. **Continuity of support post hearing**

LSMs contact the witnesses giving them support and feedback as a result of the hearing.

## **b). Witnesses are offered an opportunity to visit the Coroners Court or County Court.**

This has been and remains available to all staff who may be a witness in future. Some staff who had this offered but declined it have struggled when giving evidence. There are also on-line resources that illustrate the process, including videos, produced by Legal Firms. At PI trial hearings witnesses are offered an opportunity to watch a video produced by DAC Beachcroft.

LSMs see witnesses only where accompanied by their line Management. It is comparatively rare for witnesses to seek support from LSMs, and this remains the primary role of the line manager. In the case of there being a dispute between the

witness and line manager, an appropriate alternative should be identified by the line manager.

LSMs when writing to witnesses for a statement send them a copy of the leaflet prepared by the Matron for Ophthalmology along with a template statement for preparing a witness statement/report.

**c). Witnesses who do not seek or accept line manager support.**

In cases where witnesses do not seek their line manager's support or where support can be more difficult to arrange, e.g. night staff, then concerns should be reported as Incidents. There have been occasions where staff have declined occupational health support, and or have not been able to seek Line Management support due to their shift; in such circumstances LSMs will escalate concerns if necessary to the Line Manager for the witness. Some staff have declined occupational health or other preparation activities because they would have had to attend work outside of paid shifts. This must also be escalated to their Line Manager.

**Resources**

Video customer care animations video by DAC Beachcroft

Top tips when attending an inquest

LTPS witness template

Coroners statement template

[Useful Documents and Forms \(xrwh.nhs.uk\)](http://xrwh.nhs.uk)

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