

Claims Management Policy

This policy describes the process for the investigation and management of claims involving the Trust.

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Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	December 2008	Original ratification
2	October 2010	Changes to reflect current integrated governance structures
3	October 2012	Reformatted to new template. Changes to take into account new organisational structure.
4	January 2013	Updated NHSR Monitoring Section
5	March 2013	Further amendments incorporated to NHSR Monitoring Table (Appendix 1)
6	January 2016	Periodic review of requirement for claims handling: updated format, titles
7	January 2018	Review of and updated key information.
8	May 2021	Reformatted to new template. Review of and updated key information.

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Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and procedures and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 9) of this policy.

Definitions that apply to this Policy

Indemnifier	NHS Resolution indemnify the trust against clinical and non-clinical claims as well as claims made under the property expense scheme.
Claimant	A person or organisation making a claim for compensation. A Claimant acting without legal representation is termed a Litigant in Person.
Defendant	A person or organisation against which the claim is brought i.e. the Trust. Other parties (e.g. GP's, Community Trusts or other Hospital Trusts) may be co-defendants.
Pre-Action	Actions taken in relation to a claim before legal proceedings are issued. These are subject to the relevant pre action protocols (e.g. the Pre Action Protocol for Clinical Dispute Resolution).
CPR	The Civil Procedure Rules (CPR) are the rules of civil procedure used by the Court of Appeal, High Court of Justice, and County Courts in civil cases in England and Wales.
Clinical Negligence Claim	Defined by the NHSR as: "Allegations of clinical negligence and/or demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident which carries significant litigation risk for the Trust"
Non-Clinical Negligence Claim	Defined by the NHSR as "a demand for compensation made following an adverse incident resulting in damage to property and/or personal injury"
Portal	The MOJ Portal was established in 2013 – it is a mechanism by which claimants and their representatives can submit claims electronically where damages are limited to £25,000 and costs are fixed.
Stakeholder	An individual or organisation which has an interest in a claim e.g. they are required to provide information for a claims investigation.
Ex gratia payment	These are payments that the Trust is not obliged to make or for which there is no statutory cover or legal liability, including damage to or loss of patients' property.
Losses and special payments request	This is a request for an ex- gratia payment. Any payment made following such a request is made without any admission as to liability.

Purpose of the Policy

This policy defines the framework for the investigation and management of claims and the duties of staff within the Trust. It sets out arrangements, which are minimum standards in accordance with the statutory rules (Civil Procedure Rules) including the Pre-Action Protocols and NHR requirements and guidance.

1.0 Summary and scope of policy

1.1 This Policy describes the process for managing claims involving the Trust under the relevant NHS Resolution (NHR) scheme or equivalent insurance scheme. It details both the duties of staff in assisting with claims enquiries and how staff will be supported.

2.0 Introduction

2.1 Leicestershire Partnership NHS Trust (The Trust) is committed to an effective, timely and transparent investigation of any claim that includes allegations of clinical negligence personal injury, or loss or damage to property.

2.2 The Trust adheres to the Pre action Protocol and CPR requirements when managing its claims. All members of staff are required to fully co-operate with the investigation and management of each claim with emphasis on:

- Encouraging openness in line with the Trusts A Culture of Candour Policy.
- Pro-actively identifying clinical and non-clinical incidents which may give risk to civil claims via a clear triangulation of complaints received and subject access requests made.
- Managing claims from the outset such that any which cannot realistically be defended are settled with the least amount of staff impact and costs exposure
- Providing a key resource to support and advise staff assisting with claims enquiries
- Working with NHR to ensure a proportionately robust approach is taken to defensible claims
- Ensuring that any healthcare governance and risk management issues that may emerge during the claims process are addressed promptly and the outcomes used to facilitate wider organisational learning.

2.3 Claims relating to Community Health Services care provided before April 2011 i.e. prior to TCS are the responsibility of the Clinical Commissioning Groups. The **Legal Affairs Lead** will forward any claims to the relevant appointed officer in the Commissioning Groups.

3.0 Duties within the Organisation

3.1 **The Trust Board** has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.

3.2 The **Director of Finance** ensures claims management processes and claims schemes are compliant with governance framework standing financial instructions.

3.3 The **Legal Affairs Lead** is the senior manager lead for claims/litigation. The Legal Affairs Lead oversees the management of claims and provides information on individual claims, liability and causation, quantum and damages, legal costs and alternative methods of resolving disputes e.g. mediation.

3.4 The **Legal Affairs Lead** is responsible for administering the claims management process for the Trust. The Legal Affairs Lead reports all claims and certain potential claims to the NHSR. The Legal Affairs Lead must liaise with NHSR and respond to information requests within allotted timescales. The Legal Affairs Lead is responsible for requesting information from Services. The Legal Affairs Lead should advise Clinical Governance, Health and Safety and any affected department about any lessons learned and identified during the course of a claim.

3.5 The **Patient Safety** team, the **Health & Safety Compliance** Team, the **Information Governance** team and the **Complaints** team are responsible for alerting the Legal Affairs Lead to any incidents which could result in a claim being made against the Trust.

3.6 The **Patient Experience and Involvement Manager** is responsible for alerting the Legal Affairs Lead to any complaints which could result in a claim being made against the Trust.

3.7 **Service Directors and Heads of Service** are responsible for ensuring:

- staff compliance with Health and Safety regulations/legislation, the investigation of incidents, serious untoward incidents and complaints is carried out,
- the support of the investigation of claims,
- support to staff involved in claims investigations,
- the implementation of recommendations identified during claims investigations.

3.8 **Clinical Governance Teams** team are responsible for alerting the Legal Affairs Lead to any incidents which could result in a claim being made against the Trust. They are responsible for communicating lessons learned from claims

investigations within their services and identifying opportunities for Trust wide learning.

- 3.9 **Team leaders & Ward Matrons** must ensure information requested by the Legal Affairs Lead for NHSR is provided on time.

They are responsible for searching for and copying records and documents requested as part of a claims investigation.

They are further responsible, for supporting staff involved in claim investigations. It is essential that they maintain regular contact with the staff to ensure they are actively and compassionately supported through the claims process. This support will need to be responsive to the staff member's individual needs. Regular contact should be maintained to ensure the appropriate support is offered and available through-out the process specifically, statement writing and pre-court, during court and post court. Consideration should be given to signposting to the legal team for advice or referral to additional health and wellbeing services through-out the process.

- 3.10 **All staff** are responsible for providing information requested by the Legal Affairs Lead **within 10 working days** or other stated timescale (**Appendix 1**).

- 3.11 This policy will be circulated to all staff and made available on the Trust's intranet. Managers are responsible for alerting their staff to the existence of this policy and ensuring attendance at relevant training programmes. It is the responsibility of individual members of staff to read and consult these documents. A link to this policy will be included in the email sent to the staff when notifying them of a claim.

4.0 Claim Types and NHSR Schemes

4.1 Clinical Negligence Claims

A clinical negligence claim is defined as '*allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury*'. Clinical negligence claims are covered by the **CNST scheme** if the incident took place on or after the 1 April 1995. Where the incident took place prior to this date it will be covered by the Existing Liabilities Scheme (**ELS**).

Clinical negligence claims may be made by the service user or following a death, by their next of kin. Common examples of allegations include but are not limited to:

- medication errors,
- failure to provide appropriate care;
- inappropriate advice;
- failure to obtain consent;

4.2 Non-clinical Negligence claims

Most claims are non-clinical negligence claims which fall into one of four categories and are covered by the **LTPS scheme**:

4.2.1 Liabilities to Third Parties Scheme (LTPS)

- **Employers' Liability** – claims for compensation for injuries or ill health arising out of work/employment.
These can include claims relating to:
 - Injuries as a result of assault by service users or visitors;
 - Work related, bullying or stress related claims;
 - Manual handling injuries;
 - Industrial injuries due to exposure to substances, fire incident, plan/equipment failure;
 - Injury from slips, trips and falls.
- **Public Liability** - claims for injuries to members of the public (including patients and visitors) following an accident on Trust property.
- **Employment Tribunal and / or Personal Injury Claims relating to Employment Tribunal Claims** – employment tribunals claims are managed by the Human Resources team. However, personal injury claims may arise following an employment tribunal.
- **Property Expenses Scheme (PES)** - accidental loss or damage to Trust property from fire, flood or subsidence.

4.3 Ex-gratia payments – Payments that the Trust is not obliged to make and for which there is no statutory cover or legal liability.

Types of ex gratia payment:

- loss of/damage to personal effects;
- personal injury;
- settlements on termination of employment;
- maladministration cases;
- any other type of payment not listed above.
- Ex-gratia payments are managed by the Trust, not NHR.

5.0 Delegation Limits

5.1 The Trust Board has responsibility from the Department of Health for the management of claims. The Trust Board recognises the importance of liaising closely with the NHR on any claims that are reportable to them under CNST or LTPS.

5.2 This financial responsibility will be delegated in the first instance to the Deputy Director of Corporate Affairs, or any Executive Director in the Deputy Director of Corporate Affairs' absence, who will have power to agree to an admission of

liability in all claims to any value where such an admission is authorised by the NHSR.

- 5.3 In the absence of authorisation, the NHSR will not reimburse the Trust either for the compensation awarded or for any costs generated. Such payments will fall outside of the scheme and will have to be found from within the Trust's internal financial resources.
- 5.4 All payments in settlement of claims will be entered in summary form in the Register of Losses and Special Payments.

6.0 Claims Excess

- 6.1 The standard excess for claims (per scheme) is:

Type of Claim	Excess
Clinical Negligence	£0
Employers' Liability	£10,000
Public Liability	£3,000
PES Schedule 2 - Property Damage Expense	Buildings £20,000 Contents £20,000 Cap on claim of buildings and contents of £1m
PES Schedule 8 - Contract Works Expense	Damage to existing structures £20,000

7.0 Stakeholders

- 7.1 The Legal Affairs Lead will investigate any allegations of negligence in conjunction with the relevant stakeholders and the process of investigation will be determined by whether the claim is a clinical negligence claim or a non-clinical claim.
- 7.2 Stakeholders include but are not limited to the Service Director, Head of Service, Locality Manager and Matron. Also, any staff required to give a statement as part of a claim investigation (**Appendices 1 & 3**).
- 7.3 It is important that stakeholders are adequately informed at key stages of a claim. Information provided to stakeholders will be such as to enable them to perform their role. Where external communication is by email it must be encrypted. Communication by post or telephone is also acceptable. See the Trust's Data Protection and Information Sharing, The Social Media and

Electronic Communications and The Information Security and Risk LPT policies for details.

- 7.4 Where Risk Management issues have been identified the Clinical Governance Leads, the Health & Safety team and other relevant staff will be stakeholders.
- 7.5 In all claims NHSR (and any appointed solicitors) will be stakeholders. All new claims must be registered securely online using the NHSR's Claims Reporting System and thereafter, documents should be sent electronically using the Documents Transfer System.
- 7.6 Where the claim relates to a death then it is possible that the Coroner will be holding an inquest during the subsistence of the claim. The Coroner is not a stakeholder for the purposes of this policy because a Coroner is precluded from considering matters of negligence and is not entitled to documents that were prepared in contemplation of litigation and are subject to privilege.

8.0 Notification of a Clinical Negligence Claim

8.1 The Trust can be notified of a Clinical Negligence or a potential claim in the following ways:

- An Electronic Incident Report Form (e-irf);
- A subject access request for disclosure of medical records;
- A Letter of claim;
- Service of court proceedings;
- Evidence at an inquest that appears likely to result in a claim;
- A Complaint.

8.2 This is not an exhaustive list. If you are in doubt please contact the Legal Affairs Lead. All staff should forward any correspondence related to a potential or actual claim as soon as possible to the LPTlegal inbox. A standard response to potential claimants by the service is below:

If you want to make a claim against the Trust for this matter please correspond with the Trust's legal team at lptlegal@leicspart.nhs.uk

Or write to:

Leicestershire Partnership NHS Trust

Legal Affairs

Room 170, Penn Lloyd building

County Hall

Leicester LE3 8TB

The first step is to send a formal letter of claim setting out the circumstances of the claim, the allegations in respect of breach of duty of care, position on causation, value of claim, detail of heads of losses (compensation), details of the injuries (as appropriate), and any funding arrangements to support the claim process.

All claimants are advised to speak to independent legal advisors as claims involve legal tests such as duty of care and causation. The Trust's Legal team will then report the claim to its insurers (NHS Resolution) who will investigate the claim and provide a response within 4 months of receipt.

9.0 How are claims received?

9.1 Depending on the type of claim, a claimant or their legal representative will send a Letter before Action (clinical), Letter of Claim (clinical and non-clinical), Claim Notification Form via the MOJ Portal (non-clinical) to the Trust/NHSR. It is rare but the Trust may also receive court papers (directly from the court) which will be addressed to the Chief Executive and sent to the Trust Headquarters or to the LPTLegal inbox. LPT provide a wide range of services in many locations so on occasion these documents can be sent to services or members of staff directly.

9.2 Upon receipt of these documents you **MUST** immediately scan and email (lptlegal@leicspart.nhs.uk) or hand deliver a copy of the document/s to the Legal Affairs Lead on the day of receipt. The "originals" must be marked "confidential" and forwarded through to the legal affairs team as soon as possible. Do not acknowledge any documents to the claimant's solicitor or the court. This will be actioned by the Legal Affairs Lead.

9.3 Clinical Negligence Claims

To investigate and comply with the NHSR reporting guidelines the Legal Affairs Lead will take the actions in the Clinical Negligence Claims flowchart (Appendix 1).

9.4 The Legal Affairs Lead must report all new CNST claims using a Clinical Claims Report Form, which is submitted to NHSR via the NHSR's Claims Reporting System. Where possible a Useful Documents Guide must be completed when reporting a claim to the NHSR. However the NHSR accepts that it may not be possible to collate all of the relevant documentation/information when initially reporting the claim, in such cases, the NHSR requires that any outstanding information/updated documentation is sent within 2 weeks of reporting the claim.

This documentation may include but is not limited to:

- Copies of claimant/claimant solicitors correspondence
- Internal reports/comments prepared by clinicians
- Full complaints file
- Electronic Incident Reporting Form (e-irf)
- Trust Policies or Procedures

9.5 Non-Clinical Negligence Claims

The Claimant's solicitor will usually notify the Trust of a claim by a Pre-Action Letter of Claim or CNF (if the claim has been submitted via the portal).

The Legal Affairs Lead will take the actions in the Non-Clinical Negligence Claims flowchart (Appendix 3) to investigate and comply with NHR reporting guidelines.

This documentation may include but is not limited to:

- Incident report form (IRF)
- Contemporaneous Witness Statements
- RIDDOR form (where claimant suffered injury resulting in absence >7 days)
- Serious Incident Report
- Any Health and Safety related records concerning an incident
- Any notes or records of "lessons" learnt from an incident and report of changes implemented as a result of those lessons
- Medical records including any records which may be kept separately from the main bundle of records.

10.0 Timescales and procedures for the exchange of information with other parties

10.1 Day to day management of claims will be carried out by the Legal Affairs Lead. Investigations will be appropriate to the severity of the claim but every claim is important and will be investigated as such.

10.2 Within 21 days of receipt of a letter of claim the Legal Affairs Lead will identify if the claim is against the Trust, and, if so, acknowledge the receipt of the claim to the claimant's solicitor.

10.3 The Legal Affairs Lead will instigate an initial investigation and document and evidence gathering exercise. **Appendices 5 & 6** are used as part of this purpose.

- There are additional reporting timescales that the Legal Affairs Lead must comply with. These are detailed in the NHR's Rules and Reporting Guidelines.
- The information should be transferred to NHR electronically by the Claims Reporting System (when reporting a new claim) and/or the Document Transfer System (if the claim has been reported previously).
- NHR will liaise with the Legal Affairs Lead and obtain the Trust's agreement before making any admissions on liability. The Legal Affairs Lead will seek instructions from the relevant Directors of the service.
- Once the claim is concluded, the file will then be archived and destroyed in accordance with the guidance in the Records Management Code of Practice for Health and Social Care 2016.

10.4 Where a personnel file is to be copied, equalities monitoring information should only be copied and shared where it is relevant to the claim or it identifies potential lessons learnt. For example, if an allegation of racial discrimination was made as part of a claim then equalities monitoring information may be relevant.

All documentation will be copied and held by the Legal Affairs Lead on individual claim files.

10.5 NHSR seeks early notification of a letter of claim where the following features arise:

- Fatal accidents;
- MP involvement;
- Media attention;
- Human Rights issues;
- Multi-party actions;
- Multiple claims from a single cause;
- Novel, contentious or repercussive claims.

10.6 In addition to formal letters of claim being received the Trust will also notify the NHSR of serious adverse incidents and/or serious adverse outcomes representing a significant litigation risk prior to an actual demand for compensation being made.

These may come to light through:

- Normal in-house Incident recording/investigation
- Complaints which look highly likely to lead to claims
- Other matters identified through Risk Management processes

10.7 The Legal Affairs Lead will report claims to the NHSR and undertake all associated administration and liaison with the NHSR, Panel Solicitors, NHS England or Clinical Commissioning Group officers, Claimants' Solicitors and others as necessary.

11.0 Being Open and Duty of Candour

11.1 Where the facts of an incident indicate a liability on the part of the Trust, this should not prevent staff from undertaking remedial action properly and effectively. It should not inhibit frank and open discussion with patients. NHSR advocates the giving of apologies and explanations.

11.2 Duty of Candour is a statutory and contractual requirement which does not require a breach of duty giving rise to a clinical negligence claim.

11.3 Being Open and Duty of Candour is integral to the incidents, complaints and claims processes and are a fundamental part of the Trust's transparent, fair blame and learning culture. Having this culture is critical to ensure the Trust continually learns.

11.4 Further details on Being Open and Duty of Candour can be found in the Trusts Culture of Candour Policy.

Apologies

11.5 NHSR: “It is both natural and desirable for clinicians who have provided treatment which produces an adverse result, for whatever reason, to sympathise with the patient or the patient’s relatives; to express sorrow or regret at the outcome; and to apologise for shortcomings in treatment. It is most important to patients that they or their relatives receive a meaningful apology. We encourage this, and **stress that apologies do not constitute an admission of liability**. In addition, it is not our policy to dispute any payment, under any scheme, solely on the grounds of such an apology.”

12.0 Information on Claims

12.1 The Legal Affairs Lead will maintain a database of all clinical negligence and personal injury claims. This database will facilitate the provision of relevant and timely information as required by the Services and NHSR.

12.2 The Legal Affairs Lead will ensure the secure storage for current claims files and files that have been closed and archived. Following a claim being closed this information will be archived and kept for a period of 10 years.

13.0 Confidentiality

13.1 The Trust will ensure that confidentiality in relation to all information gathered as part of the investigation and held by the Trust, and that which is forwarded to the NHSR is complied with and will also ensure compliance with information held in accordance with the UK General Data Protection Regulation, Data Protection Act 2018 and the Access to Health Records Act 1990. In addition the Trust will ensure that the Pre-Action Protocol for the Resolution of Clinical Disputes is complied with and that records are provided within 40 days of the request.

14.0 Litigation

14.1 As claims work is subject to litigation, the Legal Affairs Lead’s requests for records and information must be responded to **within 10 working days (see Appendix 1 and 3)**. If, for any reason this is not possible, the Legal Affairs Lead must be informed in writing by e-mail. It is essential that timescales are met as all claims are potentially subject to litigation and delays may result in financial penalties.

14.2 Some claims proceed to litigation and may proceed as far as a court hearing. The Civil Litigation Timeline at **Appendix 4** the litigation process. Employees will not bear any financial or legal responsibility for a claim even if they are personally named in the Particulars of Claim (is a document that a claimant files with the court and serves on the defendant setting out the details of the claimant’s case).

- 14.3 As part of the litigation process, the Trust will be asked to sign a number of documents including the Defence, the List of Documents and the Counter Schedule. A Statement of Truth accompanies these documents. Only designated officers of the Trust may sign a Statement of Truth. These are the Chief Executive, an Executive Director, or Deputy Director of Corporate Affairs (pp by Legal Affairs Lead if necessary). Any member of staff who receives a Statement of Truth or any document requiring signature must forward it immediately to the Legal Affairs Lead.

15.0 Communications

- 15.1 All approaches by the media regarding claims or potential claims, whether ongoing or closed, must be directed to the Communications team. The Communications team will liaise with the Legal Affairs Lead who will contact NHSR. Working together they will determine a response. Staff should not make any comments to the media unless authorised to do so by the Communications team who in turn will have cleared the response with NHSR.

16.0 Risk Management Report & Lessons Learnt

- 16.1 Risk management issues will be considered for every claim especially where NHSR Solicitors' Risk Management Reports on Claims have been received. The sharing of lessons learnt post investigation is a critical part of claims management. These will be disseminated throughout the organisation via the Patient Safety Group, Health and Safety Committee and service governance forums.
- 16.2 The Legal Affairs Lead will report to the relevant stakeholders any issues, identified from a claims investigation, that need to be addressed either immediately or as the result of the investigation's findings.
- 16.3 Before closing a file the Legal Affairs Lead shall ensure that all risk management issues have been reported to the appropriate manager and that documentary evidence of any actions taken is received.
- 16.4 The Legal Affairs Lead will contribute to the safety and quality reports for the Quality Assurance Committee regarding incidents, complaints and claims.

17.0 Support for Staff

- 17.1 Staff physical and psychological health and well-being is important. The Trust recognises the upset and distress that can be caused to staff through their involvement in the investigation and response to a claim. The litigation process can be lengthy and staff may find it stressful and upsetting. The Trust is committed to providing all appropriate support to staff and, where a claim arises from an incident or complaint, support may already have been offered and arranged at the earlier investigation stage.
- 17.2 Directors of Services, Service Managers, Associate Chief Nurses, Heads of Department, Clinical Directors and senior clinical staff have a responsibility to

ensure that their staff are appropriately supported both in terms of their emotional health wellbeing and the claims process. The Line Manager, Matron, Service Group Lead or Clinical Director should be the first point of contact for an individual seeking support.

- 17.3 Staff involved in a claims investigation may want further information regarding the claims process and what is expected of them. The Legal Affairs Lead is available to provide advice and support throughout the claims process. They will provide on-going support to staff, using the method most suited to the individual's needs. The Legal Affairs Lead as appropriate, will accompany staff to meetings with panel solicitors, claims conferences and, should the claim proceed to this stage, to pre-trial meetings and trial. Any member of staff called as a witness will be fully prepared and supported by the Legal Affairs Lead and the Panel Solicitors.
- 17.4 If an individual requires additional support, they will escalate this to the individual's manager to ensure that additional sources of support are offered from, for example, the Occupational Health Team, Staff Counselling Service and support from the Freedom of Speak Up Guardian.

18.0 Monitoring Compliance and Effectiveness

Please refer to the table in Appendix 7.

19.0 Due Regard and NHS Constitution

This policy describes the process for managing claims against the Trust. During the consultation process nothing was identified as directly affecting persons with protected characteristics as defined by the Equality Act 2010. Therefore this policy is determined as being equality neutral. Please see Appendix 9.

In respect of the Public Sector Equality Duty appropriate consideration of the Trust's Equality and Human Rights and reasonable adjustment policies will be given whilst implementing this policy for example when supporting staff involved in any claim.

The NHS Constitution checklist consideration outcome is at Appendix 8.

20.0 References and Associated Documentation

This policy was drafted with reference to the following:
LPT Losses and Special Payments Policy

Civil Procedure Rules (CPR)

UHL Claims Handling Policy and Procedure

NHSR CNST Membership Rules

NHSR LTPS Membership Rules

NHSR Reporting Guidelines

Pre-Action Protocol for Personal Injury Claims.

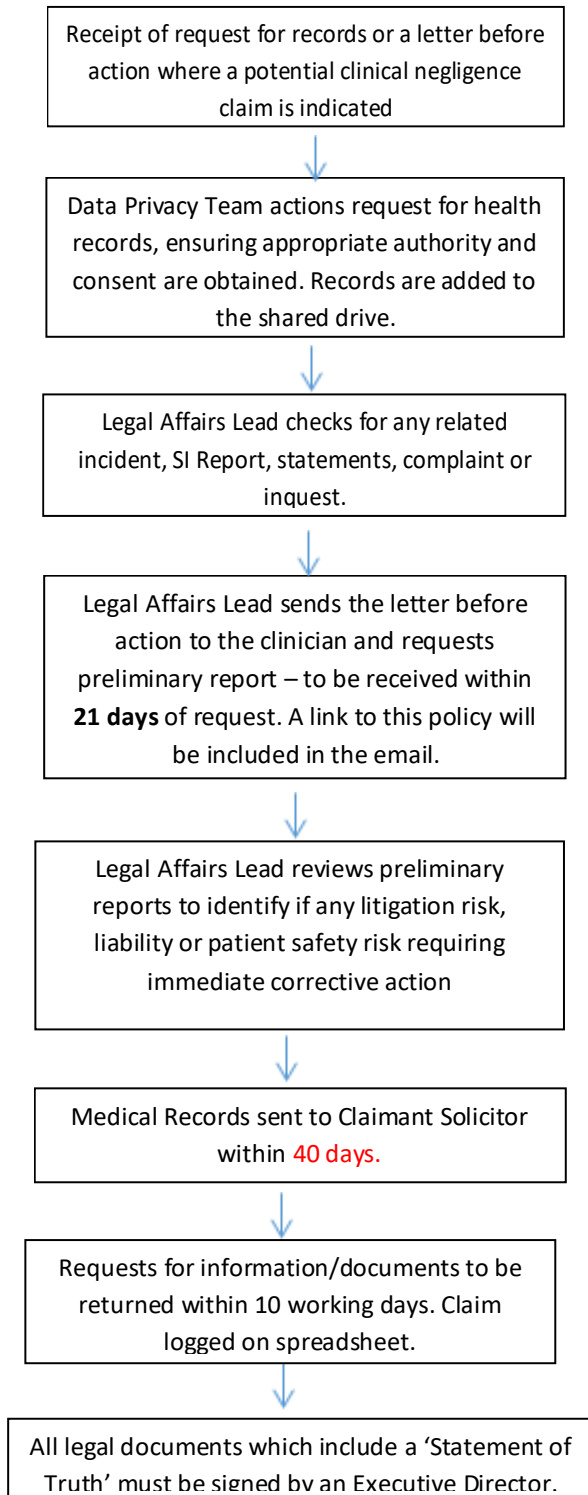
Pre-Action Protocol for the Resolution of Clinical Disputes

Pre-Action Protocol for Low Value Personal Injury (Employers Liability and Public Liability) Claims

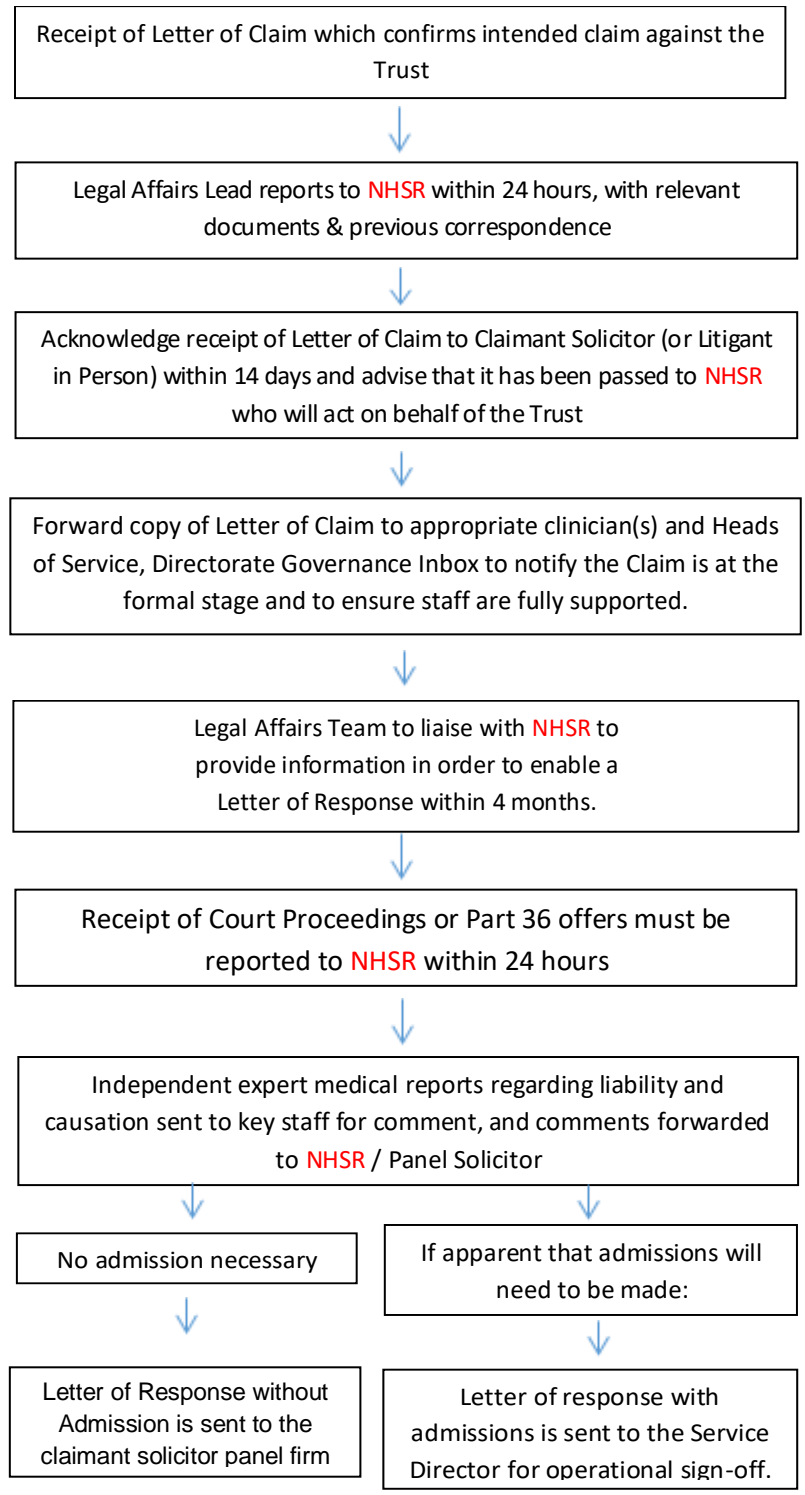
Appendix 1

Procedure for the Management and Investigation of Clinical Claims

POTENTIAL CLINICAL CLAIMS



PRE-ISSUE CLINICAL CLAIMS



- Legal Affairs Lead will liaise with panel firm to successful defend/settle a claim. Outcome of claim will be notified to all staff involved.
- Settled claims will be added to spreadsheet and circulated on a quarterly basis.
- NHSR/panel firm/Legal Affairs may identify litigation risks which require action through the Trusts risk management process.
- Action taken by the Services to address highlighted risks which have resulted in admission of liability.

Appendix 2

General Procedure for the Management and Investigation of Non-Clinical Claims

1 Personal Injury Claims.

- 1.1 These claims can be either from a member of staff and come under Employer's Liability or from a patient or visitor to the Trust and come under Public Liability Claims.
- 1.2 No admission are made until after a full investigation has been undertaken.

2 The Employers' Liability (EL) and Public Liability (PL) Claims Portal

- 2.1 As part of a package of reforms the Ministry of Justice announced that from **1 August 2013** EL and PL claims valued up to £25,000 will be managed by insurers and compensators using a web-based portal process.
- 2.3 The portal is a secure electronic communication tool designed to facilitate communication between claimant representatives and insurers/indemnifiers and compensators.
- 2.4 The portal radically changed the way EL and PL claims are managed by introducing much shorter timescales and a regime of fixed legal costs.
- 2.5 **How does it work?**

All employers' and public liability claims under LTPS, valued up to £25,000, will be notified direct to NHS Resolution via the portal and NHS Resolution must acknowledge receipt within 24 hours.

On EL claims the defendant has 30 days to provide a response on liability via the Portal and 40 days on PL claims. If the decision is not provided in time, the claim exits the portal process and costs may increase.

The shortened timeframes mean that prompt information gathering, investigation and document management are vital.

Where it looks likely that a claim is one to defend, then the defendant will allow the claim to "time out" of the portal and the Claims Notification Form acts as a letter of claim (subject to the pre action protocol time frames). The defendant has 3 months from the date of submission to provide its response on liability. Fixed costs pursuant to CPR P45 will still apply (where the claim remains below £25,000), but it will no longer be subject to the lower "portal costs".

The Health & Safety Compliance Team will need to make an early judgement as to whether an incident is likely to give rise to a claim; to ensure claims investigations and document-keeping are robust, responses from those best placed within the divisions are prompt and balance the costs benefits of an early admission (i.e. within the portal / pre issue) against a robust defence of the Trusts position.

2.6 Costs payable under the Portal Scheme

Claims settled below £10,000 will attract fixed costs of £900. Under the current regime we pay on average over £6,000 in legal costs for these claims.

Claims settled between £10,000 and £25,000 will attract fixed costs of £1,600. Under the current regime we pay on average over £14,000 in legal costs for these claims.

2.7 The portal has three stages:

Stage 1 – Notification of the claim to the NHS Resolution and a liability decision within 30 days (EL) or 40 days (PL);

Stage 2 – Medical report, offers to settle and negotiation;

Stage 3 – Access to the courts where settlement cannot be agreed.

Claims where liability is denied or where contributory negligence is alleged will exit the portal.

The key is to keep indefensible claims in the portal. Trust need to work together with the NHS Resolution to ensure that incidents are quickly investigated and evidence gathered so as to make the right decision within the deadlines.

Appendix 3 - NON-CLINICAL NEGLIGENCE CLAIMS FLOWCHART

- Incident Occurs
- Incident Report Form (IRF) completed.
- If incident involves an injury classified as moderate or above, manager commences investigation and gathers evidence/disclosable documents.
- If in doubt, the manager to make judgement call (with support from Legal Affairs or H&S Team if required) on whether litigation risk is high enough to investigate.



NHSR notified of Claims via Claims Portal

- Legal Affairs Lead will request all relevant documentation from the Service – Complaints and Patient Safety Team.
- Legal Affairs lead to notify all relevant people that a Claim has been received.
- Legal Affairs Lead to obtain the Claimant's wages for 13 week prior to the date of the accident and 13 weeks



NHSR

- NHSR to admit/deny liability within 30 days for Employer Liability Claims and 40 days for Public Liability Claims.
- If NHSR unable to make or support the liability decision within set timescale, i.e, because the disclosure documents have not been provided claim exits the portal and costs increase significantly.



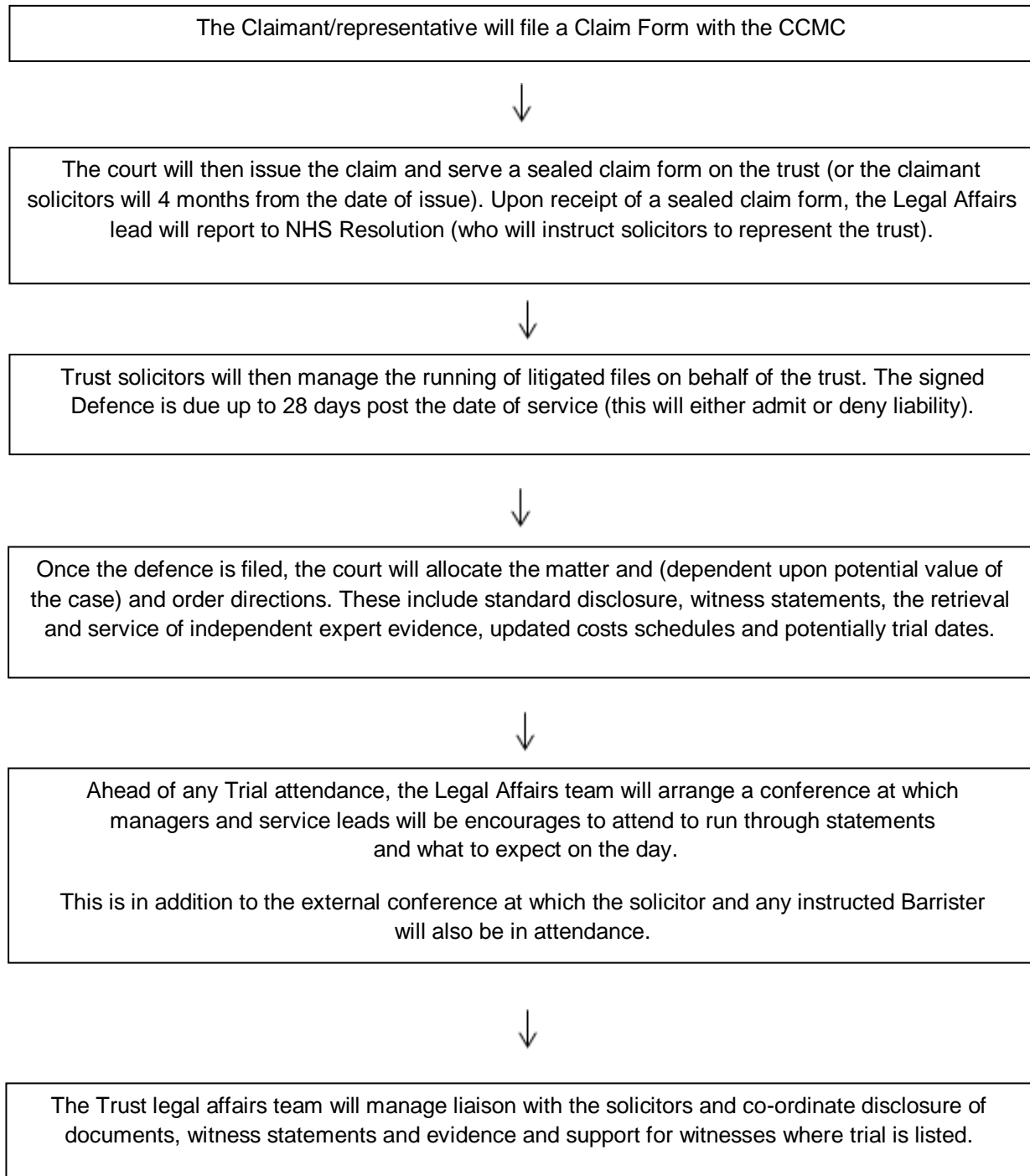
Recommendations

- Settled claims added to settled claims spreadsheet and circulated on a quarterly basis.
- NHSR / appointed Solicitors / Legal Affairs may identify litigation risks which require action through the Trust's risk management process.

Appendix 4

Civil Litigation Timeline – bringing a clinical negligence/personal injury claim

POST ISSUE CLINICAL and NON-CLINICAL CLAIMS



Appendix 5



Leicestershire Partnership
NHS Trust

Witness Statement

Incident Investigation Reference No:

Date of Incident:

Place of Incident:

Time of Incident:

(24 hour clock)

Statement of (Name):

Age if under 18:

(If over 18 insert 'over 18')

Occupation:

Telephone/Mobile number:

Email address:

Work address:

Home address:

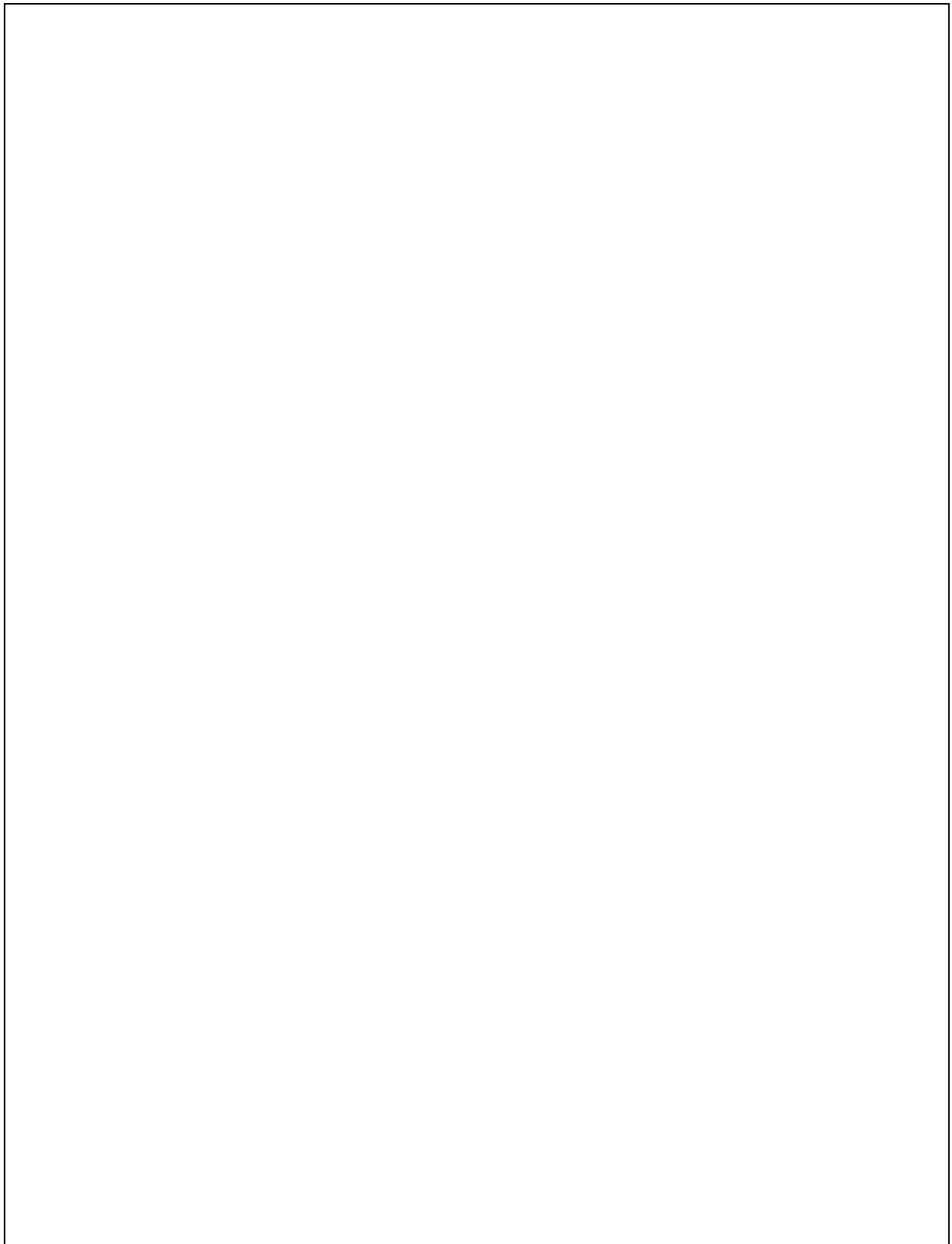
This statement (consisting of page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signature:

Dated the: day of 20.....

Page number..... of

Continuation Statement of (Name):



Page number..... of

REQUEST FOR A REPORT: STRICTLY PRIVATE AND CONFIDENTIAL
IN CONTEMPLATION OF LITIGATION

Synopsis and Chronology

Care Management Problems

Breach of Duty

Causation

Conditions and Prognosis (if applicable)

Quantum

Risk Management Implications i.e. what can be learned in the future from this incident?

Action Plan

Risk assessment: Low/Medium/High

Appendix 7 - Monitoring Compliance and Effectiveness

Duties outlined in this Policy will be evidenced through monitoring of the other minimum requirements

Where monitoring identifies any shortfall in compliance the group responsible for the Policy (as identified on the policy cover) shall be responsible for developing and monitoring any action plans to ensure future compliance

Minimum Requirements to be monitored	Evidence from self assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
Action to be taken, including timescales	11.0 Timescales and Procedures	Audit of 10 claims which have been selected by Risk Management	Legal Affairs Lead	Annually
How the organisation communicates with relevant stakeholders, such as <u>staff</u> , claimants, NHS R, solicitors, HM Coroner, etc	8.0 Stakeholders	Audit of 10 claims which have been selected by Risk Management	Legal Affairs Lead	Annually

Appendix 8 -The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

Shape its services around the needs and preferences of individual patients, their families and their carers	<input type="checkbox"/>
Respond to different needs of different sectors of the population	<input type="checkbox"/>
Work continuously to improve quality services and to minimise errors	<input checked="" type="checkbox"/>
Support and value its staff	<input type="checkbox"/>
Work together with others to ensure a seamless service for patients	<input type="checkbox"/>
Help keep people healthy and work to reduce health inequalities	<input type="checkbox"/>
Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance	<input checked="" type="checkbox"/>

Appendix 9

Due Regard Screening Template

Section 1			
Name of activity/proposal		Claims management	
Date Screening commenced			
Directorate / Service carrying out the assessment		Enabling/ Legal team	
Name and role of person undertaking this Due Regard (Equality Analysis)		Sameah Akhtar, Legal Affairs Lead	
Give an overview of the aims, objectives and purpose of the proposal:			
AIMS: This policy describes the process for managing claims involving the Trust under the National Health Service Resolution (NHSR) scheme or equivalent insurance scheme.			
OBJECTIVES: Due regard and equality analysis			
Section 2			
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details		
Age	No impact		
Disability	No impact		
Gender reassignment	No impact		
Marriage & Civil Partnership	No impact		
Pregnancy & Maternity	No impact		
Race	No impact		
Religion and Belief	No impact		
Sex	No impact		
Sexual Orientation	No impact		
Other equality groups?	None identified		
Section 3			
Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.			
Yes		No	
High risk: Complete a full EIA starting click here to proceed to Part B		Low risk: Go to Section 4. X	
Section 4			
If this proposal is low risk please give evidence or justification for how you reached this decision:			
The policy is neutral and has no impact on protected groups			
Signed by reviewer/assessor		Date	
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
Head of Service Signed		Date	

Appendix 11

DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</p> <p>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</p>		
Name of Document:	Claims Management Policy	
Completed by:	Sameah Akhtar	
Job title	Legal Affairs Lead	Date
Screening Questions	Yes / No	Explanatory Note
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	NO	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	NO	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	NO	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	NO	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	NO	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?		
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	NO	
8. Will the process require you to contact individuals in ways which they may find intrusive?	NO	
<p>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via Lpt-dataprivacy@leicspart.secure.nhs.uk</p> <p>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</p>		
Data Privacy approval name:		
Date of approval		

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust