
Claims Management Policy

Please be aware that this printed version of the Policy may NOT be the latest version. Staff are reminded that they should always refer to the Intranet for the latest version.

Purpose of Agreement	To effectively manage the receipt, handling, investigation and response to any claim arising from allegations of clinical negligence, personal injury giving rise to employer or public liability, or damage to or loss of property.
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SUMMARY OF POLICY

The purpose of this policy is to ensure claims that are received against the trust are appropriately managed whilst minimising costs and co-operating as much as possible to ensure the efficient and cost effective resolution of claims whether they be clinical or non-clinical. The content is summarised as follows:

- Communication, openness and timeliness in the claims process,
- Scope and definition,
- The process for reporting a claim upon receipt of this,
- The roles and responsibilities within the legal/risk team,
- The disclosure of medical records and associated documents that are relevant to a claim and in defending this, if appropriate,
- Associated documents,
- Claims procedure and notification of a claim to the NHS Litigation Authority.

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Glossary

'NHS Litigation Authority (NHSLA)' - Government funded body who deal with claims on behalf of the NHS and pay out compensation on their behalf.

'Clinical Negligence Scheme for Trusts (CNST)' - one of the schemes run by the NHSLA for dealing with and paying out compensation in respect of clinical negligence claims.

Liability to Third Parties Scheme (LTPS) - one of the schemes run by the NHSLA for dealing with and paying out compensation in respect of claims pursued by third parties, ie, visitors or members of staff. This will include personal injury claims.

'Property Expenses Scheme (PES)' - One of the schemes run by the NHSLA in respect of property claims pursued by members of staff or patients.

'Claim' - Any claim against the trust, either clinical or non-clinical.

'Letter of Claim' - The first stage in the claims process prior to the issue of formal proceedings.

'Serious Incident Requiring Investigation (SIRI)' - An incident reported or unexpected death that is considered to require investigation in order to establish the root causes.

'High Risk Incident (HRI)' - An incident reported that is considered to require investigation, but of a lesser degree and scale than a SIRI.

Claims Management Policy

1. INTRODUCTION & PURPOSE

- 1.1 Inadequate management of civil disputes by NHS organisations can result in inefficient use of public funds that could otherwise be directed towards delivering effective and efficient health services. This may extend the time period over which legal costs are incurred or by the Organisation inappropriately being found liable (or admitting liability) for damages due to a failure to disclose evidence that may constitute a defence against the allegation.
- 1.2 Solent NHS Trust is committed to effective and timely investigation and response to any claim arising from allegations of clinical negligence, personal injury giving rise to employer or public liability, or damage to or loss of property.
- 1.3 The organisation will ensure that in the interests of patients, staff and others, all reported claims will be resolved as quickly as possible and are managed within the NHS Litigation Authority (NHSLA) requirements for the relevant NHSLA schemes, namely Clinical Negligence Scheme for Trusts (CNST), Liability to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES).
- 1.4 The policy will be communicated to all relevant stakeholders.
- 1.5 The aims of this policy are:
- 1.5.1 To minimise claims by adopting the principles of:

Openness by:

- encouraging communication between patients and the healthcare provider encouraging patients to voice their dissatisfaction or concerns at the earliest opportunity
- encouraging the sharing of information by all parties to aid mutual understanding and to develop systems to identify adverse outcomes.

Timeliness by:

- providing an early opportunity to identify and investigate areas of concern involving defence organisations at an early stage
- ensuring records are provided on request within a realistic timescale and assist in providing third party information
- ensuring the litigation process proceeds within a reasonable timescale where resolution is not possible
- avoiding prolonged pursuit and defence of unmeritorious claims.

Awareness of options by:

- ensuring patients are aware of options available to pursue and resolve disputes.

1.5.2 To manage the claims process by ensuring the efficient and timely collation of documentation and efficient and timely communication with all parties to maintain a comprehensive database to ensure that:

- all relevant information is captured
- all claims can be graded
- reporting of trends and action is comprehensive and enables the organisation to learn.

1.5.3 To ensure that the organisation learns from each claim and puts action in place to prevent the incident from recurring or, where this is not possible, reducing the risk by adopting a good risk management process in line with the Risk Management Strategy and Policy.

2. SCOPE & DEFINITIONS

2.1 This document applies to all directly and indirectly employed staff within Solent NHS Trust and other persons working within the organisation in line with Solent NHS Trust's Equality, Diversity and Human Rights Policy.

2.2 A claim is defined as any demand, however made (but usually by the patient's / member of staff's legal advisor) for monetary compensation in respect of an adverse event, which may have resulted in:

- personal injury to patients and/or third parties, whether physical or psychological injury to staff
- damage/loss to patient, staff and/or third party property -
- clinical negligence
- and which carries significant litigation risk for the organisation.

2.3 The following are examples of information that might indicate a claim for Clinical Negligence being brought against the organisation:

1. A letter of claim from the individual from his/her next of kin, or an appointed representative, (e.g. Solicitor)
2. A complaint through the NHS Complaints Procedure, which also includes a request for compensation
3. A coroner's inquest where the standard of care provided by the organisation is criticised, especially where the relatives of the deceased patient have instructed lawyers for the hearing.
4. A request for disclosure of medical records, which includes specific allegations of negligence.
5. A completed claim form with particulars of claim.

2.4 Where an incident, complaint or other matter has the potential to lead to a claim, a preliminary analysis should be carried out and the matter may need to be notified to the NHS Litigation Authority.

3. PROCESS/REQUIREMENTS

3.1 Claim reporting

3.1.1 Any new claim or likely claim should immediately be brought to the attention of the Claims & Litigation Manager. The Claims & Litigation Manager will apply the Claims Handling Procedure in Appendix 1.

3.1.2 In order to report a claim to the NHS Litigation Authority (NHSLA) scheme the Claims & Litigation Manager must be in a position to send to the NHSLA the following documentation:

- NHSLA Report Form (LTPS or CNST depending on the type of claim) Letter of Claim
- All documents relating to the type of claim being reported.

3.1.3 On receipt of a letter of claim alleging clinical negligence, the Claims & Litigation Manager or nominated deputy will conduct or require from the service concerned, a preliminary analysis identifying any shortcomings in the care provided. The Preliminary Analysis offers the opportunity to comment on the possibility that the breach of duty identified led to the harm described in the letter of claim. It is a requirement for the preliminary analysis to be sent with the letter of claim to the NHSLA for Clinical Negligence claims to be accepted under the NHSLA scheme.

3.2 Analysing, Investigating and Learning from Claims

3.2.1 Solent NHS Trust Policy for the Analysis, Investigation and Organisational Learning (from Adverse Events, Complaints and Claims) will be followed where the Claims & Litigation Manager considers, at the time of receiving the letter of claim, that there is still potential for the event/s described to cause future adverse events. The Policy describes the reporting arrangements for any extended investigation and resultant action plans.

3.2.2 The Complaints Team and where appropriate, the Head of Patient Safety and Coroner Liaison will be made aware of any claims to enable a 'joined up' approach to management and learning from the incident to be taken.

3.3 Organisational reporting

3.3.1 The NHS Litigation Authority provides a report annually to the Claims and Litigation Manager on any claims notified to them by the organisation and a quarterly summary of new and existing claims.

3.3.2 **The Assurance Committee (AC)**

The Committee will receive quarterly reports detailing the registered and potential claims. This report will be based upon the quarterly feedback on all new and existing claims received from the NHSLA and include claim reports from appointed solicitors. Details of individual claims will be presented where these present a particular risk to the organisation and claims will be escalated to the Chief Nurse, as necessary.

3.3.3 **Risk Assurance Sub-Committee (RAsC)**

The Sub-Committee will monitor the progress and outcome of claims at each meeting. Remedial actions arising from particular claims or applicable to the whole organisation will be overseen by this Sub-Committee with particular risks and related action plans being referred by the Assurance Committee (AC) where required.

3.3.4 Reports will include action plans in order that lessons can be learned and practice and procedures reviewed, training needs identified and services improved.

4. ROLES & RESPONSIBILITIES

4.1 Chief Nurse

4.1.1 The Chief Nurse has Board level responsibility for Risk Management and organisational handling of claims and will inform the Board of major developments on claim-related issues.

4.2 Head of Patient Safety

4.2.1 The Head of Patient Safety has operational responsibility for claims management and should ensure that personnel involved have the appropriate skills and knowledge required to undertake the role with refresher training made available if necessary.

4.3 Claims & Litigation Manager

4.3.1 The Claims and Litigation Manager has responsibility for the conduct and control of all claims and the appropriate storage, transmission and disposal of claims documentation.

4.3.2 Following the receipt of information that may indicate a potential claim, the Claims & Litigation Manager, supported as appropriate by the Risk Management Assistant, will undertake a preliminary analysis. This will include a brief examination of the immediately available evidence that will be considered in terms of a breach of duty of care and causation in order to judge whether there is a realistic prospect of a claim being made. The analysis will be made using the National Patient Safety Agency Root Cause Analysis approach, where this is appropriate. Further details of this can be found in the RK04 Investigation Policy.

4.3.3 The assessment of litigation risk should be based on the guidelines for determining the levels of consequence and likelihood of risk (as detailed in Solent NHS Trust's Risk Management Strategy and Policy).

4.3.4 The Claims & Litigation Manager will contact the NHS Litigation Authority immediately by telephone before taking any further action should a significant litigation risk be identified or where the following features arise:

- Human rights issues
- Multiple claims from a single cause
- MP involvement
- Novel, contentious or repercussive claims.

4.3.5 It should be noted that where claims are below the excess of the NHS Litigation Authority Schemes, i.e. involving loss of equipment through theft or accident, these should be reported to the Finance Department for recording in the organisational Loss Register. Please also refer to the Losses & Compensation Policy.

4.3.6 The Claims & Litigation Manager will liaise with the Chief Executive, Chief Nurse, the Medical Director and the Director of Finance to settle or approve major decisions such as admission of liability for all claims against the trust.

4.3.7 The Claims & Litigation Manager will report on these matters directly to the Head of Risk Management.

4.3.8 Arrangements will be made to ensure that adequate legal and procedural advice can be obtained in absence of the Claims & Litigation Manager. In the first instance the Risk Management Assistant should be contacted.

4.4 **Director of Human Resources and Organisational Development**

4.4.1 The Director of Human resources, in liaison with the Claims & Litigation Manager, will arrange for the required investigation into any HR related claims.

4.5 **All Staff**

4.5.1 All staff receiving information that may constitute or lead to a claim as described in section 2 shall send all records of correspondence marked **for the attention of Solent NHS Trust Claims and Litigation Manager** and in accordance with the Confidentiality Policy and the Data Protection Policy to the Risk Management Department.

4.5.2 All directly employed staff and managers of services that wish to be covered by the provisions of the organisation's insurance schemes are required to co-operate with the claims process described within this policy and any subsequent guidance. Refusal of the claim under the NHSLA scheme or potential recharging to local budgets will be considered where non-cooperation causes the organisation to incur additional costs.

4.5.3 Risks and insurance must factor when considering service development options or events. The Risk Management Department can be contacted for advice.

5. TRAINING

- 5.1 All staff are informed of the reporting requirements for this policy as part of the Risk Management training. No formal training is currently delivered for the management of claims although staff should continue to check the current Training Needs Analysis requirements.
- 5.2 The Chief Nurse should ensure that personnel involved have the appropriate skills and knowledge required to undertake the role with specific training made available if necessary.

6. EQUALITY & DIVERSITY AND MENTAL CAPACITY ACT

- 6.1 An Equality Impact Assessment has been carried out assessing this policy (please see Appendix 2) and no adverse impacts have been found.
- 6.2 The policy has been assessed and meets the requirements of the Mental Capacity Act 2005.

7. SUCCESS CRITERIA / MONITORING COMPLIANCE WITH THE DOCUMENT

- 7.1 The Head of Patient Safety will review adherence to this policy on an annual basis to inform the Risk Management Annual Report.
- 7.2 There is no consistent measure for the successful handling of claims due to their diverse nature. However, the Claims Handling Procedure (Appendix 1), supporting the management of claims, details a number of key performance criteria against which each claim will be monitored. Failure to achieve these criteria will be examined for learning opportunities and will be reported to the Assurance Committee (AC) as necessary.
- 7.3 Any feedback relating to Solent NHS Trust claim handling received from the NHS Litigation Authority Claim Handlers will be reported to AC as required. A formal response from the organisation may be required should shortcomings be identified.

8. REVIEW

- 8.1 This document may be reviewed at any time at the request of either staff or management, but will automatically be reviewed 3 years from initial approval and thereafter on a triennial basis unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

9. REFERENCES AND LINKS TO OTHER DOCUMENTS

- Risk Management Strategy and Policy
- Health & Safety Policy
- Policy for the Reporting and Management of Adverse Events and Significant Adverse Events (including those reportable as SIRI)
- Analysis, Investigation and Organisational Learning from Adverse Events, Complaints and Claims.
- SIRI Policy
- Duty of Candour Policy

- HSC 1998/183 Handling Clinical Negligence Claims
- Civil Procedure Rules: Pre-Action Protocol for the Resolution of Clinical Disputes
- Civil Procedure Rules: Pre-Action Protocol for Personal Injury Claims Civil Procedure Rules: Part 36 Offers to Settle and Payments into Court National Patient Safety Agency, Root Cause Analysis Training, Exploring Incidents, Improving Safety
- Health & Safety at Work Act 1974
- Management of Health & Safety at Work Regulations 1999

- NHS Litigation Authority:

- Clinical Negligence Scheme for Trusts (CNST) Liabilities to Third Parties Scheme (LTPS) Property Expenses Scheme (PES)
- CNST Reporting Guidelines (Fifth Edition) – September 2008
LTPS Reporting Guidelines October 2007 incorporating ‘NHSLA Disclosure List’

Claims Handling Procedure by the Claims and Litigation Manager

Logging the Claim

On receipt (within 48 hours) the potential claim must be coded and logged. Sign in to Safeguard selecting the 'Litigation' module.

Create a reference number as follows:

SOLxx00##

SOL representing the organisation Solent NHS Trust

Xx the type of claim EL (Employer's Liability), CN (Clinical Negligence), PL (Public Liability)

00## the sequential case number

Enter all available information in the litigation and solicitor tabs.

Administration of Claim

On receipt (within 48 hours) make up a named file, to hold all correspondence, which is filed alphabetically by name in the secure claims filing cabinet.

Connectivity

On receipt (within 48 hours) check with the Complaints and Patient Advice and Liaison Team (PALS) and the Clinical Risk and Safety manager whether there have been any complaints or Serious Incidents Requiring Investigation (SIRI) respectively linked to this claim.

On receipt (within 48 hours) check if there is an inquest linked to this claim.

Raise Awareness

If any connectivity has been established, inform relevant managers.

Consider informing Head of Patient Safety or the Chief Nurse based on the assessment of risk.

Contact the NHS Litigation Authority immediately by telephone before taking any further action should a significant litigation risk be identified or where the following features arise:

- Human rights issues
- Multiple claims from a single cause
- MP involvement
- Novel, contentious or repercussive claims

Case Specifics

Clinical Negligence:

Upon receipt of a letter of claim the NHSLA must be informed and an acknowledgement sent to the claimant's solicitors within 21 days. Should the claim be below NHSLA thresholds it must be discussed with the Head of Risk Management.

The NHSLA will require a covering letter and a copy of the letter of claim.

The NHSLA will also require a preliminary analysis but this does not have to be sent at the same time as the initial notification.

The preliminary analysis will include a brief examination of the immediately available evidence, which will be considered in terms of a breach of duty of care and causation, in order to judge whether there is a realistic prospect of a claim being made. The analysis will be made using the National Patient Safety Agency Root Cause Analysis approach, where this is appropriate. Medical records must be obtained and staff relevant to the care of the individual may be approached.

The preliminary analysis should be sent to the NHSLA within one month of receipt of the claim but it is recognized that with complex claims this may not be possible. A note should be made on the file to identify the reason(s) for any exception and a holding letter sent to the NHSLA.

Documents must be sent by Special Delivery.

Await further instructions from the NHSLA.

Employer's Liability:

Upon receipt of a letter of claim the NHSLA must be informed and an acknowledgement sent to the claimant's solicitors within 21 days. Should the claim be below NHSLA thresholds it must be discussed with the Head of Risk Management.

The NHSLA will require a covering letter and a copy of the letter of claim.

The NHSLA have provided a list of documents which have to be included at the same time as submission of the claim.

The list of documents can be found at:

R:/ Legal Services\Templates\Claims

It is unlikely that all documents are available but every effort should be made to provide the majority of documents with the claim. The claim must not be submitted past the 21 day timescale in order to collect all the documents. Remaining documents will need to be sent to the NHSLA at the earliest opportunity.

To access Occupational Health records it is necessary to have signed authority by the claimant.

Details of employees pay must be requested from SBS.

Documents must be sent by Special Delivery.

Await further instructions from the NHSLA.

Public Liability:

Upon receipt of a letter of claim the NHSLA must be informed and an acknowledgement sent to the claimant's solicitors within 21 days. Should the claim be below NHSLA thresholds it must be discussed with the Head of Risk Management.

The NHSLA will require a covering letter and a copy of the letter of claim.

The NHSLA will also require a preliminary analysis but this does not have to be sent at the same time as the initial notification.

The preliminary analysis will include a brief examination of the immediately available evidence, which will be considered in terms of a breach of duty of care and causation, in order to judge whether there is a realistic prospect of a claim being made. The analysis will be made using the National Patient Safety Agency Root Cause Analysis approach, where this is appropriate.

The preliminary analysis should be sent to the NHSLA within one month of receipt of the claim but it is recognized that with complex claims this may not be possible. A note should be made on the file to identify the reason(s) for any exception and a holding letter sent to the NHSLA.

Documents must be sent by Special Delivery.

Await further instructions from the NHSLA.

Reporting

The claim must be included in relevant reports for RAsC, at the next available meeting, and AC, at the next relevant quarterly meeting.

Appendix 2

Equality Impact Assessment

Step 1 – Scoping; identify the policies aims	Answer
1. What are the main aims and objectives of the document?	To determine the pathway for Claims identification and handling within the organisation.
2. Who will be affected by it?	Staff receiving claims or notification of the intention to claim.
3. What are the existing performance indicators/measures for this? What are the outcomes you want to achieve?	This policy aims to ensure that the Risk Manager as designated Claims Handler receives all claims and is notified of all potential claims to allow claims handling to progress. The policy further aims to ensure that staff are aware of the necessary co-operation to provide information to manage claims.
4. What information do you already have on the equality impact of this document?	None – this is a new document
5. Are there demographic changes or trends locally to be considered?	No
6. What other information do you need?	None

Step 2 - Assessing the Impact; consider the data and research	Yes	No	Answer (Evidence)
1. Could the document differentiate unlawfully against any group?		X	Inclusive approach to handling all claims
2. Can any group benefit or be excluded?		X	Services are expected to treat claims from their client/patient groups in line with this policy
3. Can any group be denied fair & equal access to or treatment as a result of this document?		X	Investigating a claim would not impact on a specific patient's care and may identify improvements
4. Can this actively promote good relations with and between different groups?	X		Improves dialogue
5. Have you carried out any consultation internally/externally with relevant individual groups?		X	Policy to be presented to Policy Steering Group Dec'10
6. Have you used a variety of different methods of consultation/involvement		X	
Mental Capacity Act implications			
7. Will this document require a decision to be made by or about a service user? (Refer to the Mental Capacity Act document for further information)		X	

If there is no negative impact – end the Impact Assessment here.