

**Policy Document Control Page**

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**Designation: Head of Corporate Governance**

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**Responsibility of: Karen Byrne**

**Designation: Head of Corporate Governance**

**This policy is to be disseminated to all relevant staff.**

**This policy must be posted on the Intranet.**

**Date Posted: 30<sup>th</sup> May 2014**

| <b>Section</b> | <b>Contents</b>   | <b>Page</b> |
|----------------|---|-------------|
| 1.             | Purpose of the document   | 4           |
| 2.             | Aims  | 4           |
| 3.             | Scope   | 4           |
| 4.             | Introduction and Role of the NHSLA  | 4           |
| 5.             | Definition of a claim   | 5           |
| 6.             | Limitation  | 6           |
| 7.             | Notification of Claims  | 6           |
| 8.             | Roles and Responsibilities  | 6           |
| 9.             | Action by Legal Coordinator   | 8           |
| 10.            | Investigation of Claims - timescales  | 8           |
| 11.            | Protocol for Personal Injury Claims   | 9           |
| 12.            | Support for Staff   | 10          |
| 13.            | Keeping Patients, Relatives and Carers Informed   | 11          |
| 14.            | Record Keeping/ Evidence  | 13          |
| 15.            | Liaison with Legal Representatives/ Insurers  | 13          |
| 16.            | Reporting arrangements  | 13          |
| 17.            | Follow up arrangements  | 14          |
| 18.            | Conclusion of claim   | 14          |
| 19.            | Monitoring of Claims process  | 14          |
| 20.            | Financial Information   | 15          |
|                | Appendix A – Communication with External Agencies   | 17          |
|                | Appendix B - Flowchart for management of claims   | 18          |
|                | Appendix C – NHSLA Disclosure List  | 19          |
|                | Appendix D – Staff Feedback Questionnaire on Personal Injury and Clinical Negligence Claims Process | 33          |

## **1. Purpose of this Document**

This policy provides guidance on the process for managing all claims in accordance with NHSLA requirements and to provide assurance to the Board that appropriate systems are in place for the handling of claims and that any learning from the events giving rise to those claims is appropriately disseminated.

## **2. Aims**

Adhere to National Guidelines on management of legal claims and to provide an effective, comprehensive service to meet the needs of the Trust.

## **3. Scope**

This policy applies to all Trust employees, irrespective of age, race, colour, religion, disability, nationality, ethnic origin, gender, sexual orientation or marital status, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership. All employees will be treated in a fair and equitable manner recognising any special needs of individuals where adjustments need to be made. No member of staff will suffer any form of discrimination, inequality, victimisation, harassment or bullying as a result of implementing this policy.

## **4. Introduction and the Role of the NHSLA**

The Trust has a duty of care towards those it treats and any person who believes they have suffered harm from a breach of this duty of care can make a claim for compensation.

Similarly, the Trust has a duty to provide a safe environment for its employees and visitors. Any member of staff or visitor to the site who believes they have suffered harm as a result of the Trust's breach of duty may make a claim for compensation.

The Trust is a member of the NHS Litigation Authority (NHSLA). The NHSLA is a special health authority and part of the NHS responsible for handling negligence claims made against NHS Trusts. The NHSLA administers the schemes set out below and the Trust contributes to them.

The Trust is a member of the following schemes:

### **Clinical Negligence Scheme for Trusts (CNST)**

The CNST is a voluntary "mutual" administered by the NHS Litigation Authority which deals with claims for clinical negligence arising on or after 1<sup>st</sup> April 1995. Incidents before this date are covered by the ELS Scheme – see below.

The Trust will be indemnified for the full cost of clinical negligence claims provided the CNST guidelines are followed. The Trust pays an annual contribution as a member of the scheme.

### **The Existing Liabilities Scheme (ELS)**

The ELS is also administered by the NHS Litigation Authority, and provides funding for clinical negligence claims arising before 1<sup>st</sup> April 1995. No contributions are payable providing the ELS guidelines are followed.

### **Liabilities to Third Parties Scheme (LTPS)**

The LTPS is administered by the NHS Litigation Authority and deals with employer / public liability claims arising on or after the Trusts membership of the scheme from 1 April 1999. Membership is voluntary. The Trust pays an annual contribution to the scheme as well as an excess of £10,000 for each employer liability claim and £3,000 for each public liability, products liability and professional claim.

### **Property Expenses Scheme (PES)**

The PES is administered by the NHS Litigation Authority and deals with property claims arising on or after the Trusts membership of the scheme from 1 April 1999. Membership is voluntary. The Trust pays an annual contribution to the scheme as well as an excess of £20,000 for each PES claim.

All claims are also reviewed in accordance with the Trust's policy for handling incidents. This ensures that any adverse incidents associated with claims are identified and appropriately investigated/communicated (with internal and external agencies). Based on the grading of the incident this may include undertaking a Root Cause Analysis (RCA) in accordance the Trust's policy.

## **5. Definition of a Claim**

The NHSLA "Clinical Negligence Reporting Guidelines" define a claim as:

*Allegations of clinical negligence and/or a 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*

The above definition applies equally to other non-clinical negligence claims handled under the other schemes, for example, employers and public liability claims.

The NHSLA has stated:

*"This includes complaints leading to claims, notification of serious adverse events, incident reports generated by risk management processes (any of which represent a significant litigation risk), and requests for the disclosure of medical records. Defining an incident as a 'claim' in the absence of a demand for compensation does NOT of itself imply that the NHSLA accepts that compensation will ultimately be paid. It simply means that a preliminary analysis should be carried out and the matter may need to be reported".*

## **6. Limitation**

A claimant will usually have a period of three years from the date of incident or date of knowledge of the cause of any injury in which to issue a claim for negligence. In the case of a paediatric claim, the three-year limitation period will commence on the patient's eighteenth birthday. Limitation will not normally apply to a person incapable of managing and administering their own affairs. Additionally, the Court has discretion to waive the limitation period in some circumstances

## **7. Notification of claims**

All correspondence notifying the Trust of a potential claim (clinical negligence or personal injury) should be addressed/directed to the Chief Executive, who will forward this promptly to the Head of Corporate Governance and Legal Coordinator. Any request for Access to Health Records, which indicates a claim is being considered, will also be passed to the Legal Coordinator without delay.

The Trust will ensure that all communication is open, honest and is initiated as soon as possible after receipt of any claim.

## **8. Roles and Responsibilities**

### Chief Executive

- The Chief Executive has overall responsibility for Health and Safety throughout the Trust, of which personal injury and clinical negligence claims are a part.
- To ensure that both statutory and mandatory requirements are met and that adequate resources are made available for the Trust to meet its duties in respect of the management of all claims against the Trust and minimising financial loss and loss of reputation that may occur through adverse publicity.,.
- The Chief Executive is responsible for supporting staff by making adequate resources available to fulfil the requirement and making provision for staff to undertake appropriate training.
- Responsible for ensuring that robust arrangements are in place for the timely reporting and investigation of all personal injury and clinical negligence claims.

### Director of Nursing

- Presentation of the Quarterly Integrated Governance Report to Trust Board, highlighting the number of personal injury and clinical negligence claims and any significant trends and lessons learnt.

- Presentation of monthly Executive Overview Report to Trust Board, detailing number of personal injury and clinical negligence claims.

#### Head of Corporate Governance

- Lead role in the management of investigations and risk associated with claims and litigation.

#### Trust Solicitor

- The Trust Solicitor will review the claim with the respective members of staff and prepare a Preliminary Analysis. The purpose of this meeting will be to identify any adverse events that took place and highlight relevant learning issues. This will include a review of any details previously reported via the Trust's incident reporting system or complaints investigation process; and will agree whether a retrospective incident form should be completed based on the nature of the allegations in the claim. If an incident form is completed the investigation/communication of the incident with internal and external agencies, healthcare teams, service users and their carers will follow the procedure defined in the Trust's Incident Reporting and Management Policy (CO10). This includes the need to establish an inquiry and reporting on the management and outcome of the investigation to the Board. In addition, the Trust solicitor will be responsible for the management and coordination of any external legal representation.

#### Service Managers

- Responsible for ensuring staff in their area of managerial control are fully aware of the content of the personal injury and clinical negligence claim policy and the associated procedures.
- Responsible for ensuring incidents are promptly reported via the Trust electronic incident reporting system in relation to issues where a potential personal injury and clinical negligence claim could be brought against the Trust.
- Ensuring that incident forms are accurately and fully completed.
- Ensuring that staff involved receive adequate local support and any additional external and ongoing support where required.
- Responsible for ensuring any necessary local reviews and/or investigations have been carried out and that the results, together with remedial action(s) have been accurately recorded in an action plan and applied.
- Ensuring staff attend training sessions in relation to the personal injury and clinical negligence claim policy.

### All Employees (Permanent and Bank Workers)

- Responsible for ensuring understanding of the content of the personal injury and clinical negligence claim policy and the associated procedures.
- Ensuring the prompt reporting of all incidents/near misses on the Trust Incident Reporting System, in an accurate and timely manner.
- Ensuring that incidents are reported to Line Managers in accordance with the requirements of the policy.
- Co-operating fully in the investigation of any claim providing evidence as requested in a timely manner
- Ensuring the safe custody of documentary and other physical evidence as required.
- All newly appointed staff are responsible for attending Trust induction which will include the principles for incident reporting
- Alert the Trust Solicitor immediately or in his absence the Legal Coordinator of the receipt of any Court Proceedings or Claimant's solicitor's letter indicating a possible claim or requesting medical records.

### **9. Action by Legal Coordinator**

- Prompt acknowledgement of all correspondence received.
- Opening new claims files and obtaining further documentation as required by the NHSLA reporting requirements.
- Manage all claims in accordance with Trust procedures, NHSLA requirements and appropriate Pre Action Protocols.
- Liaising with the Trust's staff including obtaining statements and retrieval of records.
- Liaising with External Agencies (see Appendix A).
- Liaising with the Head of Corporate Governance, Complaints Manager and Risk Manager in the Governance Department
- Maintain a data base of all claims
- Reporting claims activity within the Trust
- Preparing a preliminary analysis in liaison with the Trust Solicitor.
- Liaising with the finance department on a quarterly basis to ensure that finances are reserved for damages and claimant costs.

### **10. Investigation of Claims - Timescales**

The investigation process will be coordinated by the Legal Coordinator. Thorough Investigation of legal claims (clinical negligence and personal injury) is essential. This can be prolonged and time consuming.

There are a number of timescale targets which apply to the claims Management process. The Legal Coordinator, on behalf of the Trust, will aim to meet in liaison with the NHSLA as appropriate, the following targets, where applicable:

- a) Provision of copy medical records under the Data Protection Act 1998 (DPA), the Access to Health Records Act 1990 (applies to deceased patients only) and the Pre-action Protocol for the Resolution of Clinical Disputes – within 40 days of receiving a properly authorised request or within 21 days for deceased patients of the record has been added within the 40 days preceding the receipt of the request
- b) Reporting a clinical negligence claim to the NHS Litigation Authority immediately upon receiving a letter of claim or within timescales set out in the reporting guidelines for other classes of incidents. The Legal Coordinator will need to obtain records, clinician's comments and in liaison with the Trust Solicitor produce a preliminary analysis prior to reporting.
- c) Reporting an employer/public liability claim to the NHS Litigation Authority within six weeks of receiving a letter of claim. Submission of Key documentation and the LTPS reporting form must be disclosed.
- d) Acknowledging the Claimant's solicitor's Letter of Claim – 21 days.
- e) Responding to the Claimant's solicitor's Letter of Claim with a Letter of Response (with either an admission or denial of liability) – 3 months after receipt of Letter of Claim.
- f) Acknowledging the service of formal proceedings (i.e. the Claim Form, Particulars of Claim, Scheduling of Damages) – 14 days from receipt.
- g) Serving a defence – 28 days from receipt of proceedings. An extension may be applied for if, for example, the proceedings were incomplete or the Claimant's solicitors have not complied with the Pre-action Protocol due to a limitation issue.

The Legal Coordinator will liaise with all grades of staff as part of the claims investigation process. Initial contact will be with the Lead Clinician and General Managers for clinical negligence claims; and with the General Manager and/or Head of Department/Service Manager for personal injury claims. The Legal Coordinator will bring all new claims to the attention of the Head of Corporate Governance and the Trust Solicitor.

Staff requested to provide statements, records or any other information are required to do so without delay and as conscientiously as possible. Any delay in providing this information may result in a financial penalty for the Trust if the legal/court time limits are not adhered to.

## **11. Protocol for Personal Injury Claims**

All new claims must include the following documentation:

- NHSLA LTPS Report Form

- Letter of Claim
- All documents relating to the type of claim being reported. Sample lists are enclosed in the form of an NHS Disclosure List (Appendix C). A completed Disclosure list must accompany all reported claims, indicating which documents are enclosed by means of a tick in the appropriate box.

Upon receipt of a letter of claim, the Legal Coordinator should promptly identify the type of claim and complete the NHSLA Disclosure List having identified the relevant documents. For every workplace claim the first page of the NHSLA Disclosure list must be completed, together with the appropriate page relating to the specific type of workplace claim.

## **12. Support for staff**

Any claims investigation can be disconcerting for the staff involved. The initial need to make a verbal and/or written statement can be stressful. As the investigation progresses, there may be the need for a more critical analysis of events. The Trust acknowledges that staff may find the process of litigation stressful and recognises that it is therefore important that staff are appropriately supported.

Immediate support for staff will be provided by their line manager. In addition, the Legal Coordinator and the Trust Solicitor will liaise/meet with the staff involved at regular intervals to explain and reassure them of the legal process and offer support as appropriate. This support will be provided on an ongoing basis until the litigation is resolved. Assistance will also be given with the preparation of statements as necessary.

In the event that staff are called as a witness, advice will be available from the Trust Solicitor/Legal Coordinator to staff to discuss the witness procedure in court and advise on production of any statements required.

In the event of external support/advice being required, the Trust has access to independent external legal advisors who will liaise with staff where appropriate.

In the event that a conflict of interest arises between the Trust and a member of Trust Staff, advice will be provided in relation to obtaining separate representation through their relevant Professional Body and non legal support will continue to be provided by the Trust.

Longer-term ongoing support can be offered through the Trust Staff Counseling Service. In addition staff members' line manager will continue to offer additional support to the individual.

In the event that staff members are experiencing difficulties with the litigation claims/ investigation the team/ward manager should consider if the staff service or the occupational health department would be helpful for the individual.

Staff support is available within Pennine Care, and contact information is available on the Trust intranet. Staff should be made aware of, and supported to access these services if appropriate. The Staff Counselling Service will advise regarding further additional external support if assessed to be required.

The Team Leader / Ward Manager should ensure that continuing support is available for staff throughout any litigation process. This may include emotional support via the Staff Counselling Service, and also practical assistance and training where needed. Guidance & training on how to construct a statement for litigation is available from the Trust Solicitor/ Legal Coordinator. Additional support and advice is also available to staff who are required to give witness evidence to any internal or external inquiry.

### **13. Keeping Patients, Relatives And Carers Informed**

All Trust staff has a major role to play in identifying and minimising risks. This can only be achieved if there is a progressive, honest and open working environment, where near misses and untoward incidents are identified quickly and acted upon in a constructive way, without unnecessary recourse to disciplinary procedures.

The aim of Pennine Care NHS Foundation Trust, in keeping with national policy, is to ensure complaints, incidents and claims made by service users, relatives or their carers are resolved openly and promptly and that staff are treated fairly.

Pennine Care recognises that open and honest communication with patients and their relatives or carers is essential in all areas of the Trusts work and across all relevant Health and Social Care Agencies. However it is especially important when incidents or accidents occur which affect patients and their families. The Trust's approach to such incidents will be to work openly and transparently, ensuring that patients and relatives are kept truthfully informed at all stages of the process in a timely manner. The patient (and/or relatives where appropriate) will be informed as a matter of priority, when an incident resulting in harm has occurred.

The Trust fully supports the "Being Open" principles contained in the NPSA Safer Practice Notice 10: Being Open when patients are harmed. Being open means apologising and explaining what happened to patients who have been involved in a patient safety incident, (and/or their carers).

Communicating effectively with patients and/or their carers is a vital part of the process of dealing with errors or incidents. In doing so, NHS organisations can help to ease the trauma suffered by patients and relatives. Other relevant Health and Social Care Agencies must be included in the "Being Open" principles as agreed by the Lead Trust Executive.

It is essential that staff receive proper advice and guidance on how to support patients and relatives following an incident. Patients and/or their carers should receive an apology as soon as possible after a patient safety incident has occurred and staff should feel able to apologise on the spot. Saying sorry is

not an admission of liability and it is the right thing to do. Patients have a right to expect openness in their healthcare.

*“it is both natural and desirable for those involved in treatment which produces an adverse result, for whatever reason, to sympathise with the patient or the patient’s relatives and to express sorrow or regret at the outcome. Such expressions of regret would not normally constitute an admission of liability, either in part or in full, and it is not our policy to prohibit them, nor to dispute any payment, under any scheme, solely on the grounds of such an expression of regret.” (NPSA 2005).*

When an incident has occurred, which resulted in serious injury to the patient, a meeting should be arranged with the patient/ relative and Pennine Care staff. Further detailed guidance is available in the Trust’s Incident Reporting Management and Investigation Policy.

The Trust will ensure that the patient (and/ or relatives) affected by an incident are informed if the incident is being investigated. The process for investigating the incident should be explained to the patient / carer, and they should be made aware that they may be contacted in the future to contribute to any subsequent investigation. If an investigation is complex or lengthy, the Trust will maintain regular contact with the patient to keep them informed of progress and likely timescale for conclusion. For serious incidents resulting in an Internal NHS Mental Health Trust investigation, the patient / relatives/ carers will be invited to contribute their views and concerns to the process.

The conclusion of any investigations including written summary reports for serious incidents will be shared with the patient (and / or relatives) staff members and other healthcare agencies where it is appropriate.

It is the responsibility of the local Service Manager to ensure that family and carers are contacted following a serious incident, when appropriate. If a patient is unable to give informed consent to disclosure of information to the relative or carer, the care team should consider if there is a duty to disclose information in the best interests of the patient. This should be documented in the patient’s notes.

However, where a death or serious injury has occurred the next of kin /carer will always be informed. The Manager in Charge /Team Leader, in consultation with the Service Manager, is responsible for ensuring that this is done by an appropriate senior member of staff.

Where an incident involves the death or serious injury of a staff member, an appropriate member of staff must inform the next of kin. Responsibility for ensuring this is done lies with the Manager in Charge of the Ward /Team Leader, in consultation with the Service Manager and Senior Manager on-call.

If a relative or carer is vulnerable or additional support is felt to be needed in breaking the news of a death to a relative at home, it may be appropriate to involve a person who knows the family best. Also if the relative or carer is difficult to contact this should be discussed with a Trust Senior Manager when it may be appropriate to contact the police.

The level of support required by the relative or carer should be assessed by a person who knows the circumstances best and can give guidance and advice on how to access support should this be required. This will include ward manager/charge nurse if inpatient, community team member or Consultant. A staff member will be identified as a contact person and a coordinator to ensure the relatives' support needs are met.

All communication with service users/carers/relatives and any other agencies must be documented in the Service Users Health Care Record.

Nothing in this section shall override the principle of legal professional privilege once any legal process has been commenced in relation to an incident. In such cases the Trust will comply with their responsibility under the Civil Procedure Rules or any other relevant statutory or regulatory provision in relation to the disclosure of evidence.

#### **14. Record keeping/evidence**

Clinical, nursing and other health or incident related records are essential to assist in the defence of a claim. Staff are reminded of the importance of dated, clear, legible notes at all times.

It is also essential that all incident forms are completed clearly and comprehensively, as these are often required as evidence, particularly in personal injury claims.

Personnel, Occupational Health and training records are also required for personal injury claims and similarly comprehensive, legible, accurate records are essential. All communication, including telephone calls with staff, service users, carers/relatives and external stakeholders must be clearly documented, dated and signed.

#### **15. Liaison with Legal Representative/NHSLA**

Only staff designated by the Chief Executive will have direct access to External Legal Representatives or NHSLA. All correspondence and enquiries should be channeled through the Trust Solicitor/Head of Corporate Governance.

#### **16. Reporting arrangements**

The Legal Coordinator will be responsible for maintaining and reporting to a claims database. This will allow the Legal Coordinator to:

- Monitor information for the CNST and NHSLA
- Facilitate payment of legal fees
- Prepare monthly and annual reports to the Integrated Governance Executive Group to analyse trends and ensure financial control.

- Circulate monthly reports to the Head of Corporate Governance for information and further investigation of trends as necessary.
- Ensure the appropriate external agencies are notified particularly in the event of a novel, contentious or repercussive claim (see Appendix A).
- Ensure that “lessons learnt” from claims is disseminated through the Trust’s governance structures.

## **17. Follow-up arrangements**

The Trust Solicitor and Legal Coordinator will liaise closely with all the staff involved, throughout the investigation of the claim and at its conclusion.

Individual Managers will also be notified of any systems or departmental processes that may need review following a claim (clinical negligence or personal injury).

The Corporate Governance Department will support the development and sharing of an agreed action plan and sharing of any lessons learned following any investigation undertaken. Divisional Integrated Governance and Borough Integrated Governance arrangements will be responsible for monitoring the implementation of any actions required by service areas.

## **18. Conclusion of Claim**

The Head of Corporate Governance will be responsible for arranging a closure review (as necessary) to consider the process by which the claim was managed and ensure that learning has taken place for any identified issues/risks. Any such learning will be summarised in an action plan.

If it is anticipated there will be media interest, the staff involved will be notified immediately as well as the Trust’s Chief Executive, Communications Manager and Head of Corporate Governance. A press statement will be prepared if necessary, and approved by the Chief Executive.

All staff involved in the incident will receive a written outcome of the investigation/claim and any resulting recommendations and actions. In addition, the Trust solicitor may arrange to meet with staff members involved to discuss the outcome.

## **19. Monitoring of Claims process**

The Trust solicitor will monitor on a two weekly basis all claims ensuring that deadlines are being met and communication with relevant stakeholders has been actioned. Any exceptions will be dealt with by the Trust solicitor.

The Legal Coordinator, on a monthly basis, will provide a summary report to the Integrated Governance Executive Group of all clinical negligence and personal injury claims. This will include: summary of number of new, settled and ongoing claims (clinical, personal injury and insurance); summary of

financial risk; trends/themes & learning; progress with agreed action plans; and performance against key performance indicators.

The monitoring of action plans will be undertaken by the Risk Department and the relevant Divisional and Borough Integrated Governance Groups on a monthly basis. Any themes/ lessons learned will be incorporated in to the quarterly Integrated Governance report and sent to the Integrated Governance group.

Reports to the Integrated Governance Executive Group will be reviewed by the Head of Corporate Governance to provide a single point of co-ordination with incidents and claims information.

The Head of Corporate Governance will report by exception to the Integrated Governance Executive Group where necessary.

The Corporate Governance Department will monitor the standards in relation to advice and support for staff through a staff feedback questionnaire which will be sent out to individual staff members on the conclusion of the case. This will request staff to feedback on whether the member of staff felt adequately supported and the legal advice/support from both internal and external advisors where appropriate, assisted and supported the staff member through the process (appendix D). This will be included in the six monthly report to the Integrated Governance Group. Any actions required will be the responsibility of the Corporate Governance department.

The Weekly Patient Safety Improvement Group (PSIG) will monitor the process in relation to staff, service user and relative/carer support via the completion of a Team Investigation Report (TIR). In addition the weekly PSIG via the Team Investigation Report will monitor communication with patients, relatives and staff regarding the principles of being open and apologizing where appropriate. Any concerns identified within the group will be fed back to the service area for immediate action.

## **20. Financial Information**

The responsibility for managing and settling clinical negligence claims transferred from the Trust to the NHSLA on 1 April 2002. The Trust has no authority to settle any claim. Where a claim is settled without discussion with the NHSLA then the Trust will be liable for the payment. For any clinical negligence claims not covered by the NHSLA (which should be the exception), approval to negotiate settlement shall be given by the Chief Executive and Director of Finance.

The Trust has insurance via the Clinical Negligence Scheme for Trusts (CNST) administered via the NHSLA. Insurance premiums are issued annually.

The Trust receives a discount to the CNST premium according to the associated risk management standard achieved through the NHSLA Risk Management Standards for Trusts.

Occasionally, having made a complaint, a claimant will request an 'ex gratia' settlement. Such settlements are not based upon legal liability and are therefore not reimbursable under the CNST by the NHSLA. In respect of requests for compensation associated with a possible clinical negligence claim, payments will only be made in the event of legal liability and all requests will be reported to the NHSLA. Ex gratia payments will not be made.

Financial responsibility for claims managed via the scheme is retained by the NHSLA; therefore, key management decisions concerning admissions made and monetary compensation are subject to authorisation from the NHSLA.

Approval to admit liability, or a decision to proceed to trial, shall be given by the Chief Executive in consultation with the Head of Corporate Governance, the Trust Solicitor and the NHSLA.

Any clinical negligence claim settled by the Trust outside of the NHSLA arrangements shall be recorded in the Trust's Losses and Special Payments Register. A summary of this register, which shall be subject to audit, will be presented to the Audit Committee twice in each financial year.

The Department of Health requires a summary of the Trust's Losses and Special Payments Register to be submitted as part of the Trust's annual accounts summarisation schedules. On the basis of this the Department of Health may ask for documentation on a sample of cases.

### **Communication with External Agencies**

The Trust Solicitor will review all new claims against the Serious Untoward Incident (SUI) criteria provided by the Strategic Health Authority. This review will consider potential media interest as well as the nature of the underlying cause of the claim.

In all claims, consideration will be given to reporting the claim to outside agencies which the claim will potentially impact upon or that could be involved in an investigation.

Outside agencies to be considered include:

- NHS England
- Clinical Commissioning Groups
- Environmental Health Agencies
- Health and Safety Executive
- Ambulance Trusts
- Local Acute and Mental Health Trusts

The Trust Solicitor, following discussion with the Head of Corporate Governance, will notify all external agencies as soon as possible.

Also, as part of the Incidents Management Policy, communication will take place with External Agencies and stakeholders as appropriate.

## APPENDIX B

### TIMESCALE FOR HANDLING OF CLINICAL NEGLIGENCE AND PERSONAL INJURY CLAIMS

|  | Time limit   |
|--|--|
| Notification of claim/ Request for records (to go to Claimant's solicitors)                          | 40 days  |
| Managers and staff involved to be notified +++   | 2 days   |
| Regional Medico-Legal Service and/or National Health Service Litigation Authority to be notified *** | Variable dependent on nature of claim<br>Max. 3 months |
| Letter of claim received to be acknowledged<br>(Clinical negligence)<br>(Personal injury)            | 14 days<br>21 days                                     |
| Offer of settlement received to be acknowledged  | 21 days  |
| Admission of liability or preparation of Defence   | 3 months or 90 days from Letter of Claim               |

\*\*\* The RMLS and/or NHSLA do not need to be notified until a formal allegation is made by the claimant. This can be some time after the initial request for access to records; or immediately a claim is notified if there is a clear indication of the basis of a claim as follow-on from an incident or formal complaint.

+++ Following the initial notification, Managers and staff will be contacted intermittently for their comments, supplementary information and/or formal statements.

## Appendix C – NHSLA Disclosure List

### WORKPLACE CLAIMS

|   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Accident Book Entry  | <input type="checkbox"/> |
| 2. First Aider report   | <input type="checkbox"/> |
| 3. Surgery record   | <input type="checkbox"/> |
| 4. Foreman/supervisor accident report   | <input type="checkbox"/> |
| 5. Safety representative's accident report  | <input type="checkbox"/> |
| 6. RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) report to HSE                                       | <input type="checkbox"/> |
| 7. Other Communications between defendants and HSE  | <input type="checkbox"/> |
| 8. Minutes of Health and Safety Committee meetings(s) where accident/matter considered  | <input type="checkbox"/> |
| 9. Report to DSS  | <input type="checkbox"/> |
| 10. Documents listed above relative to any previous accident/matter identified by the claimant and relied upon as proof of negligence | <input type="checkbox"/> |
| 11. Earnings information where defendant is employer  | <input type="checkbox"/> |

### **Documents produced to comply with requires of the Management of health and Safety at Work Regulations 1992-**

|  |                          |
|--|--------------------------|
| 1. Pre-accident Risk Assessment required by Regulation 3   | <input type="checkbox"/> |
| 2. Post-accident Re-Assessment required by Regulation 3  | <input type="checkbox"/> |
| 3. Accident Investigation Report prepared in implementing the requirements of Regulations 4, 6 and 9 | <input type="checkbox"/> |
| 4. Health Surveillance Records in appropriate cases required by Regulation 5                         | <input type="checkbox"/> |
| 5. Documents relating to the employees health and safety training required by Regulation 11          | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION A – WORKPLACE (HEALTH SAFETY AND WELFARE) REGULATIONS 1992**

- |  | <b>Enclosed</b>          |
|--|--------------------------|
| 1. Repair and maintenance records required by Regulation 5                       | <input type="checkbox"/> |
| 2. Housekeeping records to comply with the requirements of Regulation 9          | <input type="checkbox"/> |
| 3. Hazard warning signs or notices to comply with Regulation 17 (Traffic Routes) | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION B – PROVISION AND USE OF WORK EQUIPMENT REGULATIONS 1998**

- |   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Manufacturers' specifications and instructions in respect of relevant work equipment establishing its suitability to comply with Regulation 5.                               | <input type="checkbox"/> |
| 2. Maintenance log/maintenance records required to comply with Regulation 6.  | <input type="checkbox"/> |
| 3. Documents providing information and instructions to employees to comply with Regulation 8.   | <input type="checkbox"/> |
| 4. Documents provided to the employee in respect of training for use to comply with Regulation 9.   | <input type="checkbox"/> |
| 5. Any notice, sign or document relied upon as a defence to alleged breaches of Regulations 14 to 18 dealing with controls and control systems.                                 | <input type="checkbox"/> |
| 6. Instruction/training documents issued to comply with the requirements of regulation 22 insofar as it deals with maintenance operations where the machinery is not shut down. | <input type="checkbox"/> |
| 7. Copies of marking required to comply with Regulation 23.   | <input type="checkbox"/> |
| 8. Copies of warnings required to comply with Regulation 24.  | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION C – PERSONAL PROTECTIVE EQUIPMENT AT WORK  
REGULATIONS 1992**

- |  | <b>Enclosed</b>          |
|--|--------------------------|
| 1. Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 6.                                  | <input type="checkbox"/> |
| 2. Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7.                     | <input type="checkbox"/> |
| 3. Record of maintenance procedures for Personal Protective Equipment of comply with Regulation 7.   | <input type="checkbox"/> |
| 4. Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7.   | <input type="checkbox"/> |
| 5. Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 9. | <input type="checkbox"/> |
| 6. Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 10.          | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION D – MANUAL HANDLING OPERATIONS  
REGULATIONS 1992**

- |   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Manual Handling Risk Assessment carried out to comply with the requirements of Regulation 4(1)(b)(i).  | <input type="checkbox"/> |
| 2. Re-assessment carried out post-accident to comply with requirements of Regulation 4(1)(b)(i).  | <input type="checkbox"/> |
| 3. Documents showing the information provided to the employee to give general indications related to the load and precise indications on the weight of the load and the heaviest side of the load if the centre of gravity was not positioned centrally to comply with Regulation 4(1)(b)(iii). | <input type="checkbox"/> |
| 4. Documents relating to training in respect of manual handling operations and training records.  | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION E – HEALTH AND SAFETY (DISPLAY SCREEN EQUIPMENT) REGULATIONS 1992**

- |  | <b>Enclosed</b>          |
|--|--------------------------|
| 1. Analysis of work stations to assess and reduce risks carried out to comply with the requirements of Regulation 2.         | <input type="checkbox"/> |
| 2. Re-assessment of analysis of work stations to assess and reduce risks following development of symptoms by the claimant.  | <input type="checkbox"/> |
| 3. Documents detailing the provision of training including training records to comply with the requirements of Regulation 6. | <input type="checkbox"/> |
| 4. Documents providing information to employees to comply with the requirements of Regulation 7.                             | <input type="checkbox"/> |

## WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

### SECTION F – CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH REGULATIONS 1999

|  | <b>Enclosed</b>          |
|--|--------------------------|
| 1. Risk assessment carried out to comply with the requirements of Regulation 6.  | <input type="checkbox"/> |
| 2. Reviewed risk assessment carried out to comply with the requirements of Regulation 6.   | <input type="checkbox"/> |
| 3. Copy labels from containers used for storage handling and disposal of carcinogenics to comply with the requirements of Regulation 7(2A)(1).                           | <input type="checkbox"/> |
| 4. Warnings signs identifying designation of areas and installations, which may be contaminated by carcinogenics to comply with the requirements of Regulation 7(2A)(h). | <input type="checkbox"/> |
| 5. Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 7(3A).  | <input type="checkbox"/> |
| 6. Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7(3A).   | <input type="checkbox"/> |
| 7. Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7(3A).   | <input type="checkbox"/> |
| 8. Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 7(3A).                           | <input type="checkbox"/> |
| 9. Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 7(3A).                                     | <input type="checkbox"/> |
| 10. Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard to comply with the requirements of Regulation 7.           | <input type="checkbox"/> |
| 11. Maintenance examination and test of control measures records to comply with Regulation 9.  | <input type="checkbox"/> |
| 12. Monitoring surveillance records to comply with the requirements of Regulation 11.  | <input type="checkbox"/> |
| 13. Documents detailing information, instruction and training including training records for employees to comply with the requirements of Regulation 12.                 | <input type="checkbox"/> |
| 14. Labels and Health & Safety data sheets supplied to the employers to comply with the CHIP Regulations.  | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION G – CONSTRUCTION (DESIGN MANAGEMENT)(AMENDMENT) REGULATIONS 2000**

- |  | <b>Enclosed</b>          |
|--|--------------------------|
| 1. Notification of a project form HSE F10) to comply with the requirements of Regulation 7.              | <input type="checkbox"/> |
| 2. Health and Safety Plan to comply with requirements of Regulation 15.                                  | <input type="checkbox"/> |
| 3. Health and Safety file to comply with the requirements of Regulations 12 and 14.                      | <input type="checkbox"/> |
| 4. Information and training records provided to comply with the requirements of Regulation 17.           | <input type="checkbox"/> |
| 5. Records of advice from and views of persons at work to comply with the requirements of Regulation 18. | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION H – PRESSURE SYSTEMS AND TRANSPORTABLE GAS CONTAINER  
REGULATIONS 1989**

- |   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Information and specimen markings provided to comply with the requirements of Regulation 5.                          | <input type="checkbox"/> |
| 2. Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7. | <input type="checkbox"/> |
| 3. Copy of the written scheme of examination required to comply with the requirements of Regulation 8.                  | <input type="checkbox"/> |
| 4. Examination records required to comply with the requirements of Regulation 9.  | <input type="checkbox"/> |
| 5. Instructions provided for the use of operator to comply with Regulation 11.  | <input type="checkbox"/> |
| 6. Records kept to comply with the requirements of Regulation 12.   | <input type="checkbox"/> |
| 7. Records kept to comply with the requirements of Regulation 22.   | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION I – LIFTING OPERATIONS AND LIFTING EQUIPMENT  
REGULATION 1998**

1. Record kept to comply with the requirements of Regulation 6.

**Enclosed**



**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION J – THE NOISE AT WORK  
REGULATION 1989**

- |   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Any risk assessment records required to comply with the requirements of Regulations 4 and 5.   | <input type="checkbox"/> |
| 2. Manufacturers' literature in respect of all ear protection made available to claimant to comply with the requirements of Regulation 8. | <input type="checkbox"/> |
| 3. All documents provided to the employee for the provision of information to comply with Regulation 11.                                  | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION K – CONSTRUCTION (HEAD PROTECTION)  
REGULATION 1989**

- |   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Pre-accident assessment of head protections required to comply with Regulation 3(4). | <input type="checkbox"/> |
| 2. Post-accident re-assessment required to comply with Regulation 3(5).                 | <input type="checkbox"/> |

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION L – THE CONSTRUCTION (GENERAL PROVISIONS)  
REGULATION 1961**

1. Report prepared following the inspections and examinations of excavations etc. to comply with the requirements of Regulation 9.

**Enclosed**



**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY**

**SECTION M – GAS CONTAINERS  
REGULATIONS 1989**

- |   | <b>Enclosed</b>          |
|---|--------------------------|
| 1. Information and specimen markings provided to comply with the requirements of Regulation 5.                          | <input type="checkbox"/> |
| 2. Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7. | <input type="checkbox"/> |
| 3. Copy of written scheme of examination required to comply with the requirements of Regulation 8.                      | <input type="checkbox"/> |
| 4. Examination records required to comply with the requirements of Regulation 9.  | <input type="checkbox"/> |
| 5. Instructions provided for the use of operator to comply with Regulation 11.  | <input type="checkbox"/> |

I \_\_\_\_\_ state that I have carried out a reasonable and proportionate search to locate all of the documents which I am required to disclose.

I certify that I understand the duty of disclosure and to the best of my knowledge I have carried out that duty.

Signed \_\_\_\_\_

Date \_\_\_\_\_

Position \_\_\_\_\_

**Staff Support Feedback Questionnaire on the Personal Injury and Clinical Negligence Claims Process.**

- |  | Y/N                      |
|--|--------------------------|
| 1. Did your manager advise or offer the following:   |                          |
| Was a referral to occupational health department discussed with the employee?  | <input type="checkbox"/> |
| Was a referral to staff counselling service discussed with the employee?   | <input type="checkbox"/> |
| Was there a referral to any other agency?  | <input type="checkbox"/> |
| Was the member of staff provided with a copy of the policy?  | <input type="checkbox"/> |
| 2. Did you feel adequately supported by your line manager?   | <input type="checkbox"/> |
| 3. Did you feel adequately supported by the Trust's internal Legal Team?   | <input type="checkbox"/> |
| Was the employee offered support in statement writing?   | <input type="checkbox"/> |
| Was the employee offered support in preparation for appearing as a witness in court?   | <input type="checkbox"/> |
| Was arrangements made to ensure that the member of staff would be supported on the day of the hearing?                                 | <input type="checkbox"/> |
| If the case has concluded, was the employee debriefed or informed of the outcome of the claim.   | <input type="checkbox"/> |
| 4. Did you feel adequately supported by the external Legal Advisors?   | <input type="checkbox"/> |
| 5. Would you like to make any comments that would improve the support offered to staff through this process? If so please state below: |                          |

**A copy of this form should be sent to the Legal Coordinator and a copy filed in the member of staffs personnel file**