

CLAIMS HANDLING POLICY & PROCEDURE
CLINICAL NEGLIGENCE, LIABILITIES TO THIRD PARTIES
AND PROPERTY EXPENSES SCHEME CLAIMS

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DOCUMENT CONTROL

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CONTENTS

Section	Summary of Section	Page
Doc	Document Control	2
Cont	Contents	3
1	Introduction	4
2	Purpose and Scope	5
3	Duties and Responsibilities	5
4	Liaison with Third Parties	7
5	Explanations of Terms used	8
6	General Issues Surrounding Claims Handling	8
7	Claims Management Procedure	9
7.1	Letter of Claim	9
7.2	EL (Employers Liability) and PL (Public Liability) claims above the value of £25,000.	10
7.3	Low value EL and PL claims below £25,000 (web based Portal)	10
7.4	The Response to a request for Disclosure of Records	11
7.5	NHSLA Funding Request for Legal Representation at Inquests	12
7.6	Apologies and Explanations	12
7.7	NHSLA Feedback to Trusts	13
7.8	Solicitors Risk Management Reports	13
7.9	Reporting and Analysing Claims data	14
8	Letter of Response	14
9	Offer to Settle	14
10	Experts	14
11	Negotiation	14
12	Quantum	15
13	Support During the Claims Investigation Process	15
14	Training Requirements	15
15	Equality Impact Assessment	16
16	Monitoring Compliance and Effectiveness	16
17	Counter Fraud	16
18	Relevant Care Quality Commission (CQC) Registration Standards	17
19	References, Acknowledgements and Associated documents	17
20	Appendices	18
Appendix A	Indemnity	19
Appendix B	Limitation Act 1980	20
Appendix C	Financial Limits within the Scheme of Delegation (summary)	22

1. INTRODUCTION

- 1.1 It is in the interest of the Trust, our patients, carers, staff and visitors that all potential claims are managed efficiently and in accordance with an agreed procedure. All reported claims should be resolved as quickly and professionally as possible.
- 1.2 The Claims and Litigation Manager should be notified **immediately** of any reported incidents or complaints that could potentially result in a claim against the Trust. The conduct and control of all claims and claims documentation is the responsibility of the Claims and Litigation Manager and relevant Claims Handler (eg NHS Litigation Authority Claims Department).
- 1.3 The Claims and Litigation Manager will obtain approval from two Executive Directors, for the settlement of a claim up to a delegated limit according to the financial limit within the scheme of delegation (Appendix C). Payments will only be authorised when the **Payments Authorisation Checklist for the settlement of Claims Out of Court** (Authorisation for Losses and Special Payments form) has been completed to include action taken to mitigate future risk and lessons learned. Payments above £20,000 will need to be referred to the Trust Board.
- 1.4 **Small Value Claims** - The prevention of loss is a prime requirement of sound financial control, and control systems should be designed to achieve this. Losses do nevertheless occur, however, internal checks, regular supervision and internal audit must be used to ensure these are minimised. All small claims will be managed using **FP5 Losses and Special Payments** procedure accessible on the Trust intranet. For advice regarding the FP5 Losses and Special Payments process please contact the Lead: Senior Assistant Director of Finance.
- The register of Losses and Special Payments is reported to the Audit Committee.
- 1.5 The Trust encourages staff to be open and honest with patients and their families when there has been an unexpected outcome (Letter of Guidance from Chief Executive, NHSLA dated August 2007). Staff should be familiar with the Trust's Being Open and Duty of Candour policy.
- 1.6 The **Trust** acknowledges that:
- it is rarely the case that NHS staff set out to deliberately harm either themselves or others.
 - staff are usually doing their best to carry out their work in a safe and effective manner in order to benefit patients.
 - adverse events which lead to claims often occur due to system errors rather than due to an error on behalf of an individual alone.
 - being involved in a case which is being investigated as a possible claim can be a stressful experience for both junior and senior staff
- 1.7 The Trust acknowledges and recognises the diverse nature of its workforce and the service users and carers who use its services. Equality and diversity issues will be taken fully into account when handling and processing claims as covered by this policy.

2. PURPOSE & SCOPE

2.1 This policy aims to provide guidance to patients/staff/carers and the general public on the management of actual and potential claims within Somerset Partnership for the following type of claim:

2.2 CLINICAL NEGLIGENCE SCHEME FOR TRUSTS (CNST)

2.2.1 **Clinical Negligence** - "a breach of duty of care", claims in relation to patient incidents taking place after 1 April 1995 covered by the NHS Litigation Authority (NHSLA) CNST. There is no excess for CNST.

2.3 RISK POOLING SCHEME FOR TRUSTS (RPST)

2.3.1 **Employer Liability** - covered by the NHSLA RPST Liability to Third Parties Scheme (LTPS). All incidents where a Letter of Claim is received and the potential will exceed the Trust's **excess for Employer's Liability £10,000**.

2.3.2 **Public Liability** - covered by the NHSLA RPST Liability to Third Parties Scheme (LTPS) all incidents where a Letter of Claim is received and the potential will exceed the Trust's **excess for Public Liability £3,000**.

2.3.3 **Property Expenses Scheme** - covered by the NHSLA RPST Property Expenses Scheme (PES), these are "first-party" losses such as property damage and theft. All cases where the potential will exceed the Trust's **excess for buildings £20,000 and contents £5,000**.

2.4 Clearly **staff will not** indicate to patients or their families that they believe that the Trust is **liable** in a matter or that they consider that compensation is definitely due to them. **It is for the NHSLA to make any formal admission of liability**. It is also important that staff do not adversely criticise the work of colleagues (verbally or in writing), in particular where there has been no discussion with those colleagues or objective review of the matter.

3. DUTIES AND RESPONSIBILITIES

3.1 The **Trust Board** has a clear duty to investigate serious incidents and satisfy themselves that all reasonable steps have been taken to prevent the risk of future recurrence and in doing so reduce the risk of harm to patients, staff and visitors.

3.2 The **Chief Executive** will ensure there are systems in place within the Trust so that all claims are dealt with effectively and efficiently. Ensuring that support is available for staff involved in claims as required.

3.3 The **Director of Finance and Business Development** (or designated deputy) will monitor the NHSLA Quarter Reports for CNST and RPST to ensure he is alerted to any actual or potential claims against the Trust which will have financial consequences.

3.4 The **Director of Strategy and Corporate Affairs** is the Lead Director who has devolved responsibility who will oversee the monitoring and implementation of this policy in order to ensure that it is applied throughout the Trust. The Director of Strategy and Corporate Affairs will sign the 'Statement of Truth' at the end of the Defence at the appropriate stage in any legal proceedings confirming that the contents of the Defence are true.

3.5 The **Head of Corporate Business** is responsible for the management, review and monitoring of the Trust's claims and litigation services and will

- ensure the Quality and Performance Committee receive a quarterly progress report.
- 3.6 The **Claims and Litigation Manager** is the Trust's Claims Handler and will manage clinical negligence and employer/public liability claims whether brought via solicitors or by Claimants in Person (eg people acting alone without a solicitor). In all cases where a claim is suspected or known to be fraudulent, the Claims and Litigation Manager will seek the advice of the Trust's **Local Counter Fraud Specialist**.
 - 3.7 The **Quality and Performance Committee** is the Committee with overarching responsibility for Claims Management. The claims management report will be a regular standing item on the Quality and Performance Committee agenda and members will monitor each quarter, this will also update the Director of Finance and Business Development of the potential value of claims in order to budget for future costs.
 - 3.8 The **Clinical Governance Group** will review clinical negligence solicitor's reports to ensure where deficiencies are identified or risk concerns raised, action is taken to ensure the Trust is learning lessons from clinical claims.
 - 3.9 The **Complaints and PALS Manager** will advise the Claims and Litigation Manager of any complaints with the potential outcome of a claim against the Trust
 - 3.10 The **Information Governance Team** will advise and support the Claims and Litigation Manager of any 'Access to Records' disclosures in respect of potential claims against Somerset Partnership. The Information Governance Team will manage all 'Access to Records/Information' requests relating to 'Third Party Disclosure' (eg information requested in relation to a claim which is not against Somerset Partnership).
 - 3.11 The **Head of Estates and Facilities** will advise and support the Claims and Litigation Manager in managing Trust 'insurance' matters relating to the RPST Property Expense Scheme.
 - 3.12 The **Patient Advice and Liaison Service (PALS)** will offer advice and support to service users, carers and the general public and will advise the Claims and Litigation Manager of any issues with the potential outcome being a claim against the Trust.
 - 3.13 All **Senior and Operational Managers** will ensure staff are familiar with this policy and procedure and will support the Claims and Litigation Manager throughout any claims management process. Identify and take necessary actions to manage any risks highlighted by a claim and ensure a local risk assessment is completed. If related to a clinical risk specific to an individual patient then a clinical risk assessment should take place and be recorded and updated within the healthcare record.

3.14 All **Trust staff** will:

- a) report incidents as they occur (or retrospectively if not made aware of an incident until later) in accordance with the Trust's Untoward Events Reporting Policy (accessible via the public website).
- b) alert the Claims and Litigation Manager to matters which may lead to a claim whether clinical negligence, employer/public liability or incidents which may lead to a claim against the Property Expenses Scheme.
- c) co-operate fully in the investigation of any claim providing comments or statements as requested in a timely manner. This applies to current and ex-employees. **All NHS employees are covered by NHS Indemnity (see Appendix A).**
- d) alert the Claims and Litigation Manager **immediately** when a Claim Form (Proceeding issued by a Court) or Claimant's solicitor's letter indicating a possible claim in relation to their NHS work be addressed to them personally.
- e) alert the Claims and Litigation Manager **immediately** should they receive a request for medical records addressed to them personally in a matter which could potentially become a claim against the Trust.
- f) contact the Information Governance Team when they receive a request for healthcare records in a matter which is relating to 'Third Party Disclosure' (eg information requested in relation to a claim which is not against Somerset Partnership) and any other healthcare records request not related to a claim.
- g) contact the Trust's Freedom of Information Officer where any Freedom of Information requests are received concerning claims (who will liaise with the Claims and Litigation Manager).
- h) keep any 'privileged' documents filed **separately** from the medical records. Privileged documents are those produced in contemplation of litigation. These will be forwarded to the Claims and Litigation Manager who will file documents for staff on the claims or potential claims file, in line with the Records Keeping and Records Management Policy requirements. These can be made available to staff on request.
- i) ensure the safe keeping of any physical evidence which may be required in the investigation of a claim and contact the Head of Corporate Business to obtain photographic evidence if appropriate where the physical environment is in issue and may subsequently change.
- j) co-operate with the Claims and Litigation Manager in identifying the root causes of an incident which has resulted in a claim.

4 **LIAISON WITH THIRD PARTIES**

4.1 The Trust's Serious Incident Requiring Investigation (SIRI) Policy outlines the key external agencies and the responsibilities of reporting serious incidents to those agencies.

4.2 The **key external relationships and responsibilities** for the Trust's **Claims and Litigation Manager** are as follows:

4.2.1 **NHS Litigation Authority (NHSLA)** - initial reporting of new claims to the NHSLA (in accordance with CNST and RPST reporting guidelines) and ongoing liaison thereafter with Case Managers and Claims Inspectors (including seeking their approval of any proposed press releases in respect of claims matters).

- 4.2.3 **Claimants' Solicitor** - ongoing Trust liaison once contact is made, although most correspondence will be through the NHSLA.
- 4.2.4 **Defence Solicitor** - ongoing liaison once panel solicitors are instructed by the NHSLA.
- 4.2.5 Instructing defence solicitors on matters not covered by the risk pooling schemes eg a Disability Discrimination Act claim.
- 4.2.6 **Claimants** - communicating directly with a claimant, in a language and format which they can easily understand, where they are acting as claimants in person without solicitor representation.

5 EXPLANATIONS OF TERMS USED

- 5.1 A **claim** is defined as an allegation of negligence and/or a demand for compensation made following an adverse event resulting in personal injury, or any clinical incident which carries significant litigation risk for the Trust.
- 5.2 A **claimant** is any patient or their representative, member of the public, or employee who instructs solicitors to act on their behalf to pursue a claim against the Trust, or who enters legal proceedings against the Trust or who pursues compensation.
- 5.3 The **NHS Litigation Authority** (NHSLA) is a Special Health Authority, which was established in 1995 to administer the Clinical Negligence Scheme for Trusts (CNST) and thereby provide a means for NHS organisations to fund the cost of clinical negligence claims. Almost immediately the NHSLA's role expanded to cover clinical claims arising from incidents occurring before 1995, known as the Existing Liabilities Scheme (ELS). In 1999 the Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES), together known as the Risk Pooling Schemes for Trusts (RPST), were established to fund the cost of legal liabilities to third parties and property losses.
- 5.4 **DATIX** - the Trust's electronic risk management database used for recording the following data: PALS Concerns; Complaints; Untoward Events, SIRS (Security Incident Reporting System) and Medical Devices Register.

6 GENERAL ISSUES SURROUNDING CLAIMS HANDLING

- 6.1 The NHSLA handle and fund all CNST claims, regardless of value.
- 6.2 RPST claims are subject to excesses therefore trusts handle and fund lower value RPST claims themselves.
- 6.3 The Trust will need to take legal advice on individual cases, but the general position will be that all of the following must apply before liability for negligence exists:
 - **Duty of Care** - there must have been a duty of care owed to the person treated by the relevant professional(s);
 - **Breach of Duty** - the standard of care appropriate to such duty must not have been attained and therefore the duty breached, whether by action or inaction,
 - **Failure to advise** – inappropriate advice given or failure to advise;

- **Causation** - such a breach must be demonstrated to have caused the injury and therefore the resulting loss complained about by the patient;
- any loss sustained as a result of the injury and complained about by the person treated must be of a kind that the **courts recognise** and for which they allow compensation; and
- **Foreseeability** - the injury and resulting loss complained about by the person treated must have been reasonably foreseeable as a possible consequence of the breach.
- **Limitation** – Currently the Limitations Act 1980 is the key limitation which applies. For personal injury and clinical negligence claims the Claimant should issue their Claim Form through the Court within a period of 3 years of the date of incident which allegedly caused them harm or within 3 years of their ‘date of knowledge’ if this can be proven to be later. There are exceptions when the court will allow an extension, please see Appendix B.

7. CLAIMS MANAGEMENT PROCEDURE

All claims will be managed under the appropriate Pre-action Protocol for the Resolution of Clinical Disputes (CNST) or the Pre-action Protocol for the Resolution of Non-Clinical Claims (Personal Injury). The Pre-Action Protocol aims to achieve settlement of claims without the need for expensive and risky court proceedings.

7.1 Letter of Claim

The Trust (Claims and Litigation Manager) on receipt of a Letter of Claim will ensure the following procedures are followed:

- stamp date of receipt
- identify the date of the incident
- establish which NHSLA Scheme the claim should be referred to
- acknowledge (to Claimant/Claimant’s Solicitor) the Letter of Claim (CNST) within **14 days of receipt** or within **21 days of receipt** for (LTPS) advising the Trust has forward correspondence to the NHSLA for consideration
- check sufficient information has been provided and request more if necessary
- requests for disclosure of medical records to be processed **within 40 days**
- collect, retain, and index relevant records
- commence investigations
- identify all relevant persons involved/present at the time of the incident and obtain relevant contact detail (eg name, job title, contact telephone number)
- report a potential clinical negligence claim to the NHSLA – **within 2 months** of receiving an indication of a claim (where there is significant litigation risk) and **immediately** on receipt of a Letter of Claim or Claim Form (whether or not there is any litigation risk)

- complete relevant CNST or RPST registration using the NHSLA Extranet, CMS (Claims Management System) and upload relevant documentation eg Letter of Claim, Acknowledgement to Claimant's Solicitor, Investigation Reports (when available)
- complete Compensation Recovery Unit (CRU1) form if claim is below our excess.
- provide a reasoned answer within three months of receipt of the Letter of Claim stating:
 - an admission of liability
 - an admission of partial liability
 - a denial of liability
 - open a litigation file, giving it a unique reference number
- all letters of claim and Part 36 offers will be notified to the NHSLA **immediately**;
- all legal proceedings (in CNST or RPST claim) to be notified to the NHSLA **immediately**.
- acknowledge the service of formal proceedings (eg the Claim Form, Particulars of Claim, Schedule of Damages) – **14 days** from receipt.
- 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 solicitor has not complied with the Pre-action Protocol due to a limitation issue. The NHSLA will usually have instructed solicitors by this stage and they will serve the Defence once approved by the NHSLA and the Trust, with a Statement of Truth signed by the Trust (usually the Director of Strategy and Corporate Affairs).

7.2 **EL (Employers Liability) and PL (Public Liability) claims above the value of £25,000**

All EL and PL claims above the value of £25,000 and claims following incidents pre-dating 1 August 2013, will continue to be managed using the existing Pre-action Protocol for the Resolution of Non-Clinical Disputes.

7.3 **Low value EL and PL claims below £25,000 (web based Portal)**

On the 1 August 2013, the Ministry of Justice introduced a web-based Portal to be managed by Insurers and Compensators for low value claims following incidents occurring on or after the 1 August 2013. This means all Employers Liability (EL) and Public Liability (PL) claims valued below £25,000 will be reported directly to the NHSLA using the new Portal and the NHSLA will advise the Trust of each new claim.

The Trust's Claims and Litigation Manager will collate all requested disclosures and complete the NHSLA EL and PL Portal Claims Investigation Pack.

What this means for us

All low value claims managed within the Portal will need to be investigated and responses regarding liability will need to be made within the following time frames:

- Employers Liability – 30 working days
- Public Liability – 40 working days

Benefits to the Trust and the NHS

Claims processed using the portal will be subject to a regime of fixed recoverable costs. Claims settled below £10,000 will attract fixed costs of only £900 and Claims settled between £10,000 and £25,000 will attract fixed costs of £1,600. This gives scope for significant potential savings to the Trust and the wider NHS.

Risk - significantly increased legal costs

Overdue responses will mean that the claim will exit the portal process resulting in significantly increased legal costs. The key is to keep indefensible claims in the portal and to ensure that incidents are quickly investigated and evidence gathered so as to make the right decision within the deadlines.

7.4 The Response to a request for Disclosure of Records

7.4.1 Requests for disclosure of records are usually made under the subject access provisions of the Data Protection Act 1998. There are three usual routes for these requests:-

- by a patient or his representative directly (**Personal Disclosure**)
- by a solicitor requesting records in respect of a claim against another party (**Third Party Disclosure**), not a claim against Somerset Partnership.
- by a solicitor acting either to investigate or notify a claim against the Trust (**Pre-Action Disclosure**)

7.4.2 **To comply with the Data Protection Act, and the Pre-Action Protocol for the Resolution of Clinical Disputes, records must be provided within 40 days** of the request and payment of the fee, at a cost not greater than that specified by the Data Protection Act (a maximum of £50, inclusive of copying, but plus postage, at present).

7.4.3 The Data Protection Act also specifies a duty to consider if disclosure would:-

- reveal information likely to cause serious harm to the physical or mental health of a patient or any other individual
- reveal information relating to or provided by an individual other than the patient (or health professional involved in the care of the patient) who could be identified, and has not given consent to the disclosure [eg in paediatric and psychiatric cases].
- advice and support is available to staff by contacting the Information Governance and Records Manager.

7.4.4 **Copying records in the course of a claim is not a trivial task.** It requires skill and patience to ensure that all copies are clear, readable, and of good quality. Copies should be filed into an indexed and paginated bundle, not run off and kept as an undifferentiated pile. Additional work arising from poor or incomplete copying will certainly rebound in increased costs if the case is lost. Copying of all healthcare records will be conducted by the Claims and Litigation Manager with the support of the Information Governance Team.

7.5 **NHSLA Funding Request for Legal Representation at Inquests**

The NHSLA provides discretionary funding for members' legal representation at inquests under the CNST Scheme, where it is likely that a civil claim will be pursued based upon the subject matter of the inquest, from April 2013.

The Claims and Litigation Manager will complete the NHSLA for funding requests through the Claims Reporting Wizard, providing as much information as is possible. Examples of matters where this may apply include where:

- the family has legal representation;
- there has already been a complaint to the Trust;
- there has been a SIRI investigation, irrespective of the result;
- the clinicians or the Coroner have expressed concerns about the care;
- the member believes there is a significant litigation risk;
- the case concerns a prison death where the member provided, rather than simply commissioned, the healthcare (all prison death require an Article 2 Inquest);
- there has been or is likely to be national press coverage of the inquest; and/or
- the case involves a Never Event.

7.6 **Apologies and Explanations**

The Trust recognises that experiencing an adverse outcome can be stressful and difficult for patients and their families. The Trust has a statutory 'Duty of Candour' to ensure that patients and their families receive timely information when something has gone wrong. The Trust's Being Open and Duty of Candour Policy describes how to manage these situations so that families are informed about investigations and are given an apology.

The NHSLA encourages organisations to say sorry at the earliest opportunity remembering:

- saying sorry is not an admission of legal liability
- good communication with Patients, Carers, Family is vital during these discussions
- any information given should be based solely on facts known at the time
- the Patient, Carer, Family should be made aware that new information may emerge during any investigation.

7.7 **NHSLA Feedback to Trusts**

- acknowledgement and initial view of claim
- advise Trust if Proceedings likely, media interest, conferences, trial or mediation
- obtain Trust agreement if admissions are proposed
- advise Trust when negotiations are entered into
- Defence Solicitor to forward copy reports to trust.
- In February 2010, Chief Executives were sent a letter NHSLA Gateway number 0094 to advise Trusts that solicitors on the NHSLA's clinical panel will prepare a separate risk management report on all new CNST claims. The risk management report will be sent by the solicitor to the Claims and Litigation Manager to be shared within the Trust for action. A copy of the report will also be sent to the NHSLA Risk Management Team who will use the information as a basis for communicating with the organisation about the actions taken in response to the risk issues identified by the claim and sharing lessons with the wider NHS

7.8 **Solicitors Risk Management Reports**

- 7.8.1 In order to improve the safety of patients and staff and to reduce the number and severity of claims, a summary of all CNST Risk Management Reports received from Panel Solicitors is provided to the Quality and Performance Committee as part of the quarterly reporting requirements.
- 7.8.2 Where deficiencies and/or risk issues have been identified the Quality and Performance Committee will refer clinical issues to the Clinical Governance Group, who are responsible for agreeing and monitoring action plans. If action has not been taken, the reasons why and how this decision was made must be clearly document within the minutes of the meeting. All significant risks arising as a result of claims are escalated to the Trust Board.
- 7.8.3 Quarterly reports provided to the Quality and Performance Committee detail the following quantitative and qualitative information:
- Details of public liability cases currently open;
 - Details of employer's liability cases currently open;
 - Details of clinical negligence cases currently open;
 - Number and aggregate value of claims in progress;
 - Likely outcome of claims, the final outcome (once known);
 - Lessons learned and any remedial action taken or anticipated
- 7.8.4 The Claims and Litigation Manager will liase with the Head of Corporate Business and the Director of Strategy and Corporate Affairs before reporting back to the NHS Litigation Authority in respect of actions taken following Solicitors Risk Management Reports.
- 7.8.5 The Clinical Governance Group will ensure learning points are forwarded to the Patient Safety Team and staff awareness take place during training and awareness raised in the Trust newsletter 'Whatson'. The 'Whatson' is sent

to all staff fortnightly by email and is accessible to all staff on the Trust Intranet.

7.9 Reporting and Analysing Claims data

The Head of Corporate Business supported by the Claims and Litigation Manager will provide a quarterly report of claims activity using the Governance Group reporting template. The report will include an up-to-date spreadsheet of all CNST and RPST claims handled by the Trust and the NHSLA.

8 LETTER OF RESPONSE

- 8.1 **The Trust should, within three months of receipt of a Letter of Claim, provide a reasoned answer**, except for low value Portal Claims eg EL (30 working days) and PL 40 working days. The pre-action protocols for the resolution of both clinical and non-clinical disputes promotes the early disclosure of relevant documents. The Letter of Claim may identify the documents requested by the claimant's solicitor.
- 8.2 **If the Trust denies liability**, we should enclose with our Letter of Response copies of any documents in our possession which are 'material to the issues' between the parties and which the Court would otherwise order to be disclosed.
- 8.3 **If the Trust admits partial liability**, but alleges 'contributory negligence' by the claimant, it should make clear which issues are admitted and which are denied. The Trust should give reasons supporting the allegations and disclose any documents relevant to the dispute.

9 OFFER TO SETTLE

- 9.1 If the claimant has made an 'offer to settle', the Trust should respond to the offer in its response letter. The Trust may make its own offer to settle at this stage, either as a counter offer or of its own accord. Any offer made by the Trust should be accompanied by supporting evidence in relation to the value of the claim.

10 EXPERTS

- 10.1 Before either party instructs an expert, he will give the other party a list of names or name of an expert in the relevant speciality. Within **14 days**, the other party may **indicate an objection** to one or more of the named experts. If the second party objects to all the listed experts, the parties may then instruct an expert of their own choice.
- 10.2 Either party may send to an agreed expert, via the claimant's solicitor, **written questions on the report relevant to the issues**. The expert should send their response to any questions separately and directly to each party.

11 NEGOTIATIONS

- 11.1 Both parties and their legal representatives are encouraged to enter into discussions and/or negotiations prior to starting Court proceedings. This may include face-to-face discussions with the claimant and their legal advisors where applicable.

12 QUANTUM

- 12.1 This should be estimated by the Claims Manager on the basis of information known at the time, using the Judicial Studies Board (JSB) Guidelines supplemented by advice from the NHSLA. It should represent a best guess of the probable cost to the defendant at the time of resolution of the case and should incorporate figures for both claimant and defence legal costs. Claims staff at the NHSLA will be pleased to advise by telephone.
- 12.2 **Some of the procedures detailed above will be dealt with directly by the NHSLA, Trust Insurers, where the claim exceeds our current excess limit. However, this guidance will also provide for in-house claims to be dealt with by the Trusts Claims Handler (Claims and Litigation Manager).**

13 SUPPORT DURING THE CLAIMS INVESTIGATION PROCESS

- 13.1 **Staff support** - The Trust recognises that being involved in an adverse incident, which is also being investigated as a claim, can be stressful for staff. Support for staff involved in either a serious incident, complaint or claim is described in the Trust's Serious Incidents Requiring Investigation (SIRI) Policy and Procedure.
- 13.2 The **Line Manager** should be the first point of contact for an individual seeking support.
- 13.3 **Trust Managers and Senior Clinical Staff** will have a responsibility for ensuring that their staff are appropriately supported and, where necessary, should seek guidance from the Human Resources Department .
- 13.4 The **Claims and Litigation Manager** may be contacted directly on 01278 432 091 or 01278 432 084 for further advice and support.
- 13.5 Staff could also contact their local trade union representatives for individual advice.
- 13.6 **Patient and Family Support** - The Trust also recognises that experiencing an adverse outcome can be stressful and difficult for patients and their families. The Trust's Serious Incidents Requiring Investigation (SIRI) Policy and in particular the Trust's Being Open and Duty of Candour Policy (both available via the Trust's public website) describe how these situations can best be managed so as to support patients and their families, keeping them informed about any incident investigations and providing them with explanations and information on actions to be taken and where appropriate apologies.
- 13.7 The **Patient Advice and Liaison Officer** may be contacted on 01278 432 022. The PALS Officer will provide contact details of the relevant local Advocacy Service.

14. TRAINING REQUIREMENTS

- 14.1 The Trust will ensure that all necessary staff (qualified, unqualified, other clinical staff, bank and agency staff) are appropriately trained in line with the organisation's Mandatory Training Matrix (training needs analysis) accessible to all staff in the Learning and Development Section of the Trust Intranet.

- 14.2 All new staff will receive appropriate awareness training within the Corporate and Local Induction to include:
- Serious Incident Requiring Investigation (SIRI) Policy and Procedures
 - Risk Management Policy and Procedures
 - Untoward Event Report Policy and Procedures
 - Health and Safety Awareness
- 14.2 Root Cause Analysis Training will be provided to Managers expected to review/investigate Serious Incidents, Complaints and Claims.
- 14.3 All staff are provided with adequate training in the use of Untoward Event Reporting of all, including Serious Incidents.
- 14.4 Managers requiring training for Teams should contact the Head of Corporate Business who will facilitate this at the earliest opportunity.

15. EQUALITY IMPACT ASSESSMENT

- 15.1 All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. In addition, the Trust has identified Learning Disabilities as an additional tenth protected characteristic. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Equality and Diversity Lead who will then actively respond to the enquiry.

16 MONITORING COMPLIANCE AND EFFECTIVENESS

16.1 Monitoring arrangements for compliance and effectiveness

- 16.1.1 The Claims and Litigation Manager will provide a quarterly narrative report to the Head of Corporate Business who will present the report to the Quality and Performance Committee. This report will be completed using the Governance Group reporting template and will report on all activity including detail of new claims, closed cases within the last quarter, highlighting any new risks and issues of concerns. The Quality and Performance Committee will consider the report highlighting good practice and recommendations for potential learning.
- 16.1.2 The Quality and Performance Committee will refer clinical issues to the Clinical Governance Group, agree and monitor action plans following the quarter report and will escalate any serious risks to the Trust Board.

17. COUNTER FRAUD

- 17.1 The Trust is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

18. RELEVANT CARE QUALITY COMMISSION (CQC) REGISTRATION STANDARDS

18.1 Under the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3)**, the **fundamental standards** which inform this procedural document, are set out in the following regulations:

Regulation 11:	Need for consent
Regulation 12:	Safe care and treatment
Regulation 15:	Premises and equipment
Regulation 16:	Receiving and acting on complaints
Regulation 17:	Good governance
Regulation 18:	Staffing
Regulation 19:	Fit and proper persons employed
Regulation 20:	Duty of candour
Regulation 20A:	Requirement as to display of performance assessments.

18.2 Under the **CQC (Registration) Regulations 2009 (Part 4)** the requirements which inform this procedural document are set out in the following regulations:

Regulation 16:	Notification of death of service user
Regulation 17:	Notification of death or unauthorised absence of a service user who is detained or liable to be detained under the Mental Health Act 1983
Regulation 18:	Notification of other incidents

18.3 Detailed guidance on meeting the requirements can be found at <http://www.cqc.org.uk/sites/default/files/20150311%20Guidance%20for%20providers%20on%20meeting%20the%20regulations%20FINAL%20FOR%20PUBLISHING.pdf>

Relevant National Requirements

NHSLA Risk Management Standards 2012-2013 for NHS Trusts providing Acute, Community, or Mental Health and Learning Disability Services and Non-NHS Providers of NHS Care

Department of Health (2003). Making Amends. London: The Stationery Office. Available at: www.dh.gov.uk/assetRoot/04/07/23/28/04072328.pdf (April 2004)

National Patient Safety Agency: *Being open: Communicating Patient Safety Incidents with Patients and their Carers* (most recent version). Available at www.npsa.nhs.uk and the Academy download site.

National Patient Safety Agency: Root Cause Analysis (RCA). Available at www.npsa.nhs.uk

NHSLA Solicitors' Risk Management Reports on Claims - NHSLA Gateway Number 0094 February 2010

19. REFERENCES, ACKNOWLEDGEMENTS AND ASSOCIATED DOCUMENTS

NHSLA LTPS reporting guidelines updated October 2007

NHSLA RPST New Reporting Letter to Chief Executives July 2006

NHSLA Clinical Negligence Reporting Guidelines Fourth Edition – January 2007

Cross reference to other procedural documents

Being Open and Duty of Candour Policy

Counter Fraud Policy

FP5 Losses and Special Payments

Health and Safety Policy

Complaints, Concerns and Compliments Policy

Records Keeping and Records Management Policy

Risk Management Policy & Procedure

Risk Management Strategy

Serious Incidents Requiring Investigation (SIRI) Policy

Untoward Events Reporting Policy

Whistleblowing Policy

Acknowledgements

Salisbury NHS Foundation Trust

20. APPENDICES

- 20.1 For the avoidance of any doubt the appendices in this policy are to constitute part of the body of this policy and shall be treated as such.

Somerset Partnership NHS Foundation Trust

NHS INDEMNITY

The NHS Executive issued updated guidelines on 'NHS Indemnity – arrangements for handling clinical negligence claims against NHS staff' under HSG(96)48 on 8 November 1996.

This guidance is still current and confirms that all NHS staff are covered under NHS indemnity for harm caused by any acts or omissions whilst carrying out their NHS work.

The guidance states that for those covered under NHS Indemnity the NHS body (now the NHS Litigation Authority) should accept full financial liability where negligent harm has occurred and should not seek to recover their costs from the health care professional involved.

If staff are to benefit from the protection offered by NHS Indemnity it is fair that in return they co-operate fully with the claims management process.

A very useful document is included with the guidance which includes Questions and Answers on various indemnity issues. The full text is available on line in the Documents section of the NHS Litigation Authority website at www.nhs.uk

Somerset Partnership NHS Foundation Trust

LIMITATION

1. Currently the limitation Act 1980 is the key legislation which applies. This legislation seeks to strike a balance between the competing interests of Claimants and Defendants. It seeks to avoid the litigation of claims which are too old and where the evidence may no longer be available whilst still allowing actions to proceed where the strict application of time limits would result in unfairness to the Claimant.
2. In practice the commencement of a claim means the 'issue' of the Claim Form by the Court. For personal injury and clinical negligence claims the Claimant should issue their Claim Form through the Court within a period of 3 years of the date of incident which allegedly caused them harm **or** within 3 years of their 'date of knowledge' if this can be proven to be later.
3. The exceptions to this are:
 - i) children – their 3 year period does not commence until they reach the age of majority at 18 years ie. their primary limitation period expires at age 21.
 - ii) People with a 'disability' ie. 'of unsound mind' who are incapable of managing their own affairs. Such people may bring an action at anytime whilst the disability exists. In view of their ongoing disability the claim is usually brought on their behalf by a 'Litigation Friend'.
4. For claims for deceased patients being brought by their Personal Representative under the Law Reform (Miscellaneous Provisions) Act 1934 or the Fatal Accidents Act 1976 – the following applies:

If the person injured dies before the expiration of the 3 year period, the period applicable, as respects the cause of action surviving for the benefit of his estate by virtue of S.1 of the Law Reform (Miscellaneous Provisions) Act 1934, shall be 3 years from the date of death or the date of the personal representative's knowledge, whichever is the later.

The time limit for bringing an action on behalf of dependants under the Fatal Accidents Act 1976 for bereavement damages or a dependency claim is 3 years from the date of death or from the date of knowledge of the person for whose benefit the action is brought, whichever is later.

However, an action for bereavement/dependency under the Fatal Accidents Act 1976 shall not be brought if the death occurred when the person injured could no longer maintain an action to recover damages in respect of the injury (Limitation Act 1980 S.12(1)).
5. **Date of Knowledge**
Date of knowledge is when the claimant first had knowledge that the damage was significant and attributable in whole or part to the act or omissions of the Defendant.

Significant case law in recent years has led to the concepts of actual and constructive date of knowledge – ie. when did the Claimant first obtain knowledge and when **should** they have first obtained knowledge.

6. **The Court's discretion to disapply the Limitation Period**

Even though the Defendant may seek to put up a 'limitation' defence – the court has the discretion to disapply the limitation period under Section 33 of the Limitation Act.

Before doing so the Court will consider the facts of the case, the reasons for the delay and whether or not the Defendant will be prejudiced if the action goes ahead.

SOMERSET PARTNERSHIP NHS FOUNDATION TRUST

FINANCIAL LIMITS – EASY REFERENCE GUIDE

Financial Limit £	Ordering Goods & Services and Authorising Payments	Capital Expenditure	Charitable Funds	Sale of Equipment	Losses Write – off/Special Payments
0 ↓	Managers on list approved by Chief Executive	Director of Finance with the Estates Manager for schemes and variances up to £100,000	Managers and Directors	Business, General Managers and Directors	Deputy Director of Finance or Senior Assistant Director of Finance
250 ↓				As above with written quotations	Director of Finance
1,000 ↓				As above with prior approval by Dir. of Finance	Director of Finance & Chief Executive
2,500 ↓					
5,000 ↓					
20,000 ↓	Executive Directors		Trust Board	Trust Board to declare surplus followed by full tendering procedure	Trust Board
30,000 ↓					
50,000 ↓					
100,000 ↓	Director of Finance	Trust Board			
250,000 to 1,000,000	Chief Executive				