Mersey Care NHS
NHS Foundation Trust

Policy Number	SA05
Policy Name	Reporting, Management and Investigation of Claims
Policy Type	Trust-wide Non-clinical
Accountable Director	Executive Director of Nursing
Author	Director of Patient Safety Legal Advisor Claims Manager
Recommending Committee	Health and Safety Committee
Approving Committee	Executive Committee
Date Originally Approved	March 2017
Next Review Date	February 2018

This document is a valid document, however due to organisation change some references to organisations, organisational structures and roles have now been superseded. The table below provides a list of the terminology used in this document and what it has been replaced with. When reading this document please take account of the terminology changes on this front cover

Terminology used in this Document	New terminology when reading this Document
Liverpool Community NHS Trust	Mersey Care NHS Foundation Trust
Divisional Governance Board	Relevant Operational Management Board

FOR OFFICE USE ONLY (Work Stream submission check)

This document is compliant with current best practice guidance ☒

This document is compliant with legislation required in relation to its content ☐

What change has this document undergone in the policy alignment process relating to the South Sefton Transaction?

☐ None ☒ Minor ☐ Major ☐ This is a new document

☐ This document has been reviewed and is no longer required

Changes made – Removed all references to NHSLA and changed to NHS Resolution/R

Does this document impact on any other policy documents?

☒ Yes , **if yes, which policies are effected?** SA03 –Reporting and Management of Adverse Incidents

☐ No

Signed: B Judge E Howell **Date: 09/05/17**

Mersey Care NHS
NHS Foundation Trust

TRUST-WIDE NON-CLINICAL DOCUMENT

REPORTING MANAGEMENT AND INVESTIGATION OF CLAIMS

Policy Number:	**SA05**
Scope of this Document:	**All Staff**
Recommending Committee:	**Health & Safety Committee**
Approving Committee:	**Executive Committee**
Date Ratified:	**March 2017**
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Version Number:	**2017 – Version 3**
Lead Executive Director:	**Executive Director of Nursing**
Lead Author(s):	**Director of Patient Safety Legal Advisor Claims Manager**

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

Quality, recovery and wellbeing at the heart of everything we do

TRUST-WIDE NON-CLINICAL POLICY DOCUMENT

REPORTING MANAGEMENT AND INVESTIGATION OF CLAIMS

Further information about this document:

Document name	**SA05 POLICY AND PROCEDURE FOR THE REPORTING, MANAGEMENT AND INVESTIGATION OF CLAIMS**
Document summary	**This Policy provides instruction The Trust is committed to effective and timely investigation and response to any negligence claim.** **The Trust will follow the requirements and note the recommendations of the NHS Executive (NHSE) and the National Health Service Resolution (NHS R) in the management of negligence claims[1] and also in accordance with the Civil Procedure Rules 1998 (CPR) using the Protocols for Clinical Negligence and Personal Injury.** **The Trust's aim is to reduce the incidence and adverse impact of claims by adopting a prudent risk management approach that includes continuous review and a systematic approach to claims handling in line with best practice and guidance issued by the NHSE, NHS R and the courts.**
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Published by Copies of this document are available from the Author(s) and	**Mersey Care NHS Foundation Trust** **V7 Building** **Kings Business Park** **Prescot**

[1] NHS Resolution handles negligence claims made against NHS organisations (similar to insurance) and has a remit to improve risk management practices in the NHS. NHS R handles negligence claims made against NHS bodies through several schemes. The Trust is a member of the following schemes:

- Clinical Negligence Scheme for Trusts (CNST)
- Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES), collectively known as the Risk Pooling Scheme for Trusts (RPST)

NHS R takes particular interest in a Trust's claims history and making sure there is evidence that action has been taken to learn lessons from claims.

via the trust's website	**L34 1PJ** **Your Space Extranet: http://nww.portal.merseycare.nhs.uk** **Trust's Website www.merseycare.nhs.uk**
To be read in conjunction with	**SA03 the reporting and Management of Adverse Incidents**
This document can be made available in a range of alternative formats including various languages, large print and braille etc	

Version Control:

		Version History:
Consultation Draft,	Approved	March 2016
Version 1	Policy Group	February 2017
Version 2	Executive Committee	March 2017
Version 3		May 2017

SUPPORTING STATEMENTS

this document should be read in conjunction
with the following statements:

SAFEGUARDING IS EVERYBODY'S BUSINESS

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

EQUALITY AND HUMAN RIGHTS

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy

Contents

1. PURPOSE AND RATIONALE

1.1 Mersey Care NHS Foundation Trust recognises that there will be occasions when individuals who consider they have suffered personal injury or breach of their human right(s) will make a claim. The purpose of this policy and supporting procedure is to provide a mechanism for identifying and responding to (actual and potential) claims.

2. OUTCOME FOCUSED AIMS AND OBJECTIVES

2.1 The Trust's aim is to:

2.1.1 use the results of adverse incidents and complaints positively as a guide to how to improve services and reduce the likelihood of claims being made

2.1.2 take a proactive approach to try and resolve claims rather than letting them develop into unnecessary litigation

2.1.3 remedy areas of inadequacy identified by investigating claims;

2.1.4 take a systematic approach to claims handling in line with best practice and guidance issued by the NHS Executive, NHS Resolution and the Courts.

3. SCOPE

3.1 This policy will apply to all negligence claims, including allegations of clinical negligence, injury to staff and visitors, breach of human rights, data protection and property damage. Every member of staff is expected to co-operate fully with the Claims Manager in the assessment, investigation and management of each claim.

4. DEFINITIONS

4.1 Claims can be divided into a number of sub groups and will be classified by the Trust in one of the following categories:

Table 1: Description of the types of claims and relevant NHS R schemes

Terms	Definitions
Clinical Negligence	This is a claim against a healthcare professional and/or healthcare organisation arising from the decisions, judgements or actions of those employees acting in their professional capacity which caused negligent harm to the patient. These types of claims are referred by the Trust to NHS R and handled under their Clinical Negligence Scheme for Trusts (CNST), of which the Trust is a member.

Employer Liability	This is a claim against an employer by a staff member following an adverse incident at work resulting in personal injury, which was not the claimant's fault. These types of claims are referred by the Trust to NHS R and handled under their Liabilities to Third Parties Scheme (LTPS), of which the Trust is a member.
Public Liability	This is a claim against an owner/occupier by a visitor following an adverse incident on the owner/occupier's premises/or third party premises resulting in personal injury or damage, which was not the claimant's fault. It also includes claims made by patients for unlawful detention and personal data breaches. These types of claims are referred by the Trust to NHS R and handled under their Liabilities to Third Parties Scheme (LTPS), of which the Trust is a member.
Human Rights Act	This is a claim against a public authority by an individual for acting incompatibly with their rights. These types of claims are referred by the Trust to NHS R and handled under their Liabilities to Third Parties Scheme (LTPS), of which the Trust is a member.
Judicial Review	Any person with a sufficient interest in a decision or action by a public body can ask the court to review the lawfulness of the decision/action. The purpose of seeking a judicial review is to invite the public body to revisit and review its own decision or force a public authority to either do an action (Mandatory Order) or to prevent it from doing an action (Prohibitory Order) or to overrule a decision already made (Quashing Order). These types of claims are handled directly by the Trust. In these cases the Trust will instruct its own legal advisers.

Property loss or damage	This will be a **claim by the Trust** for property expenses arising from loss or damage to its property following an adverse incident. These types of claims are referred by the Trust to NHS R and handled under their Property Expenses Scheme (PES), of which the Trust is a member. Claims arising from the loss or damage to personal property brought onto Trust premises is handled by the Trust's Finance Department. All claims of this type should be referred to the Financial Accountant.
Claims involving Trust vehicles	All claims relating to Trust vehicles should be directed to the Trust's Transport Manager.
Limitation Periods	The limitation periods on initiating claims are as follows: In general, under the Limitation Act 1980, claims have to be made within three years from the date of the injury, or alternatively three years from the date the claimant knew (or ought to have known) they had suffered an injury. In the case of minors, the three-year period does not start until they reach the age of 18 years. People with a mental disability (which includes mental illness or learning disability) have unlimited time in which to make a claim. A Human Rights Act claim has to be made within one year of the act being committed, or its failure to act. A Judicial Review Application has to be made within three months of the act or omission (parties cannot agree to extend this time limit). A personal data breach claim has to be made within six years of the act being committed.

5. DUTIES

5.1 The Trust Board member with responsibility for claims will be the **Executive Director of Nursing** who will keep the Board of directors informed of major developments on claims related issues.

5.2 The **Director of Patient Safety** will be responsible for ensuring arrangements are in place for the proactive management of claims, reporting directly to the Executive Director of Communications and Marketing.

5.3 The **Director of Patient Safety** will make staff aware of this Policy and its location on the Trust web site on induction and mandatory training. They will also ensure that staff are kept up to date about any changes within the policy and procedure which impact upon them via the Communications Department.

5.4 The Trust's **Divisions** will monitor trends, gaps in control, remedial action arising, process issues for the purpose of organisational learning across the Trust.

5.5 This information will be used by the **Claims Manager** for inclusion in Trust Wide reports. Issues which may impact on the Trust's Assurance Framework, Training Needs Analysis or require a Quality Practice Alert will be highlighted in reports to the Executive Committee. (Quality Practice Alerts share safety lessons and may be communicated with external stakeholders if relevant.) Information regarding claims trends will be provided by the **Claims Manager** to the Trust Board via the bi-monthly quality report.

5.6 The **Legal Adviser** and relevant **Executive Directors** will provide professional advice as required by the Claims Manager.

Day to Day Management of Claims

5.7 The **Claims Manager** has day to day management responsibility for all claims in accordance with NHS R requirements and will oversee the claims procedure Trust Wide, maintain the claims database, deal with any procedural requests from legal advisers and ensure staff involved are kept informed as to progress of the claim. The Claims Manager will report directly to the Director of Patient Safety and communicate with relevant stakeholders and managers across the Trust via identified links at divisional level regarding both individual claims where necessary and any identified themes, trends or issues.

5.8 The Claims Manager will provide reports to the Divisions to assist the managers to monitor claims and identify recurring themes with a view to ensuring improvements where necessary.

5.9 The Claims Manager will meet with the Director of Patient Safety twice yearly to review training needs to carry out their claims management duties and will ensure continuity of cover in the event of absence

5.10 The Director of Patient Safety will monitor the progress of all claims with the Claims Manager. The Claims Manager will on receipt of a claim advise the Director of Patient Safety and the relevant Division/Service of the allegations, will advise on the preliminary analysis, how further investigations will take place, matters of procedural note and inform of the closure of the claim.

Responsibilities of Trust managers

5.11 Managers will be expected to notify the Claims Manager immediately of any reported accidents, incidents, complaints or access to records that could potentially result in a claim. The Datix Administrator, Complaints Managers and Health Records Managers also have specific duties as detailed in section 6.

5.12 Managers will be expected to assist with the investigation of claims arising from their service areas/departments. They will nominate a member of staff to assist the Claims Manager in undertaking a preliminary investigation, with specific responsibility for ensuring the collation of all relevant information from the service area/department.

5.13 Managers must progress any remedial action allocated to them arising out of a claim and advise the Claims Manager regarding any action taken.

Responsibilities of all staff

5.14 Every member of staff must co-operate fully with the Claims Manager as required in the assessment and management of all claims.

5.15 Any correspondence received in the Trust, whomsoever it is addressed to, which indicates that the intention is to make a claim against the Trust must be forwarded to the Claims Manager immediately. The conduct and control of all claims and claims documentation is the responsibility of the Claims Manager.

6. PROCESS

6.1 This is the corporate procedure for Mersey Care NHS Foundation Trust and must be followed for all claims. Attached at **Appendix A** is a flow chart illustrating the corporate procedure for the management all claims.

Identification and reporting of a potential claim

6.2 Any person in receipt of correspondence, which indicates that the intention is to make a claim against the Trust, must forward the correspondence to the appropriate Claims Manager immediately, together with any relevant information in terms of comments/documentation available at this stage.

6.3 Potential claims may also be identifiable from:

6.3.1 The accident and incident reporting procedure

6.3.2 The complaints procedure

6.3.3 An application for access to health records

6.4 The Claims Manager will be notified immediately of any reported accidents, incidents, complaints or access to records that could potentially result in a claim as follows:

6.4.1 The Datix Administrator will arrange for a copy of the incident reporting form to be sent to the Claims Manager. The Claims Manager will be

informed/involved in any investigation, which may be required. A copy of any investigation reports, witness statements, and required action etc., will be sent to the Claims Manager.

6.4.2 The Complaints Manager will send the relevant Claims Manager a complete copy of the complaint file.

6.4.3 The Health Records Manager will, where a request for access to records:

- has been submitted on the 'pre action protocol' and indicates that the intention is to make a claim against the Trust
- the record contains any information, which might give rise to a claim
- advise the Claims Manager of the request and send the Claims Manager an exact copy of the records which have been disclosed to claimants or their solicitor.

6.4.4 Any staff member in receipt of a Letter of Claim will send immediately to the Claims Manager

Dealing with a pre-action request for health records from a potential claimant

6.5 Where records are requested an original signed authority by the claimant must be provided. If not included with the request for health records, this will be sought and if not obtained the Health Records Team/Claims Manager will follow-up.

6.6 Records are usually disclosed under the Data Protection Act 1998, unless the patient is deceased whereby they will be disclosed under the Access to Health Records Act 1990 unless they were deceased prior to 01/11/91 thereby the records will be disclosed under the Supreme Court Act.

6.7 Records must be disclosed within 40 days unless exceptional circumstances require: (i) earlier disclosure by the claimant or (ii) extension of time to disclose by the Trust has been agreed by both parties.

Undertaking a Preliminary Analysis

6.8 It is not necessary or desirable to investigate in detail every event that may result in a claim. It should be appropriate to the severity of the event. However information gathering by the Claims Manager should begin as soon as the incident is known to determine if there is a realistic prospect of a claim being made - the more information gathered at an early stage, the better informed in the event a claim is made.

6.9 Where an incident report or a complaint exists, the results of the investigation and, in the case of the latter, a formal response, will be available. These will usually furnish sufficient information to form a judgement as to the likelihood of a claim being made.

6.10 Where an incident report does not exist, the Datix Administrator should be informed to arrange its completion.

6.11 The Claims Manager will consider the records available and seek the

comments of staff involved to complete a preliminary analysis, which will cover the following:

6.11.1 Synopsis and chronology – brief outline of main events including details of the main parties involved

6.11.2 Care management problems – all events where care and/or practice deviated beyond acceptable limits

6.11.3 Breach of duty – identify problems leading to harm, and consider any specific allegations made

6.11.4 Causation – determine any harm that has directly led to loss of amenity pain and suffering. (This may be difficult to determine in many cases without further investigation.)

6.11.5 Quantum - this will be an estimate by the Claims Manager on the basis of information known at the time 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. (NHS R can provide advice on estimating cost.)

6.11.6 Risk Management Implications - What can be learned for the future out of the events in question?

6.11.7 Assessment of litigation risk:

- **Low** - there is no liability on the part of any party to the claim or the allegations of negligence are not causative of the outcome alleged (nominal 25% liability)
- **Medium** - the likelihood of the claimant's success is equivocal and there is a need for further investigation (nominal 50% liability)
- **High** - the claim is viewed as likely to be settled or where there has already been an adverse expert opinion, for example in an incident investigation (nominal 75% liability)

6.11.8 Next steps recommended – the Claims Manager will contact NHS R where a litigation risk has been identified, forward the learning to the Division's relevant forum to progress learning.

6.12 The Divisional Link will assist the Claims Manager in locating relevant documentation to complete the preliminary analysis and undertake any other appropriate actions.

Reporting potential claims to NHS R

6.13 If a significant litigation risk has been established at any point during the investigation the matter will be reported by the Claims Manager immediately to NHS R or instructed solicitor, Director of Patient Safety and relevant service manager/departmental head.

6.14 Where media interest is anticipated or is already apparent the matter will be reported to the Director of Communications & Marketing

6.15 The Trust will receive notification of an actual claim via the following routes:

6.15.1 **NHS R's Employers' Liability (EL) and Public Liability (PL) Claims Portal** – for all EL and PL claims valued up to £25,000 and relate to accidents that occurred after 31 July 2013. The claimant's solicitors will also send a copy of the notification in paper form called the "Defendant Only – Claim Notification Form". These claims have shortened timeframes (compared to other claims) which means that prompt investigation and gathering of information and documents are vital. For the purpose of this Policy these claims will be known as '**Portal Claims**'.

6.15.2 **Letter of Claim (non portal claims)** – The claimant's solicitors will send notification directly to the Trust in the form of a letter which will have in the subject heading "Letter of Claim". For the purpose of this Policy these claims will be known as '**non Portal Claims**'

6.16 Upon notification of a claim it will be managed in the following way:

6.16.1 clinical negligence, employer liability, public liability, data protection and human rights act claims, whether notification is received via the claims portal or not, will be managed by NHS R in consultation with the Trust's Claims Manager.

6.16.2 property claims will be passed to the Director of Patient Safety to deal with – please refer to sections 6.70 to 6.74 for the handling for property claims.

6.16.3 all other claims (such as judicial reviews) will be dealt with by the Claims Manager, in consultation with the Director of Patient Safety. In these cases the Trust will instruct its own legal advisers.

6.17 All claims/potential claims will be logged by the Claims Manager onto Datix, the Trust's integrated incidents, complaints and claims computer database on receipt and given an identification number. This enables the aggregation of incidents, complaints and claims on an ongoing basis.

6.18 The new Employer Liability/Public Liability Protocol came into effect in July 2013, it applies to accidents occurring after 31st July 2013 and is applicable to claims valued up to £25k. These claims will be managed through the Claims Portal, which is NHS R's tool for managing low value personal injury claims.

Stage 1

6.19 Upon receipt of notification of a Portal Claim, the Claims Manager will send an electronic acknowledgment to NHS R by next business day

6.20 Liability must be admitted or the reasons why liability is not admitted must be given within 30 days for Employer Liability Claim or within 40 days for Public Liability Claims.

6.21 Failure to comply with any of the above the claim will exit the Portal.

6.22 If liability is denied or contributory negligence is alleged, the claim will exit the Portal.

Stage 2

6.23 The Trust has a total of 35 days from receipt of the settlement pack to liaise with NHS R/instructed solicitor to agree on the settlement of the claim, fifteen days to make an offer and twenty days to negotiate.

6.24 The time frame can be extended by agreement with the Claimant's Solicitors.

6.25 Interim Settlement payments to be made within ten days for up to £1K and fifteen days for over £1K.

6.26 Failure to comply with any of the above, the claim will exit the Portal and the Claimant can issue Proceedings.

6.27 For claims that exit the Portal or claims relating to events pre 31st July 2013 the procedural steps at 6.28 – 6.30 should be followed.

Acknowledging a non Portal Claim

6.28 Following receipt of a Letter of Claim (indicating that the intention to commence to legal proceedings and identifying the grounds for such) the Claims Manager will:

6.28.1 Report it to NHS R via NHS R Extranet in line with their reporting criteria relevant to the type of claim being reported, which is available from www.nhsla.com

i) In the case of clinical negligence claims first notification/reporting must occur within 24 hours of receipt of a letter of claim. If notification of the claim is via a request for disclosure of records, NHS R must be notified as soon as the preliminary analysis has been completed and no later than 2 months.

ii) In the case of non clinical claims within 21 working days of receipt of the letter of claim

6.28.2 Instruct a solicitor in all other cases (such as judicial reviews) within 5 working days of receipt or earlier if the correspondence indicates the matter is urgent and it is being expedited by the Claimant's solicitors.

6.29 The Letter of Claim will be acknowledged by the Claims Manager on behalf of the Trust within:

6.29.1 Seven days of receipt in the case of judicial reviews and will identify the instructed Solicitor who will be dealing with this matter.

6.29.2 Fourteen days of receipt in respect of all other cases and will identify that NHS R will be dealing with it. If the claimant's solicitor has not included the claimant's national insurance number or identified the claimant's funding in the letter of claim, this must be requested at this stage for the purpose of the Compensation Recovery Unit (CRU). Obtaining Compensation Recovery Benefits (CRB) information will be handled by NHS R or instructed solicitor.

6.29.3 A formal response by NHS R or the Trust's instructed solicitors will be made within:

6.29.4 Four months in the case of clinical negligence claims and three months personal injury claims

6.29.5 Fourteen days in the case of Judicial Review (however a reasonable extension should be requested, where needed, with reasons given)

provided that the Letter of Claim is pre-action protocol compliant.

6.30 The Claims Manager will inform the relevant Divisional Link of the claim within five working days of receipt.

6.31 The Claims Manager will also check the integrated incidents, complaints and claims database (DATIX) to identify if the claim relates to an incident or ongoing complaint and speak directly to the DATIX Administrator and Complaints Manager about the information available. In the event that an incident report form has not been completed the DATIX Administrator will be made aware and oversee completion retrospectively.

6.32 If a preliminary analysis was undertaken (upon receipt of correspondence indicating a potential claim) and/or other reviews including root cause analysis of an serious incident, complaint, safeguarding or HR investigation were undertaken (immediately following the incident) this will be submitted to NHS R. It may be necessary for the Claims Manager to gather further information based on any new issues identified within the letter of claim.

6.33 The preliminary analysis, will be forwarded to NHS R or instructed solicitor should include consideration of: care management problems, breach of duty, causation, quantum, claimant's funding, risk management implications.

6.34 All documents relating to the type of claim being reported should be sent to NHS R by the Document Transfer System or Trust's instructed Solicitor.

6.35 The Claims Manager will liaise with NHS R or instructed solicitor and agree how further investigations will take place and when key stages are reached, such as admission of liability or the claim is withdrawn etc.

6.36 In the event that NHS R instruct a solicitor to obtain an independent expert opinion the Claims Manager must disclose the records to the solicitor within two weeks of the request.

6.37 All requests by NHS R or instructed solicitor for site visits, interviews with staff etc.will be made through the Claims Manager.

6.38 In the event of requests to interview staff the Claims Manager will attend the interview and remain present throughout. The Claims Manager may take the opportunity to note any risk management issues which may arise during the interview. These can then be forwarded on to the service areas and Division/Service management team for consideration.

Root Cause Analysis

6.39 Consideration will be given to the severity of the event and whether a root cause analysis should be undertaken. The notification of a claim will not generate a root cause analysis. If a root cause analysis has not been undertaken at the time of the incident, e.g. incident not reported, then the Claims Manager will liaise with the Director of Patient Safety to discuss the severity of the event and who would be the most appropriate person to undertake one if appropriate. (The nomination of the investigator will be drawn from the pool of staff who have completed the Advanced Investigation Skills Training Course.)

6.40 Guidance on root cause analysis techniques and report writing is provided in *the Corporate Policy and Procedure for the Reporting, Management and Review of Adverse Incidents.*

6.40.1 Key responsibilities of the person undertaking the root cause analysis are:

(i) Identify relevant documentation
(ii) Assess the documentation
(iii) Identify all relevant staff members – every effort should be made to track down all key staff in respect of each case, including speaking to Human Resources and/or staffing agencies to find out where they have moved to and speaking to other staff members
(iv) Interview witnesses and produce a written record of the interview
(v) Write the report and, where appropriate, make recommendations to address weaknesses and prevent further occurrences.

6.40.2 The report should contain the following sub-headings:

(i) Background
(ii) Facts Established
(iii) Points of concern about the evidence
(iv) Analysis and Conclusions
(v) Recommendations (in consultation with the service manager/ departmental head)

Involving External Agencies

6.41 Some cases may be sufficiently serious to:

(i) refer to the police
(ii) involve external agencies

6.42 This should not be done as a result of the claim but at the time of the incident. However during the investigation of the claim it may become clear that the decision to refer to the police or involve external agencies has not already been made. In these instances the matter will be referred immediately to the Director of Patient Safety, who will then consider the issues raised and facilitate external liaison i.e. with the police.

6.43 In the case of claims alleging ill treatment or abuse the matter will be referred

immediately to the Nominated Officer for Safeguarding by the Claims Manager for their consideration of whether to hold a Safeguarding Panel meeting and/or involve an independent professional in the investigation of the claim.

Letter of Response

6.44 Once NHS R or instructed solicitor is in a position to take a view on liability there are a number of options to consider.

6.44.1 Make an admission of liability and invite the claimant to provide further details of his/her alleged injuries and any financial losses, with proof of the amounts where appropriate.

6.44.2 Offer to settle with NO admission of liability.

6.44.3 Deny liability and provide the claimant/claimant's solicitor with a formal response setting out the pertinent facts of the alleged incident giving a reasoned opinion as to why there is no evidence of negligence and invite them to withdraw the claim. **Note:** This is only appropriate where there are good grounds for believing that the claim is misconceived and/or without merit. An optimistic preliminary report from the relevant consultant will not always justify such a step and care must be exercised to see that all aspects of the claim have been reviewed thoroughly first.

6.44.4 Seek an early opinion from an independent expert outside the Trust. **Note:** NHS R/panel solicitors will instruct independent experts

6.44.5 Take no further action pending further communication from the claimant/claimant's solicitor.

6.45 The formal letter of response in the cases of clinical negligence and personal injury claims will be prepared by NHS R. In all other cases the response will be agreed with the instructed solicitor.

Legal Proceedings (The Claim Form and Particulars of Claim)

6.46 On receipt of the claim form/judicial review claim, the Claims Manager will forward it within 24 hours to NHS R or the instructed Solicitor as appropriate. (The Particulars of Claim must be served by the Claimant within four months of the Claim Form being issued. In cases of judicial review the claim form must be filed in the court within 3 months of the decision being challenged and served on the Defendant within 7 days of issue.

6.47 NHS R or the instructed solicitor will submit an Acknowledgement of Service within 14 days of service of the Claim Form or Particulars of Claim (where served separately). In judicial review cases the time limit is 21 days or earlier if ordered by the court. A Defence must then be submitted by NHS R or the instructed Solicitor within 28 days of service of the Claim Form unless an extension has been agreed with the Claimant. In judicial review cases the Defence must be served within 35 days or earlier by order of the court.

6.48 Once litigation has been commenced (after Court proceedings have been issued and the pleadings stage has been completed), the Trust is under a

duty to provide discovery of all documents relevant to the claim. The obligation is a continuing one so that if, for example, additional records turn up during the life of a claim which were for whatever reason unavailable at the outset, they should be disclosed to the claimant, subject to any objection taken on the grounds of relevance and/or privilege.

6.49 The Claims Manager therefore needs to take stock of the information available in connection with a claim at the earliest possible opportunity, ensuring that every effort is made to obtain all records and protect relevant documents from being destroyed.

6.50 If a Statement of Truth is received from the panel solicitors, it will need to be signed by the Claims Manager, Director of Patient Safety or another authorised member of the Legal Team In the absence of the above, a Trust Board executive will sign.

Hearing and Resolutions Pre-Hearing

6.51 The conduct and control of all claims at the Hearing and Resolutions Pre-Hearing stage is the responsibility of NHS R or instructed solicitor in consultation with the Claims Manager. NHS R or instructed solicitor will consider the suitability of the case for mediation.

6.52 Mediation involves a trained mediator acting as go-between to facilitate settlement.

6.53 The Claims Manager will inform the appropriate staff members and Director of Patient Safety at the earliest opportunity to enable their comments to be taken into account.

An Offer to Settle (Part 36 Offer and Part 36 Payment)

6.54 A Part 36 offer is an offer to settle for a stated sum pre-action, which can be made by either party and will have costs implications if unreasonably rejected. Part 36 offers may be made at an early stage, even where the first notification is a letter of claim. In all cases they should be supported by a medical report and a schedule of losses.

6.55 Punitive consequences may flow from offers made under CPR Part 36, which are either rejected or fall out of time, which ultimately prove to be successful.

6.56 Any such offer, even one unsupported by medical evidence and/or schedule requires immediate notification to NHS R by telephone followed up by fax.

6.57 No indication is to be given to the Claimant's solicitors that any such offer is valid or that time runs from a particular date.

6.58 A Part 36 payment is a sum of money lodged with the court by the Defendant representing their valuation of the claim, once proceedings have been issued and served. If the Claimant does not accept the payment but proceeds to Hearing the Claimant may be liable for the costs of the Defendant subsequent to the Part 36 Payment if the Hearing Judge ultimately awards them a sum of damages less than the monies lodged in court.

Reviewing the claim

6.59 Regular file reviews of the claim must be undertaken. The Claims Manager will monitor the receipt of quarterly updates on the progress of all claims from NHS R or instructed solicitors.

6.60 The Claims Manager will also ensure that staff involved are kept informed as to the progress of the claim.

6.61 If nothing further is heard from the claimant/claimant's solicitor within a reasonable period, the Claims Manager will seek guidance from NHS R or instructed solicitor about whether to write to check whether the claim is still being pursued.

Process for monitoring claims activity and following up relevant action plans

6.62 The Claims Manager will provide regular information to the:

6.62.1 Divisions on a monthly basis to discuss service and organisational improvements where necessary. Wider involvement/consultation will be undertaken if necessary in order to carry through any remedial action.

6.62.2 The Divisions will determine the forum it considers claims information to ensuring service/departmental improvements where necessary. Wider involvement/consultation will be undertaken if necessary in order to carry through any remedial action required. Wider lessons will be referred to the Director of Patient Safety for consideration.

6.63 The Claims Manager report will cover the following areas:

6.63.1 Quantitative information about new claims received, claims ongoing, claims closed, status of action plans arising from claims

6.63.2 Qualitative information about trends, gaps in control, remedial action arising, process issues.

6.63.3 Analysis of claims against incident and complaint data on an exceptions basis

6.63.4 Update on progress against actions and action plans arising from claims

6.63.5 The report will also provide information on performance against the standards/timescales included in this policy and identify any issues impacting on delivery and effectiveness of the policy

6.64 The Divisions are the Trust's vehicle for identifying, agreeing and following up relevant action plans. Any barriers to completing actions which cannot be remedied within a reasonable timeframe will be included in the reports to the Executive Committee.

6.65 The Claims Manager will provide the Director of Patient Safety with claims information to enable aggregated reports of incidents, complaints and claims to be submitted to the Executive Committee. Issues which may impact on the Trust's Assurance Framework, Staff Training Needs, delays and barriers to following up action plans will be included in the quarterly reports to the Executive Committee.

6.66 The Director of Patient Safety will ensure that the reports presented to the Executive Committee provide assurance that the requirements of this policy

are being fully met.

Closure of the claim

6.67 The Claims Manager will inform the Director of Patient Safety, relevant service manager, together with any other staff directly involved, of the closure of the claim.

6.68 The claim will be reviewed by the relevant Division. Wider involvement/consultation will be undertaken if necessary in order to carry through any remedial action.

6.69 The Claims Manager will safely store the records for 10 years after the claim has been closed or become inactive.

Property Expenses Scheme (PES)

6.70 Property claims can be made by the Trust to NHS R under the Property Expenses Scheme. The Scheme was established by the Regulations made pursuant to Section 21 of the National Health Service and Community Care Act 1990.

6.71 Members of the Scheme are expected to have full knowledge of the Rules and by applying for membership are deemed to be bound by them.

6.71.1 The Member shall:

(i) maintain the premises, medical and all other machinery, plant and equipment in a satisfactory state of repair;
(ii) take all reasonable precautions for the safety of the property;
(iii) take all reasonable precautions to prevent loss, destruction, damage, accident or injury;
(iv) retain documentation in respect of all purchases and sales.

6.72 The Scheme applies to any expenses, which are incurred by a member as a result of the loss or damage to its property. It is not an expense arising from a liability, which is a qualifying liability for the purposes of The Clinical Negligence Scheme, the Existing Liabilities Scheme and the Liabilities to Third Parties Scheme.

6.73 The Scheme will not be liable for any amount above the Trust's delegated limit, which will be subject to change from time to time, in respect of each and every claim. See NHS Resolution's PES LTPS – Membership rules.

6.74 All PES expenses will be dealt with by the Director of Patient Safety. Guidelines are held by the Director of Patient Safety.

Loss or damage to personal property brought onto Trust premises

6.75 The Trust has a responsibility to provide safe custody for money and other personal property handed in by patients, in the possession of unconscious or confused patients, or found in the possession of patients dying in hospital or dead on arrival. It will not accept responsibility or liability for patients' property brought onto Trust premises, unless it is handed in for safe custody and a

copy of an official patients' property record is obtained as a receipt.

6.76 Staff have a responsibility for their own property brought onto the Trust's premises**.** The Trust will only be responsible for losses which have been caused by its negligence or actions of others that it was vicariously liable for.

6.77 All claims as a result of loss or damage to personal property will be dealt with by the Finance Department. Evidence of the amount involved and reason why the case has arisen will be required. All enquiries should be referred to the Finance Department in the first instance.

7. CONSULTATION

7.1 This policy was originally developed in 2003 by the Claims & Legal Manager and Secure Services Administrator (Claims Manager) in consultation with the then Chief Operating Officer, Assistant Chief Executive: Complaints, Incidents and Legal Management (CILM) and legal advisers. It was ratified by the Trust Board 19 February 2004.

7.2 This policy is annually reviewed and updated by the Claims & Legal Manager and Secure Services Administrator drawing on the best practice advocated or guidelines issued by the NHSE, NHS R and the courts.

7.3 Consultation has taken place with legal teams both external and internal and NHS R to ensure that it meets national guidance and best practice. Staff who use the policy in the Divisions have also been consulted with.

8. TRAINING AND SUPPORT

8.1 Please refer to the Corporate Training Needs Analysis in the Trusts Mandatory Training Policy (HR28) for all training requirements linked to this policy including the investigation of claims.

9. MONITORING

9.1 This policy will be reviewed each year. Compliance with this policy will be monitored through a variety of different mechanisms described below.

9.2 Divisional governance committees will receive monthly reports in respect of claims management and have the opportunity to raise issues on where claims are up to, costs/damages related to claims etc.

9.3 A thematic report regarding claims management is presented to Commissioners on a quarterly basis via the Commissioning Quality and Performance Group.

9.4 Claims data is uploaded to the Quality Dashboard and is included in reports to the Executive and Quality Assurance Committee and the Trust Board.

9.3 The Trust's Claims Manager and Legal Adviser work closely with NHS R and its panel solicitor on managing claims effectively and to avoid repetition of the incident that gave rise to the claim. Annual scorecards are provided by NHS R detailing claims themes and quarterly reports are available on NHS R extranet

and are used by the Claims Manager to provide information whenever requested by Managers.

9.4 Support is available to the trust's claim manager from a legally qualified colleague and senior management colleagues to assist in the management of all claims. The claims manager is subject to regular peer review to ensure that the guidelines issued by NHS R on claims handling are adhered to by her line manager. Any issues arising from these reviews will be communicated to the Director of Patient Safety.

10. **EQUALITY AND HUMAN RIGHTS ANALYSIS**

Title: Policy and procedure for the reporting, management and investigation of claims**.**
Area covered: Corporate

What are the intended outcomes of this work? For effective, timely investigation and response to any negligence claims.
Who will be affected? The Trust as a corporate/pubic body.

Evidence
What evidence have you considered? Policy
Disability inc. learning disability See cross cutting
Sex See cross cutting
Race See cross cutting
Age See cross cutting
Gender reassignment (including transgender) See cross cutting
Sexual orientation See cross cutting
Religion or belief See cross cutting
Pregnancy and maternity See cross cutting
Carers See cross cutting
Other identified groups
Cross cutting

Human Rights	**Is there an impact?** **How this right could be protected?**
This section must not be left blank. If the Article is not engaged then this must be stated.	
Right to life (Article 2)	This article is not engaged
Right of freedom from inhuman and degrading treatment (Article 3)	This article is not engaged
Right to liberty (Article 5)	This article is not engaged

Right to a fair trial (Article 6)	This article is not engaged
Right to private and family life (Article 8)	This article is not engaged
Right of freedom of religion or belief (Article 9)	This article is not engaged
Right to freedom of expression Note: this does not include insulting language such as racism (Article 10)	This article is not engaged
Right freedom from discrimination (Article 14)	This article is not engaged

Engagement and involvement
Not applicable

Summary of Analysis
This is a corporate document with little impact upon service users and carers and staff.
No discrimination detected.

Eliminate discrimination, harassment and victimisation
No issues identified within discussions.

What is the overall impact? No negative impact identified.

Addressing the impact on equalities
No negative impact identified

Action planning for improvement

For the record
Name of persons who carried out this assessment (Min of 3): Emma Howell Barry Judge Jayne Bridge George Sullivan
Date assessment completed: 02/02/2017
Name of responsible Director: Executive Director of Nursing
Date assessment was signed: 2nd February 2017

11. SUPPORTING DOCUMENTS

NATIONAL HEALTH SERVICE RESOLUTION . *CNST Reporting Guidelines Fifth Edition – Oct 2008,* London: NHS R.

NATIONAL HEALTH SERVICE RESOLUTION , *Non-clinical Claims Reporting Guidelines – Mar 2009.* London: NHS R.

NATIONAL HEALTH SERVICE RESOLUTION , 2003. *A Very Brief Guide for Clinicians – June 2003.* London: NHS R.

NATIONAL HEALTH SERVICE RESOLUTION , 1999. *PES & LTPS Membership Rules.* London: HMSO.

CNST, 2005. *Mental Health & Learning Disability Clinical Risk Management Standards – June 2005.* London: NHS R.

DATA PROTECTION ACT 1998. *Protection and Use of Patient Information.*

Access to Health Records Act 1990. London: HMSO.

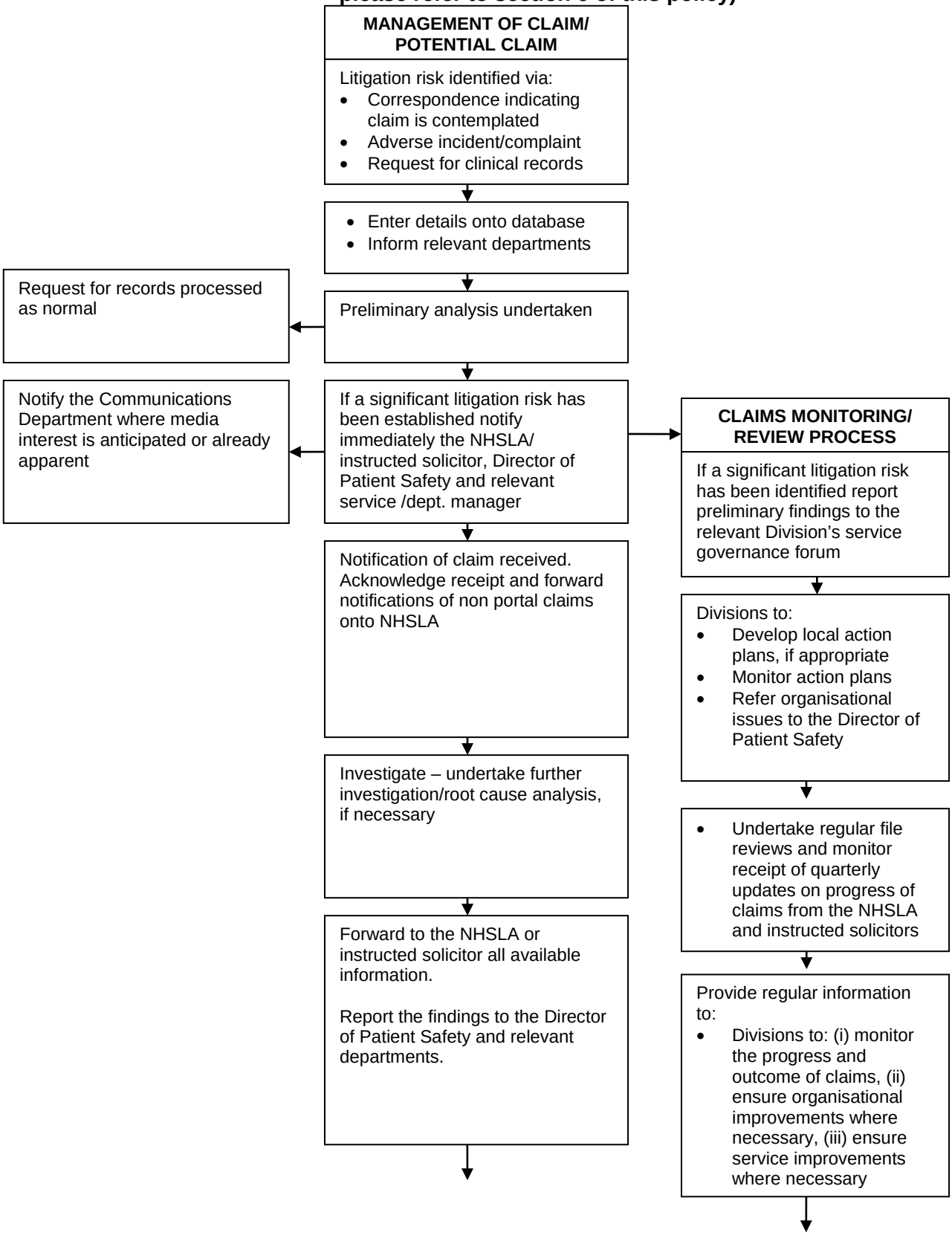
12. GLOSSARY OF TERMS

NHS R	National Health Service Resolution
EL Claim	Employer Liability Claim
PL Claim	Public Liability Claim
CN Claim	Clinical Negligence Claim
CNST	Clinical Negligence Scheme for Trusts
CRU	Compensation Recovery Unit
CRB	Compensation Recovery Benefit
PES	Property Expenses Scheme
LTPS	Liability to Third Parties Scheme
CPR	Civil Procedure Rules

13. APPENDICES

APPENDIX A

SUMMARY FLOW CHART FOR HANDLING CLAIMS
(For timescales and detail applicable to each procedural step of this flow chart, please refer to section 6 of this policy)



SUMMARY FLOW CHART FOR HANDLING CLAIMS - continued