

Checklist for the Review and Approval of Procedural Documents

To be completed and attached to any document which guides practices when submitted to the appropriate committee for consideration and approval.

	Yes/No/ Unsure	Comments
Title of Document		Claims Management Policy
Could this policy be incorporated within an existing policy?	No	
Does this policy follow the style and format of the agreed template?	Yes	
Has the front sheet been completed?	Yes	
Is there an appropriate review date?	Yes	
Does the contents page reflect the body of the document?	Yes	
Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	No	
Are all appendices appropriate and/or applicable?	Yes	
Have all appropriate stakeholders been consulted?	Yes	
Has an Equality Impact Assessment been undertaken?	Yes	
Is there a clear plan for implementation?	Yes	
Has the document control sheet been completed?	Yes	
Are key references cited and supporting documents referenced?	Yes	
Does the document identify which Committee/Group will approve it?	Yes	



Plans for communicating policy to – staff; practice membership; public (as appropriate)	Yes	Via the HVCCG intranet and weekly bulletin
---	-----	--

Individual Approval

If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

Name	Alan Warren	Date	<i>Insert</i>
Signature			

Committee Approval

If the committee is happy to approve this document, please sign and date it and forward copies to the person with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation’s database of approved documents.

Name	Executive Team	Date	<i>Insert</i>
Signature			



Claims Management Policy

Clinical Negligence, Liabilities to Third Parties and Property Expenses Scheme Claims

Version Number	1.0
Ratified By	Executive Team
Date Ratified	<i>Insert</i>
Name of Originator/Author	Dawn Crump/Amanda Yeates
Responsible Director	Alan Warren
Staff Audience	All Staff
Date Issued	<i>Insert 2015</i>
Next Review Date	<i>Insert 2016</i>

DOCUMENT CONTROL

Plan Version	Page	Details of amendment	Date	Author
1.0		New plan	15	DC/AY



CONTENTS

Section	Page
1. INTRODUCTION	6
2. PURPOSE	6
3. DEFINITIONS	7
4. ROLES AND RESPONSIBILITIES	7
5. CONTENT	
5.1 Indemnity Schemes	9
5.2 Who may make a claim	9
5.3 Triggers for invoking the claims procedure	9
5.4 Delegation limits	9
5.5 Timescales and Procedures for the Exchange of Information	10
5.6 Timescales for handling CNST claims	11
5.7 Timescales for reporting LTPS (non-clinical) claims	11
5.8 Property Expenses Scheme	12
5.9 Confidentiality	13
5.10 Communicating with Patients/Relatives/Carers and Staff	13
5.11 Liaison with Stakeholders/External Agencies	14
5.12 Learning from experience	14
5.13 Claims outside NHSLA schemes	14
5.14 Joint working	15
5.15 Legal representatives	15
5.16 Documentation	15
6. MONITORING COMPLIANCE	15
7. DISSEMINATION AND TRAINING	15
8. REFERENCES	16
9. ASSOCIATED DOCUMENTATION	16
APPENDIX 1 Claims Handling Procedure	18
APPENDIX 2 Statement template and guidance	23

1.	INTRODUCTION
	<p>The CCG is committed to the timely and effective investigation and response to any claim that includes allegations of clinical negligence or personal injury. The CCG will follow the requirements of, and note the recommendations made by, the National Health Service Litigation Authority (NHSLA) in the management of all claims.</p> <p>The NHSLA is a Special Health Authority set up under the NHS Act 1977. The principal task of the Authority is to govern the financial pooling scheme which enables NHS organisations to pool the costs of any loss of or damage to property and liabilities to third parties for loss, damage or injury arising out of the carrying out of their functions.</p> <p>The CCG is a member (membership number G080) of the Clinical Negligence Scheme for CCGs (CNST) for clinical negligence claims, Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES) for non-clinical claims to provide indemnity cover for employers and public liability claims and property damage claims. Membership of these schemes requires the CCG to have a rigorous risk management process that covers risk and requires agreed processes to be in place for reporting, managing, analysing and learning from claims.</p> <p>The CCG will follow the requirements and note the recommendations of the NHSLA in the management of all claims. The NHSLA requires NHS organisations to comply with CNST and RPST reporting guidelines which detail good practice in claims management and reflect and underpin the timescales and requirement of the Civil Procedure Rules.</p> <p>The CCG and NHSLA ensures that claims made against the NHS are handled fairly and consistently, with due regard to the interests of both patients and the NHS. The NHSLA seek to settle justified claims efficiently and defend unjustified claims robustly.</p>
2.	PURPOSE
	<p>The purpose of this document is to provide assurance to the CCG Board through its committees that appropriate systems are in place for the handling of claims and that any learning from the events giving rise to those claims is appropriately disseminated. This policy and the attached Claims Handling Procedure (Appendix 1) also provides guidance to staff on the process to be followed and their role and responsibilities within that process for the management of CNST, LTPS and PES.</p>



3.	DEFINITIONS
	<p>Claim – allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury or any clinical incident which carries significant litigation risk for the CCG. This includes complaints leading to claims, notification of any serious incidents, incident reports generated by the CCG risk management processes which represent a significant litigation risk.</p> <p>Clinical Negligence – a breach of duty of care by member of the health care professions employed by the NHS bodies in the course of employment, and which are admitted as negligent by the employer or are determined through the legal process. NHS bodies are liable at law for the negligent acts and omissions of their staff in the course of their NHS employment.</p> <p>Employer’s Liability – the CCG is under a common law duty and a statutory duty to take reasonable care to provide competent staff, safe plant and equipment, safe premises and safe working systems. The CCG may be liable to pay compensation to any employee for any injury or loss suffered as a result of a breach of their responsibilities.</p> <p>Public Liability - a claim from a member of the public who has suffered a wrong or injury linked to CCG’s services.</p> <p>Property Expenses Scheme – non-clinical claims which the CCG may make against its insurers for losses incurred with property and contents.</p> <p>Tort – A term used in law for a civil wrong or injury for which damages may be claimed.</p>
4.	ROLES AND RESPONSIBILITIES
	<p>CCG Board The CCG Board is responsible for ensuring that the CCG is managing its affairs efficiently and effectively through the implementation of internal controls to manage risk. The CCG by way of its committees and Quality & Performance Committee (through risk management reports) is made aware of claims on a 6 monthly and annual basis together with information on aggregated data.</p> <p>Accountable Officer The Accountable Officer has overall responsibility for ensuring that all claims are dealt with effectively and efficiently in line with this policy.</p> <p>Executive Team It is the duty of all senior managers to ensure that all their staff comply with the</p>



claims management process and all of its associated procedures, and take appropriate action if this does not occur.

Chief Finance Officer

The CCG Board member with responsibility for claims is the Chief Finance Officer and it is their responsibility to keep the Board informed of major developments on claims related issues and to provide assurance around the effectiveness of the claims management system.

Head of Corporate Governance

The Head of Corporate Governance is responsible for ensuring that the systems and processes for claims are in place and followed.

Risk Manager

The Risk Manager is responsible for ensuring that the system for claims, conducting investigations, reporting and learning lessons are reviewed on an annual basis and implemented in line with this policy.

Further duties include:

- Processing claims against the CCG
- Reporting all claims to the NHSLA in accordance with the NHSLA reporting guidelines and timescales, including monitoring compliance with such requirements.
- Requesting any necessary documentation regarding the claim.
- Ensuring 6 monthly reports are submitted to the Executive Team including progress on claims and to the Quality & Performance Committee via Risk Management Reports that includes aggregated data.
- Liaising with the NHSLA, ensuring communication with other key stakeholders and relevant staff at appropriate stages of claim
- Liaising with the Communications Lead as necessary where there is the possibility of publicity occurring.

Investigating Managers

It is the responsibility of clinicians/senior managers, when allocated the task of investigating and providing an investigation report or information on a claim, to ensure they follow the requirements of this policy on both reporting and management of claims and on investigations (also refer to Incident Reporting & Management Policy). Statements must be obtained from staff in investigations and the format to be used is shown at **Appendix 2** as well as Guidance on Writing Statements.

Clinicians/Specialist Advisors

Arrangements will be made to ensure that adequate advice can be obtained at all times, e.g. via NHSLA or CCG solicitors, particularly when deciding when to involve clinical staff or specialist advisors. In the preliminary analysis of claims, clinicians not directly involved in the incident will be asked to provide a professional opinion of the incident and management thereof.



	<p>All Staff All staff are responsible for referring all claims and potential claims immediately to the Head of Corporate Governance who must be informed about all claims correspondence within 24 hours. Staff will participate fully in the management of claims, providing relevant records, incident reports, complaint files, together with supporting documentation and complying with all notified deadlines.</p> <p>Quality & Performance Committee The Quality & Performance Committee monitors the implementation of this policy and the progress, analysis and outcome of claims by way of its risk management responsibilities.</p> <p>Risk Management Group (Health and Safety) The Risk Management Group receives 6 monthly and annual claims reports covering progress, analysis and outcome of claims.</p> <p>Consultation and Communication with Stakeholders The following stakeholders have been consulted in relation to this policy:</p> <ul style="list-style-type: none"> • Head of Corporate Governance (so far, Amanda you need to add to this and send this policy for consultation)
5.	CONTENT
5.1	<p>Indemnity Schemes</p> <p>Clinical Negligence Scheme (CNST) - The CNST handles all clinical negligence claims against NHS bodies where the incident in question took place on or after 1 April 1995. The costs of this Scheme are met by membership contributions. The projected claim costs are assessed in advance each year. Discounts are available to those CCGs which achieve the relevant NHSLA risk management standards. The CCG is not liable to any excess.</p> <p>The scope of the scheme is set out in the CNST rules, whilst the CNST reporting guidelines and the CNST claim report form set out how claims should be reported to the NHSLA. The CCG reporting is contained within this policy and further information can be obtained from the NHSLA.</p> <p>Liabilities to Third Parties Schemes (LTPS) The LTPS cover non-clinical risks such as liability for staff and visitors. For the reporting structure outlining the way in which Employers & Public Liability claims are to be reported under the Liabilities to Third Parties Scheme (LTPS) please see the Claims Handling Procedure at Appendix 1. The procedure has been written in line with significant changes which came into effect from 1st August 2006; all new claims reported to the NHSLA must include an LTPS Report Form, Letter of Claim and an NHSLA Disclosure List.</p> <p>Property Expenses Scheme (PES) The PES covers non clinical risks e.g. property damage and was made pursuant</p>



	<p>to Section 21 of the National Health Service and Community care Act 1990. Details of the Rules under which the scheme is governed may be found in the NHSLA Handbook “Membership Rules” available from the NHSLA website.</p> <p>5.2 Who may make a claim The CCG, as an employer is vicariously liable for any tort committed by an employee in the course of his or her employment. The CCG has a duty of care in law, and a claim can be made if that duty is breached, and if the claimant has suffered an injury, provided that breach has caused the injury. Any patient, member of staff or the public or their personal representative in the case of a death, who has suffered an injury or loss in accordance with the above definition, has the right to make a claim for damages.</p> <p>5.3 Triggers for Invoking the Claims Procedure The Claims Procedure will be invoked when a ‘Letter of Claim’ is received in the CCG outlining a claim under the Pre Action Protocol (see Claims Handling Procedure at Appendix 1).</p> <p>5.4 Delegation Limits With effect from 1 April 2002, the NHSLA meets all/any demands for compensation as a result of clinical negligence. The Head of Corporate Governance and Risk Manager will work in conjunction with the NHSLA to determine the conduct of individual cases, reporting appropriate cases and at an appropriate stage, in line with the CNST Reporting Guidelines.</p> <p>It is therefore normally inappropriate for payments to be made by the CCG; the only exceptions may be small ex-gratia payments, caused by administrative failures, involving loss of out-of-pocket expenses. These may be made in appropriate circumstances, subject to them not compromising NHSLA responsibilities in relation to liability. Guidance on this is also covered in the CCG’s Complaints Policy.</p> <p>Similarly, LTPS (Liability to Third Party) claims will be reported to the NHSLA in line with the LTPS Reporting Guidelines, with the Accountable Officer having responsibility to agree settlements up to the corresponding level of the LTPS cover excess i.e. Employers Liability (EL): £10,000 and Public Liability (PL): £3,000, in conjunction with the NHSLA. PES (Property Expenses Scheme) cover and excess is determined in relation to the CCG’s annual income.</p> <p>5.5 Timescales and Procedures for the Exchange of Information Timescales for the actions to be taken and exchange of relevant information with Claimants and the NHSLA in accordance with Civil Procedure Rules 1999 and NHSLA Reporting Guidelines are described in the Claims Handling Procedure at Appendix 1. It is important for all involved that where possible reported claims are resolved as quickly as possible and that claims handling in the CCG reflects the requirements of justice reforms in the following ways:</p> <ul style="list-style-type: none"> • Encouraging more pre-action contact with claimants; • Better and earlier exchange of information;
--	---



- Improved investigation;
- Earlier settlement without the need for expensive litigation;
- Court procedures to run smoothly where there is a need for litigation.

The Claims Handling Procedure will operate in accordance with the Civil Procedure Rules 1999 and NHSLA Reporting Guidelines. For example, records should be provided within 40 days of the request; a preliminary analysis of the case should be completed within 40 days of receipt of the request for disclosure (CNST Reporting Guidelines); an acknowledgement of a Letter of Claim within 21 days of receipt (LTPS Reporting Guidelines).

5.6 Timescales for handling CNST claims

Assessing the risk of a claim

Where there is a risk of a claim assessed, the Risk Manager will notify the NHSLA of this within 2 months of the request for records. Where the risk of a claim being received is significant, the Risk Manager will notify the NHSLA of this within 14 days after liaising with the relevant Director and Accountable Officer.

Acknowledgement and reporting of letters of claim and Part 36 offers

The Risk Manager will acknowledge letters of claim and Part 36 offers within 14 days of receipt. Letters of claim and Part 36 offers will be reported to the NHSLA by the Risk Manager as soon as these are received and within the next working day.

Reporting claims to Directors and Senior Managers

On receipt of a claim or identification of a potential claim, the Risk Manager will report this to Directors and Accountable Officer. Settled claims will be reported to the relevant Director, Senior Manager of the Service and Accountable Officer within 24 hours of receipt of any information from the NHSLA.

Preliminary Analysis Reporting/Investigation Reporting

The Risk Manager will undertake a preliminary analysis of the claim and this will involve liaison with Senior Managers. The preliminary analysis may take the form of submission of any previous internal investigation report already prepared and this may be a complaint or incident (including serious incident) report together with an internal opinion of any breach of duty from a senior clinician in the CCG. This will be provided to the NHSLA within 2 months of receipt of the claim or identification of a serious risk of a claim.

Internal reporting

The Risk Manager will provide 6 monthly claims reports to the Quality & Performance Committee

5.7 Timescales for reporting LTPS (non-clinical) claims

Acknowledgement of letters of claim

Letters of claim received should be acknowledged by the Risk Manager within 21 days from date of receipt.



Reporting internally

The relevant Director will be notified of receipt of a claim within 2 working days of receipt of the claim by the Risk Manager. As the claim progresses, any decisions on the claim including estimated value and settlement decision/date will be reported to the Directors and Accountable Officer. 6 monthly claims reports will be provided by the Risk Manager to the Health and Safety report via the Risk Management Group.

Reporting to the NHSLA

Letters of claim, subsequent letters and Part 36 offers will be reported to the NHSLA on the day of receipt or by the next working day of receipt by the Risk Manager. If all investigatory information is not immediately available, the letter of claim alone will be submitted to the NHSLA with a clear indication on the information that will follow by way of the RPST report form.

For information not immediately available, investigation reports and supporting documentation such as statements, photographs etc. will be submitted to the NHSLA with the RPST Claim Report Form within 2 months of reporting the claim to the NHSLA.

From 1 August 2013, all employers' and public liability claims under LTPS, valued up to £25,000, will be notified direct to the NHSLA via a web-based portal. The NHS LA must acknowledge receipt by the next working day. The NHSLA must provide a liability decision within 30 working days for EL claims and 40 days for PL claims. Under the current regime, there is a 90-day period to respond. If the decision is not provided in time, the claim exits the portal process and increased legal costs are payable.

The NHSLA will send an email notification to the CCG when a new claim enters the portal. All available investigation reports and supporting documents will be sent by return using the NHSLA Document Transfer System (DTS). All information will be sent to the NHSLA within 20 working days (30 for PL claims).

5.8

Property Expenses Scheme

Claims e.g. fire, flood and all property claims should be immediately notified to the Directors and Accountable Officer. The Office Manager will immediately prepare a report for the Director and the Risk Manager regarding the exact nature and cause of the damage or loss and statements obtained from any witnesses. An incident report form must be completed. The Risk Manager will then pursue any follow up action and investigation including reporting to the NHSLA within 24 hours of identification of the need to pursue a claim. The finance department will be informed of the potential value of the claim immediately.

Invoices should be obtained through suppliers where possible for the cost of purchase of replacement of the property damaged. Consideration should be given to 'hidden' costs relating to a claim such as overtime worked to rectify the damage/situation, cost of equipment hired e.g. dryers to dry a flooded room. This should be supplied by documentary evidence and if appropriate



photographs.

5.9

Confidentiality

It is essential that the duty of confidentiality the CCG has to all patients and employees is maintained. Anyone involved in a claim, at any level, has an obligation to comply with this policy and to ensure confidentiality of information at all times. The CCG will ensure that all claims are handled in accordance with the requirements of those set by the CCG's Caldicott Guardian and the Data Protection Act 1998 and in respect of deceased patients the Access to Health Records 1990. Information related to individual patients and their care and treatment provided will not be released without the appropriate consent first being obtained.

There are instances where consent does not need to be sought from an individual when the disclosure of the data is necessary for the following as defined in the Data Protection Act 1998:

- For or in connection with any legal proceedings (including prospective legal proceedings)
- For obtaining legal advice
- For establishing, exercising or defending legal rights

5.10

Communicating with Patients/Relatives/Carers and Staff

In the handling and investigation of claims the CCG and its provider organisations must follow the principles of Being Open and Supporting Staff and these policies should be referred to. It is recognised that when a claim has been made communication is through the claimants solicitors and the NHSLA but this information must follow the principles of Being Open and Supporting Staff.

For staff involved in an incident where they have been called as a witness in any court setting will in addition be offered support from the Risk Manager and also if necessary from the CCG's appointed Solicitor.

It is not the intention of the investigation process to assess whether disciplinary action against an individual member of staff should be considered. However, if, as a result of the investigation there is prima facie evidence of a breach of the law, professional misconduct, or repetitive incidents, further action may need to be taken. In these circumstances, the appropriate senior manager in consultation with the relevant Director will decide whether the disciplinary procedure should be invoked. Further advice is contained in the CCG's Disciplinary Procedure.

The NHSLA advised all Chief Executives, Finance Directors and NHS bodies in August 2007 that Parliament has adopted the NHSLA's view on apologies in Section 2 of the Compensation Act 2006 that "An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of duty."



<p>5.11</p>	<p>Liaison with Stakeholders/External Agencies</p> <p>The Risk Manager will liaise as appropriate with the relevant CCG Director to determine if external agencies should be informed or involved in the claim process, for example:</p> <ul style="list-style-type: none"> • Where the circumstances give rise to suspicion of an unlawful act the relevant Director will consult the Accountable Officer to decide whether the matter should be reported to the Police or Health & Safety Executive. • Where the circumstances give rise to allegations of professional misconduct the appropriate Director will advise whether the matter should be reported to the relevant professional body. • Where Health and Safety issues arise, and the matter has not previously been reported, the Health and Safety Adviser will advise if the matter should be reported to the Health and Safety Executive. • The relevant Director will be responsible for advising whether the following agencies should be notified such as: Medical and Health Regulatory Agency and Department of Counter Fraud Services.
<p>5.12</p>	<p>Learning from Experience</p> <p>The CCG is committed to learn and make changes to practice to improve services and safety as a result of claims. The CCG's systematic approach to encourage learning and promote improvements in practice based on individual and aggregated analysis of incidents, complaints and claims, and is a key aspect of the Risk Management Strategy.</p> <p>The identification of a risk following claims investigation will be considered for inclusion in the relevant Local/Directorate/Corporate Risk Register with plans to manage, reduce the risk and thereby learn lessons.</p>
<p>5.13</p>	<p>Claims Outside the NHSLA Schemes</p> <p>Claims may be made against the CCG which do not come within the NHSLA Schemes e.g. compensation claims because of maladministration. Decisions on whether to settle non-reportable claims will normally be on an assessment of the likely outcome of the claim and on the balance of probabilities if it were to go to Court.</p> <p>In the case of a small claim where the cost of defending the claim would far outweigh the cost settlement, an offer with no admission of liability may be considered. Any decision on settling a claim will be proposed by the relevant Director in consultation with the Risk Manager and authorised by the Accountable Officer and Chief Finance Officer and processed in accordance with the NHS Financial Manual and the CCG's Standing Financial Instructions.</p>
<p>5.14</p>	<p>Joint Working</p> <p>Where there is evidence of other CCGs, providers or external agencies being involved in a claim e.g. contractors then that agency should be involved in any investigation that may take place and any findings or recommendations be shared with that CCG/agency. The identification of external agencies involved will be made at the onset of the investigation by the Investigation Manager or Risk Manager.</p>



<p>5.15</p>	<p>The Risk Manager is responsible for informing the NHSLA of the possibility of additional parties/joint defendants when logging the claim or as soon as they are identified and they are also responsible for informing all additional parties/joint defendants.</p> <p>Legal Representatives The CCG is allocated a ‘Panel Solicitor’ by the NHS Litigation Authority (NHSLA) to deal with any clinical negligence claims from patients or their relatives.</p> <p>The NHSLA also allocate other Panel Solicitors to deal with employers and public liability claims and the CCG will be notified of this either via the NHSLA or by direct contact from the appointed firm.</p>
<p>5.16</p>	<p>Documentation The Risk Manager will maintain a central claims file that will hold all documentation collated in the handling and investigation of any claim or potential claim. Statements collected as part of any investigations, documentary evidence and investigation reports should all be submitted to the Risk Manager for retention in the claim file and disclosure to the NHSLA where necessary.</p>
<p>6.</p>	<p>MONITORING COMPLIANCE</p> <p>The Accountable officer will oversee, on behalf of the governing body, a method for monitoring the dissemination and implementation of this policy.</p> <ul style="list-style-type: none"> • A 6 monthly report will be produced by the appropriate body on behalf of the CCG. This will be done using data from the NHSLA electronic portal. • Claim reporting trends will be monitored and analysed on behalf of the CCG by the appropriate body, support subsequent investigations as requested by the CCG. • Copies of all completed claims investigation reports and follow up activity will be monitored on behalf of the CCG by the appropriate body.
<p>7.</p>	<p>DISSEMINATION AND TRAINING</p> <p>Mandatory Training There is no mandatory training associated with this policy.</p> <p>Specific Training not covered by Mandatory Training Ad hoc training sessions based on an individual’s training needs as defined within their annual appraisal or job description.</p> <p>Dissemination</p> <ul style="list-style-type: none"> • The policy will be published on the CCG website and relevant links



	<p>sent out via the communications and engagement department.</p> <ul style="list-style-type: none"> • Advice can be sought from the Corporate Support Team.
8.	REFERENCES
	<p>Department for Constitutional Affairs, 1998. Pre-action Protocols for the Resolution of Clinical Disputes 1998/183 [online]. London: The Stationary Office. Available from: www.dca.gov.uk</p> <p>Department for Constitutional Affairs, 1998. Pre-Action Protocol for Personal Injury Claims [online]. London: The Stationary Office. Available from www.dca.gov.uk</p> <p>The National Health Service Litigation Authority Framework Document. Available from www.nhs.uk (Publications - Claims publications)</p> <p>Clinical Negligence Reporting Guidelines Fifth Edition – October 2008. Available from www.nhs.uk (Publications - Claims publications)</p> <p>LTPS Claims Reporting Guidelines Available from www.nhs.uk (Publications - Claims publications)</p> <p>NHSLA Disclosure List. Available from www.nhs.uk (Publications - Claims publications)</p> <p>NPSA Being Open: Communicating Patient safety incidents with Patients and their carers</p> <p>Civil Procedure Rules</p> <p>Compensation Act 2006</p>
9.	ASSOCIATED DOCUMENTATION
	<p>This policy should be read in conjunction with other CCG policies, with particular reference to:</p> <ul style="list-style-type: none"> • Serious Incidents Management National Framework April 2015 • Serious Incidents Requiring Investigation June 2015 • Incident Reporting & Management Policy • Health and Safety Policy • Lone Worker Policy • Risk Management Strategy and Procedure • Information Governance Policies/Procedures • HVCCG Anti-Fraud & Bribery Policy • Whistleblowing Policy



	<ul style="list-style-type: none">• Complaints Policy
--	---



APPENDIX 1 - CLAIMS HANDLING PROCEDURE

1. INTRODUCTION

The number of complaints against NHS Organisations and other Healthcare Providers is growing as patients become more prepared to question the treatment that they are given, to seek an explanation of what happened, and to appropriate redress. Generally, they may seek further treatment, an apology, and assurances about future action or compensation.

On occasion, patients may feel that it is necessary to go to litigation by pursuing a claim against Healthcare Providers and, prior to April 1999, this meant a long, drawn out process, along with substantial legal costs, leading up to the court hearing stage.

It was recognised that a pre-action protocol which sets out “ground rules” for the handling of disputes at an early stage was required and to this end Lord Woolf produced a report, “Access to Justice”, in 1996. Following extensive consultation new Civil Procedure Rules were laid before Parliament and published in January 1999. These rules are supplemented by Practice Directions and Pre-Action Protocols (one Protocol deals with clinical negligence and the other deals with personal injury claims).

- Pre-Action Protocol for the Resolution of Clinical Disputes.

The protocol encourages a climate of openness when something has gone wrong with a patient’s treatment or the patient is dissatisfied with that treatment or outcome. This reflects requirements for clinical governance in healthcare, provides guidance on how an open culture may be achieved (see National Patient Safety Agency (NPSA) Being Open) and recommends a timed sequence of steps for healthcare providers.

- Pre-Action Protocol for Personal Injury Claims.

The protocol aims to achieve more pre-action contact between parties, better earlier exchange of information and investigation which puts the parties in a position to enable early settlement before litigation or for proceedings to run more efficiently. This reflects a desire to build on and increase the benefits of early but well informed settlement which genuinely satisfy both parties. All NHS Authorities and Organisations are required to comply with the Protocols and to this end the rules, where appropriate, have been incorporated into this Procedure and it is important that managers note the following implications for the organisation.

- Once the litigation process starts tight timetables are imposed.
- Effective systems are required, for providing complete, good quality copies of medical (and other) records quickly. All relevant records will need to be identified at the outset.

- Early investigation of claims will depend in large part on receiving early and informative comments from relevant staff, particularly clinical staff.
- There are financial penalties for delays, in some instances defence cases may even be struck out as a penalty for undue delay.

The rules are designed to encourage early settlement and provide for the claimant to make an offer to settle. The organisation will need to be in a position to respond very quickly to such requests, if not; there are substantial penalties for delay in accepting a reasonable offer.

Where the court decides that one of the parties has been unreasonable in their conduct the court may impose penalties in cost or interest on damages. The possibility of cost or interest penalties means that the pre-action protocol must be complied with. The claim must be thoroughly and speedily investigated at an early stage. The relative merits of defending or settling must be considered early. This means that persons requested to provide information must do so promptly.

For ease of use the Claims Procedure has been kept simple in that it has been written as a number of steps to be followed by managers and staff concerned where litigation is in progress. Where appropriate each step details the action required, by whom, and by when. For reference NHSLA Civil Procedure Rules; Pre-Action Protocol for the Resolution of Clinical Disputes; Pre-Action Protocol for Personal Injury Claims, Clinical Negligence Reporting Guidelines Fifth Edition October 2008 and LTPS Claims Reporting Guidelines have been utilised.

2. PRE-ACTION PROTOCOLS

The organisation recognises and will at all times adhere to the pre-action protocols for the resolution of clinical disputes and personal injury claims, in the interests of:

- Encouraging a climate of openness when something has “gone wrong” with a patient’s treatment or the patient is dissatisfied with that treatment and/or the outcome.
- Encouraging the adoption of a constructive approach to complaints and claims, and accepting that concerned patients are entitled to an explanation and an apology if warranted, and to appropriate redress in the event of negligence.

2.1 PRE-ACTION PROTOCOL FOR CLINICAL NEGLIGENCE CLAIMS (CNST)

Obtaining the Clinical Record

- The patient and/or their legal adviser will request copies of the patient’s medical records. The request should be made following the organisation’s Access to Records Policy. These requests should adhere to the Department of Health Guidelines and should when properly completed constitute satisfactory evidence for the organisation purposes of the patient’s consent for the release of their records to their legal and other expert advisors.
- It should be noted that if the organisation fails to provide records as requested within 40 days of receipt of the request that is in line with Policy, the claimant/solicitor can apply to the Courts for pre-action disclosure. **The Courts will have power to impose cost sanctions for any unreasonable delay.**
- The Clinical Records Department will also provide the Risk Manager with a duplicate set of clinical records to that which has been disclosed.

For each request for disclosure of records a note should be made detailing either:-

- What documents have been disclosed; or
- Where disclosure has not been undertaken the reason and outcome.
- Where the documents have been destroyed a note to that effect should be made stating the date and reason for destruction.

Letter of Claim

- If the patient decides that there are grounds for a claim, they or their solicitors will send a letter of claim to the organisation.
- The letter of claim should contain a clear summary of the facts on which the claim is based, including the alleged adverse outcome, and the main allegations of negligence. It should describe the patient's injuries, the present condition and prognosis, and the estimated financial loss incurred by the claimant. In more complex cases a chronology of the relevant events should be provided. Sufficient information should be given to enable the organisation to commence investigations if it has not already done so and for the NHSLA to put an initial valuation on the claim.

NOTE: The National Health Litigation Authority (NHSLA) will deal with all claims. The NHSLA will manage the claim for the organisation, appointing a panel solicitor to defend. The Risk Manager should facilitate this approach by providing all necessary information/documents required to defend the claim noting that the NHSLA has three months to respond formally.

4. SUMMARY OF CLINICAL NEGLIGENCE REPORTING REQUIREMENTS:

All Staff

- On receiving a request for clinical records under the Pre-Action Protocol or on receipt of a letter of claim, this should be forwarded immediately to the Risk Manager (within one working day).

Risk Manager via the Medical Records Team

- Requests for disclosure of medical records to be processed within 40 days.

Risk Manager in consultation with Director and/or Accountable Officer

- Report to the NHSLA immediately or within the next working day.
- Notify the relevant Director and Accountable Officer within 24 hours of receipt of a claim.
- Ascertain links with previous investigations conducted via complaints or incident procedure and disclose this to the NHSLA. If not previously investigated or more investigation is necessary, arrange for the claim and incident to be investigated and submitted to the NHSLA within 2 months of receipt of the claim.
- Report incidents and complaints that have a high risk of litigation to the NHSLA within 2 months of a request for records or on identification of a serious risk of litigation.
- All letters of claim and Part 36 offers to be notified to the NHSLA within 24 hours of receipt or within the next working day.
- Acknowledge letters of claim within 21 days.
- Legal proceedings to be notified immediately.
- Identify learning outcomes and risks from claims.
- Notify the Director and Accountable Officer of claims settled.

Letter of Response

The NHSLA should investigate the claim and within 3 months of the letter of claim provide a reasoned answer to it in the form of a letter of response. The NHSLA in consultation with the organisation will specify which issues of breach of duty and/or causation are admitted and which are denied and why. Documents must be enclosed which are material to the issues in dispute which would be likely to be ordered to be disclosed by the court during proceedings.

The letter of response will be drafted by the NHSLA who deal with all CNST cases.

The Proceedings Stage

The Proceedings Stage is extremely complex. Any members of staff who may be involved at any time at the Proceedings Stage will be fully informed and supported as necessary via the Risk Manager.

5. PRE-ACTION PROTOCOL FOR LTPS CLAIMS

Liabilities for Third Parties Scheme [LTPS] otherwise known as The Risk Pooling Scheme for Organisations [RPST] covers Employers Liability, Public Liability, Professional Indemnity and Property Expenses Scheme [PES].

The procedure to be followed for LTPS claims is similar to the procedure for Clinical Negligence claims, as follows:

Letter of Claim

- If the claimant decides that there are grounds for a claim, they or their solicitors will send a letter of claim to the organisation.
- The letter of claim should contain a clear summary of the facts on which the claim is based, including the alleged adverse outcome, and the main allegations of negligence. It should describe the patient's injuries, the present condition and prognosis, and the estimated financial loss incurred by the claimant. In more complex cases a chronology of the relevant events should be provided. Sufficient information should be given to enable the organisation to commence investigations if it has not already done so and for the NHSLA to put an initial valuation on the claim. The letter of claim should be forwarded to the NHSLA within 21 days by the Risk Manager; all Employer Liability claims must be accompanied by the disclosure list applicable to the particular type of claim. The Risk Manager will acknowledge the letter and identify that the NHSLA will be dealing with it.

NOTE: The National Health Litigation Authority (NHSLA) will deal with all claims. The NHSLA will manage the claim for the organisation, appointing a panel solicitor to defend. The Risk Manager should facilitate this approach by providing all necessary information/documents required to defend the claim.

6. SUMMARY OF ACTIONS:

All Staff:

- On receipt of a letter of claim refer this immediately to the Risk Manager.

The Risk Manager

- Acknowledge the letter of claim within 21 working days from date of receipt of the claim in the organisation.
- Notify the relevant Director of the receipt of a claim within 2 working days of receipt of the claim.

- For LTPS claims, notify the NHSLA immediately and complete a standard disclosure and LTPS Claim Report Form, submit to the NHSLA (supporting documents such as investigation reports and statements that are not immediately available will be submitted to the NHSLA within 2 months of receipt of the claim).
- For LTPS claims within the NHSLA portal, to submit to the NHSLA an investigation report and supporting evidence within 20 working days.
- For CNST claims, notify the NHSLA immediately and co-ordinate the preliminary analysis and disclosure to the NHSLA, liaising with Directors and the Accountable Officer.
- For CNST claims arrange for existing investigation documents to be collated for submission to the NHSLA with the standard disclosure list and arrange for any further investigation to be conducted and completed within 2 months of the receipt of the claim.
- Liaise closely with any records and reports held by the Health and Safety Advisor on reports, inspections etc. and in particular any notification of the incident to the Health and Safety Executive under RIDDOR.
- Legal proceedings to be notified immediately to the NHSLA and to Directors including the Accountable Officer.
- Identify learning outcomes and risks from claims
- Seek agreement with Directors on settlement of LTPS claims and the Director and Accountable Officer on settlement of CNST claims, reporting all via claims reports.

Keep the Chief Finance Officer updated of potential costs to the organisation as a result of claims.
Investigating Managers

- Complete investigations requested by the Risk Manager, Health and Safety Manager or Director within the period specified and not exceeding 2 months of the receipt of the claim.

Letter of Response

The NHSLA should investigate the claim and within 3 months of the letter of claim provide a reasoned answer to it in the form of a letter of response. The NHSLA in consultation with the organisation will specify which issues of breach of duty and/or causation are admitted and which are denied and why. Documents must be enclosed which are material to the issues in dispute which would be likely to be ordered to be disclosed by the court during proceedings.

Appendix 2

APPENDIX 4 – SAMPLE STATEMENT FORMAT

Statement of: *(insert name of staff member)*

Relating to: *(insert name of patient)* **D.O.B of patient:** *(if applicable)*

Date of Incident:

Time of Incident:

Occupation of *(insert name of staff member and job title):* employed by Herts Valleys CCG at *(insert name and address of site and description of Directorate)*

Give your background covering your qualifications in relation to your role and how long you have been in your current post.

Give the background knowledge that you have of the person this statement relates to and then detail your involvement in the incident. Do not use abbreviations.

I believe that the facts stated in this statement are true.

Signature

Date

Print Name:

Time of statement

This statement is disclosable under the Data Protection Act 1998 and Freedom of Information Act 2000

GUIDANCE FOR WRITING STATEMENTS

If you are unsure about whether a statement is necessary, or what should be contained within that statement, please contact the Risk Manager before compiling your statement.

- Where possible statements should be typed.
- Statements should ideally be written within 48 hours of an adverse event occurring.
- Original statements should be submitted and dated, signed and time of statement given.

What your statement should contain

- Facts only
- Who you are – name, grade, specialty
- Where the incident occurred
- Time of the incident
- Your involvement in the incident
- What happened
- What you knew about the patient or member of staff at the time of the incident
- What you found on examination/on seeing the patient or member of staff
- The situation with which you perceived you were dealing
- What you did/did not do
- Why/why not?

What your statement should not contain

- Opinion
- Petulant comment
- A verbatim regurgitation of the entries made in the clinical records – statements are designed to ‘flesh out’ information contained therein

PLEASE NOTE

Statements made following an adverse incident – if litigation has not been intimated at the time the statement is written – the statement will be disclosable if the case subsequently becomes the subject of a claim, i.e. the affected person’s legal team will have access to the statement. For that reason, it is important that if any member of staff is unsure whether to write a statement, or the format of that statement, they should contact the Risk Manager for advice.

Please also note that emails written between staff members, before legal action has been intimated, would be disclosable to the affected person’s legal team should the case become the subject of a claim.

Staff are encouraged and supported to seek advice from their respective professional organisation/union/manager when producing a statement.



CG Equality & Quality Inclusion Analysis Form

Step 1:

<p>Name of 'Policy or function' – this may relate to:</p> <ul style="list-style-type: none">• Claims Management Policy	<ul style="list-style-type: none">• Purpose The purpose of this policy is to ensure that all members, staff and/or employees working for or on behalf of the CCG are aware of their duties when managing claims.• Aims and Objectives . All staff are responsible for referring all claims and potential claims immediately to the Head of Corporate Governance who must be informed about all claims correspondence within 24 hours. Staff will participate fully in the management of claims, providing relevant records, incident reports, complaint files, together with supporting documentation and complying with all notified deadlines
---	--



Step 2:

Test for relevance:

- **Will this help to deliver one or more of the aims of the Equality Act 2010? No**
- **Will this have a potential impact on the nine characteristic groups and/or others as described in the guidance? Yes**

Does the above 'Policy' have any relevance to equality? **Yes** - It does if discrimination is cited within a claim and will be dealt with in line with our HVCCG equality objectives, policies and practices.

Policy provides the same guidance to all staff who may need to report a claim and will not have any particular impact on the nine characteristic groups.

If you have selected yes, please complete section 3-8 below.

Step 3:

Engagement, involvement and consultation undertaken N/A		PSED Due regard to:	1. Eliminating unlawful discrimination, harassment and victimisation			2. Advancing equality of opportunity between people			3. Fostering good relation between people			Please provide details of evidence considered, service, workforce, research (national or local), demographic etc. N/A
Internal	<input type="checkbox"/>											
External	<input type="checkbox"/>											
Provide details		Equality Characteristic Groups	-ve	N	+ve	-ve	N	+ve	-ve	N	+ve	
		Age										
		Disability										
		Gender										
		Gender Reassignment										



	Marriage & Civil Partnerships											
	Pregnancy & Maternity											
	Race or Ethnicity											
	Religion or Belief											
	Sexual Orientation											
	Other groups (please list)											

Key: +ve = positive impact, -ve = negative impact, N = no impact

Step 4

Engagement, involvement and consultation undertaken		Quality				Please provide details of evidence considered, service, workforce, research (national or local), demographic etc.
Internal	<input type="checkbox"/>					
External	<input type="checkbox"/>	Patient/Programmes	-ve	N	+ve	
		Patient Experience – will it: Impact on the experience of patients and service users? Impact on patient choice?				
		Patient Safety – will it: Impact on safety? Impact on preventable harm? Impact on the risk of healthcare acquired infection? Impact on clinical workforce capability, care and skills?				
		Clinical effectiveness – will it: Meet evidence based practice/NICE				



		guidance?				
		Impact on clinical leadership?				
		Include systems for monitoring clinical quality supported by good information?				



Step 5:

Have you identified any gaps or potential negative impact from the above? If yes, please state: No			
Do you plan any further engagements? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Do you require further information or data to complete the analysis/actions? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Any actions to be undertaken (including mitigation) regarding the negative impact:			
Action	Outcome	Lead	Date for completion
Monitor equality data of claims reported where appropriate			
Any changes made as a result of this assessment?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Please provide brief description of changes			
Risk Manager will monitor/review claims information in relation to 9 equality characteristic groups as appropriate, annually.			

Following information (internal use only)

Step 6: Key individuals

Analysis conducted by:	Lead Name:	Job Title:	Contact Details:
Dawn Crump	Dawn Crump	Interim Risk Manager	01442 284044

HVCCG Claims Management Policy v.1.0



Other key contributors involved:			

Step 7:

Conclusion and/or recommendations:
This policy is about systems and process of collating, reporting and managerial response to claims. Lessons learnt from such incidents on occasions highlight an equality dimension which will be responded to in line with our equality policy.

Step 8:

Date form completed: 15 July 2015	Clinical/Managerial approval:	Job Title/Directorate:	Date:	Signature:
Does a Committee or Senior Leadership Team need to be informed about this IEQA? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Do you need to undertake monitoring/review Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, date of Review: April 2016		Date of publication:
Completed copy to be forwarded to				
HVCCG Claims Management Policy v.1.0				





Questions to consider when carrying out an EQIA

In completing the EQIA you may find our annual publication of equality information along with local health inequality data from our website and/or intranet useful, as well as Hertfordshire County Council and National charities and EHRC.

When completing this EQIA please consider the following in a proportionate and relevant way:

Equality monitoring

- In line with our legal obligations, you may wish to consider how you will monitor our service users and/or workforce data by the nine equality characteristic groups.

Access to services and information

- If an eligibility criteria is applicable, please ensure that this is not discriminative unless it can be justified.
- Please consider if our buildings are physically accessible to everyone or would some people such as those with a physical disability encounter barriers? If so, what mitigation steps have you undertaken?
- In some cases information about our policies, and/or publications may need to be available in Braille, large print, easy read or on a tape or in a different community language. Do images in our publications reflect the diverse population that we serve?

Respect, dignity and cultural awareness

- Please consider that our policies always treat service users, carers, members of the public and staff with respect and dignity and that, where appropriate, we take account of people's beliefs, languages and dietary needs.

Definitions of the relevant protected characteristic groups:

HVCCG Claims Management Policy v.1.0

July 2015



Age

Definition: Age refers to a particular age group.

If your service is open to people of all ages, how will you make sure it is used by people of all ages?

Disability

A person has a disability if they have:

- a) A physical or mental impairment, and
- b) The impairment has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities

Race

Race includes:

- a) Colour
- b) Nationality
- c) Ethnic or national origins

How will you make sure that people from a wide range of ethnic backgrounds use your service? (NB you may find it helpful to look at this section alongside the section on Religion and Belief as the actions are closely related).

Religion or Belief

- 
- a) Religion means any religion and a reference to religion including a reference to a lack of religion
 - b) Belief means any religious or philosophical beliefs and a reference to belief includes a reference to lack of belief

Sex

Definition: A reference to a person who has a particular protected characteristic is a reference to a man or to a woman.

Sexual orientation

Sexual orientation means a person's sexual orientation towards:

- a) Persons of the same sex
- b) Persons of the opposite sex, or
- c) Persons of either sex

Gender reassignment

A person has a protected characteristic of gender reassignment if the person is proposing to undergo/is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex, by changing physiological or other attributes of sex.

Pregnancy and maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Marriage and civil partnership

A person has the protected characteristic of marriage and civil partnership if the person is married or is a civil partner.

Public Sector Duty regarding social/economic inequalities

An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

Quality considerations

- Patient Safety:
 - provision of information, data quality improvement, clinical coding,
 - serious incidents, incidents, never events, complaints, PALs enquiries
 - medicines management
 - equipment management
 - safe environment
 - management of Healthcare Associated Infections (HCAI)

- Clinical effectiveness of care:
 - NHS Outcomes Framework: how will the business case impact on the delivery of the five domains?
 - Preventing people from dying prematurely
 - Enhancing quality of life
 - Helping people recover from episodes of ill health or following injury

- 
- Ensuring people have a positive experience of care
 - Treating and caring for people in a safe environment and protecting them from avoidable harm:
 - standards applied by relevant professional bodies i.e. mandatory training, qualifications, CPD, revalidation & accreditation, CRB
 - Compliance with regulatory bodies
 - Compliance with relevant guidance / appraisals from NICE
 - Application of national standards and outcome measures
 - Participation in relevant clinical networks, national and local clinical audit programmes
 - Service development and improvement
 - Patient experience:
 - How is the service user engaged in planning and service design?
 - How are they listened too?
 - How do they get feedback on the service
 - How do we ensure equity of access equality and non-discrimination?