Policy:

CG 003 Accessing Legal Advice

Executive or Associate Director lead	Director of Corporate Governance
Policy author/ lead	Director of Corporate Governance
Feedback on implementation to	Director of Corporate Governance

Document type	Policy
Document status	Version 8
Date of initial draft	May/June 2022
Date of consultation	N/A
Date of approval	30/05/2022 Policy Governance Group
Date of ratification	14 June 2022 ARC
Ratified by	Audit and Risk Committee and Quality Assurance Committee
Date of issue	June 2022
Date for review	30/06/25

Target audience	All SHSC Staff

Keywords	Legal advice, litigation, claims, insurance

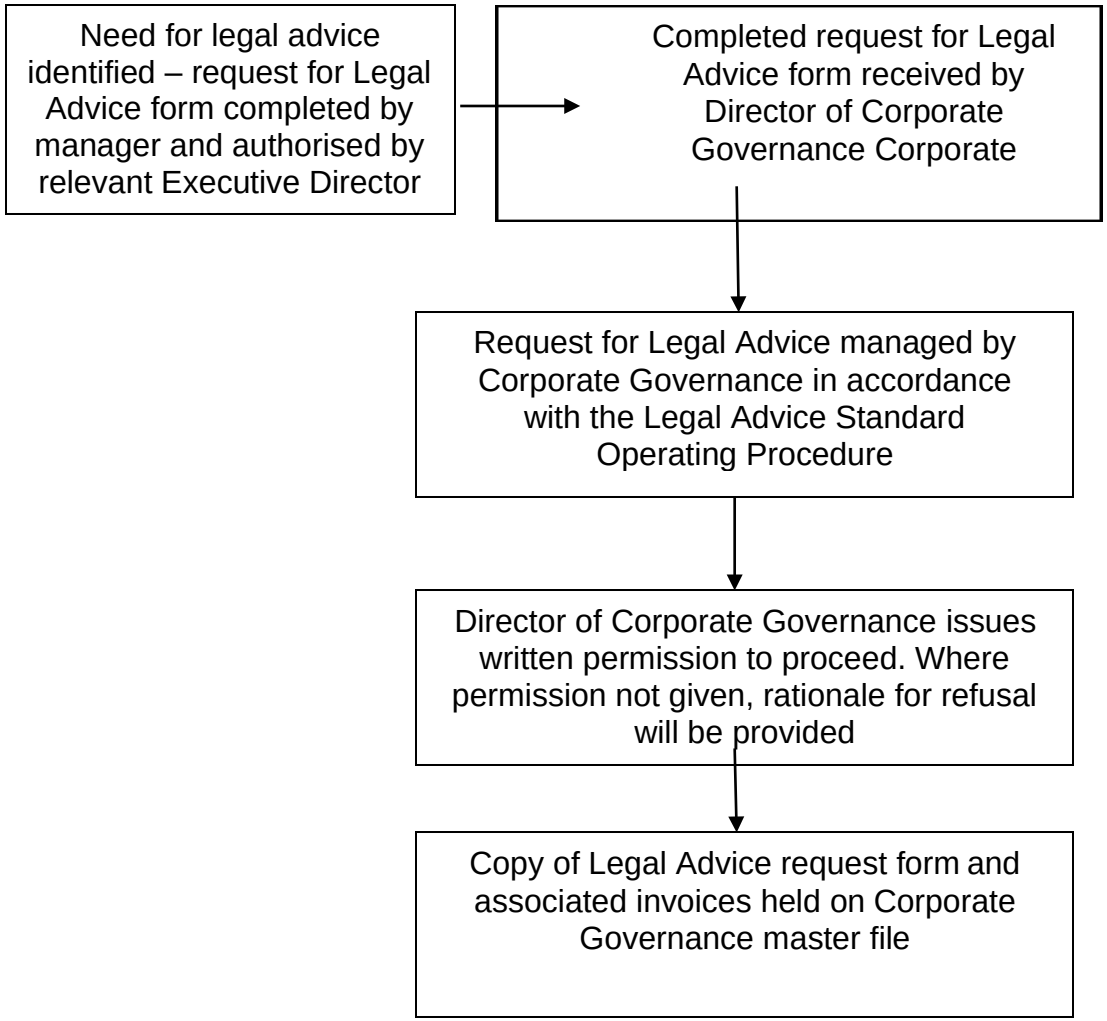
Policy Version and advice on document history, availability, and storage

This is version 8 of this policy. This version replaces version 7.

This policy will be available to all staff via the Sheffield Health & Social Care NHS Foundation Trust Intranet and on the Trust's website. The previous version will be removed from the Intranet and Trust website and archived. Any copies of the previous policy held separately should be destroyed and replaced with this version.

Contents

Flowchart


Need for legal advice identified – request for Legal Advice form completed by manager and authorised by relevant Executive Director
Completed request for Legal Advice form received by Director of Corporate Governance Corporate
Request for Legal Advice managed by Corporate Governance in accordance with the Legal Advice Standard Operating Procedure
Director of Corporate Governance issues written permission to proceed. Where permission not given, rationale for refusal will be provided
Copy of Legal Advice request form and associated invoices held on Corporate Governance master file

1. Introduction

From time to time, it may be necessary for staff to access advice from the Trust solicitors.

This Policy has been in force since 06 August 2007 to ensure financial probity, authorisation of appropriate requests, to create an audit trail, and to comply with external scrutiny.

All requests for legal advice must be authorised by an Executive Director on a case by case, or issue by issue basis before final approval by the Director of Corporate Governance.

2. Scope

This policy applies Trust wide and to all those employed by, or work for the Trust in whatever capacity. This group will be referred to as '*staff*'.

All staff are expected to comply with this policy at all times.

3. Definitions

Legal advice - refers to any advice, with a legal element requested from the Trust solicitors, whether it be in written or verbal form. Written summary of advice will be expected to be provided by Trust's solicitors.

4. Purpose

The primary purpose is to ensure that all requests for legal advice are reviewed and authorised if appropriate and necessary.

The secondary purpose is to have in place an audit system that monitors the financial spend on legal advice and also audit the nature and extent of the legal advice sought.

5. Duties

The Director of Corporate Governance (Trust Board Secretary ('TBS')) is the Trust Board Member with responsibility for management and auditing of litigation and will keep the Executive Directors' Group, Audit and Risk Committee, Quality Assurance Committee and Trust Board informed of major developments.

The Director of Corporate Governance is the sole signatory for the litigation budget. They will maintain appropriate review procedures for both clinical and non-clinical requests for legal advice and will report on litigation issues via the Quality Assurance Committee.

6. Process

6.1 Appointment of Legal Advisers

The Trust will appoint legal advisers from the firms appointed to the Panel, who are approved by the North of England Commercial Procurement Collaborative. At the present time the list includes Kennedys, DAC Beachcroft LLP, Capsticks LLP and Browne Jacobson LLP. A full list can be obtained from the Director of Corporate Governance.

6.2 Legal Advice Requests

Staff should liaise with the Director of Corporate Governance, or their appointed deputy, **before** submitting the legal advice request form. It may be that external advice need not be sought as relevant advice is available in-house. The Director of Corporate Governance will also advise on which firm is to be appointed. It will be left to the appointed law firm, to 'triage' the request and appoint a suitable lawyer of the appropriate experience and seniority. They will also require the law firm to quote a base price for the work, with any possible excess costs if the matter becomes more complex.

It will be the responsibility of the law firm to communicate with the Director of Governance, if the initial fee for the work is going to be over run. No additional payment will be made, unless it has been agreed in writing between the Trust and the law firm. The intention is that all legal advice sought in this manner, will be for a fixed fee only, unless the matter proves to very complex.

Where costs are expected to exceed £10,000 for any given piece of work, three tenders should be sought from firms on the Panel. Again, this is something that should be discussed with the Director of Corporate Governance **before** the legal advice request form is submitted. The tender document will be drafted by the Director of Governance. Where tenders are issued, all paperwork will be kept for a minimum of 6 years, from the date of success or tender, as per NHS England corporate records Retention Guidance.

All staff requiring legal advice must complete the appropriate request form (see Appendix A). I copy can be found as a document link in the Claims section of the Jarvis Trust Intranet. Hard copies are available from the Director of Corporate Governance on request.

The form must be signed by the relevant Executive Director of the Service in which the member of staff seeking advice is based and forwarded to the Director of Corporate Governance. This must take place **before** legal advice is sought.

6.3 Request Handling Procedures

On receipt of the authorisation form signed by the relevant Executive Director, the request will be countersigned by the Director of Corporate Governance. An assigned reference number will be allocated, and the request logged on the appropriate database. This database will be managed by the staff who at the time manage the claims and work with NHS Resolution at the current time Claims Management Team (Capsticks).

Where costs for a piece of work are expected to exceed £10,000, three tenders should be sought from any of the firms on the Panel. The Director of Corporate Governance is happy to advise in terms of the firms/individuals best placed to advise the Trust on any specific issue.

Initial contact with the solicitor appointed will be made by either the Director of Corporate Governance or the member of staff requesting the advice required, once authorisation has been received. **Staff should not instruct solicitors in respect of pieces of work until written authorisation (via e-mail or fax) to proceed has been received from the Director of Corporate Governance.**

On receipt of solicitors' monthly invoices, each item for which payment is requested

will be cross-referenced to ensure that the requirements regarding authorisation were complied with prior to advice being sought.

Any requests for payment of items not authorised will be brought to the attention of the relevant Executive Director. Invoices will **not** be paid until all items for which payment has been requested have the relevant supporting authorisation duly signed.

6.3 Learning

The nature of requests for legal advice will be closely monitored and the Director of Corporate Governance (or an assigned member of their team) will hold a master file of legal advice received, ensuring that duplicate requests for legal advice are not made. Learning will be captured on the most commonly requested pieces of legal advice and advice given to aid learning and reduce costs.

The number and nature of requests for legal advice will be reviewed on a six-monthly basis by the Director of Corporate Governance.

Any excessive requests for legal advice will be reviewed by the Director of Governance.

7. Dissemination, Storage and Archiving (Control)

The policy will be made available to all staff via the Sheffield Health & Social Care NHS Foundation Trust intranet. All staff will be advised that the policy is available via Connect (the weekly staff e-newsletter).

Previous versions of the policy will be deleted from the intranet and website. The Trust staff will be informed when a new policy is released. Electronic and hard copies of the previous version will be held in the relevant Trust archive. The retention period will be ten years from date of new policy version. Version control is the responsibility of the Director of Corporate Governance.

8. Training and Other Resource Implications

To facilitate continual improvement in the handling of requests for legal advice, one-to-one training will be provided throughout the year for relevant managers on request.

In addition, the Director of Corporate Governance (or via outsourced legal support) is available to work with groups of staff to address their specific training and learning needs. See Section 12 Contact Details.

Directors, Associate Directors, Deputy Directors, Service, Ward and Team Managers are responsible for making sure that their staff are aware of and comply with this policy.

9. Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Require-ment	Process for Monitoring	Responsible Individual/ group/ committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group / committee for action plan development	Responsible Individual/group/ committee for action plan monitoring and implementation
Six monthly	Review of data and learning	Director of Corporate Governance	3 yearly or when changes to legislation, regulation	Director of Corporate Governance	Director of Corporate Governance reporting via the Audit and	Director of Corporate Governance/Audit and Risk Committee

			or internal personal occurs		Risk Committee	

10. Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy onto intranet and website and remove old version	Corporate Assurance Officer	Following ratification	
Make staff aware of new policy via Connect	Corporate Assurance Officer	First issue of Connect following ratification	

11. Links to other policies, standards and legislation (associated documents)

Complaints Policy, Claims Policy, Duty of Candour and Being Open Policy, Learning from Deaths Policy, PREVENT Strategy Policy, Incident Policy, Confidentiality Code of Conduct, Managing Conflicts of Interest in the NHS Policy, Disciplinary Policy, Safeguarding Adults Policy, Safeguarding Children Policy, Bullying and Harassment Policy, Whistleblowing Policy and Procedure.

12. Contact Details

Title	*Name*	*Phone*	*Email*
Director of Corporate Governance (Board Secretary)	Deborah Lawrenson	50803	Deborah. Lawrenson@shsc.nhs.uk

13. References

Audit Commission's Inspection Report on Sheffield Care Trust Autumn 2007 (*former Trust name).*

Internal legal review 2020

Appendix A – Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
1.0	Ratification and issue	November 2007	New policy issued
2.0	Review	November 2008	Trust name updated
3.0	Review	June 2010	Dates updated
4.0	Review	October 2011	Dates updated
5.0	Review	April 2014	Job titles and NHS Panel members updated
6.0	Review	January 2018	Reference to inquests removed Frequency of Litigation Bulletin added Legal advice process no longer included in staff induction
6.1	Extension to Review Date	January 2021	Review date extended to 30/06/2021 as approved by PGG on 11 Jan 2021 and ratified by ARC on 19 Jan 2021
7	Review and full revision	June 2021	Brought up to date, revision for a more effective policy.
8	Review and full version	June 2022	Updated to reflect changes in roles. The policy is not due for re-review until June 2023 but may be reviewed earlier depending on business need and following any review by the new Director of Corporate Governance

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of "all SHSC staff" email	Any other promotion/ dissemination (include dates)
1.0	November 2007	November 2007	
2.0	November 2008	November 2008	
3.0	June 2010	June 2010	
4.0	October 2011	October 2011	
5.0	April 2014	April 2014	
6.0	March 2018	March 2018	
6.1	N/A – Administrative Amendment Only	N/A – Administrative Amendment Only	
7.0	July 2021	July 2021	
8.0	June 2022	June 2022	

Appendix C – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – **Relevance** - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES –** proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

Stage 3 – **Policy Screening** - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations , in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice. This is available by logging-on to the Intranet first and then following this link https://nww.xct.nhs.uk/widget.php?wdg=wdg_general_info&page=464

	Does any aspect of this policy actually or potentially discriminate against this group?	**Can equality of opportunity for this group be improved through this policy or changes to this policy?**	**Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?**
AGE	No		
DISABILITY	No		
GENDER REASSIGNMENT	No		
PREGNANCY AND MATERNITY			
RACE	No		
RELIGION OR BELIEF	No		
SEX	No		
SEXUAL ORIENTATION	No		

Stage 4 – **Policy Revision** - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)
Please delete as appropriate: no changes made.

Impact Assessment Completed by (insert name and date) Deborah Lawrenson, May 2022

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person's Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site
http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf
(relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?

✓ **Yes. No further action needed.**

☐ **No. Work through the flow diagram over the page and then answer questions 2 and 3 below.**

2. On completion of flow diagram – is further action needed?

☐ **No, no further action needed.**

☐ **Yes, go to question 3**

3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

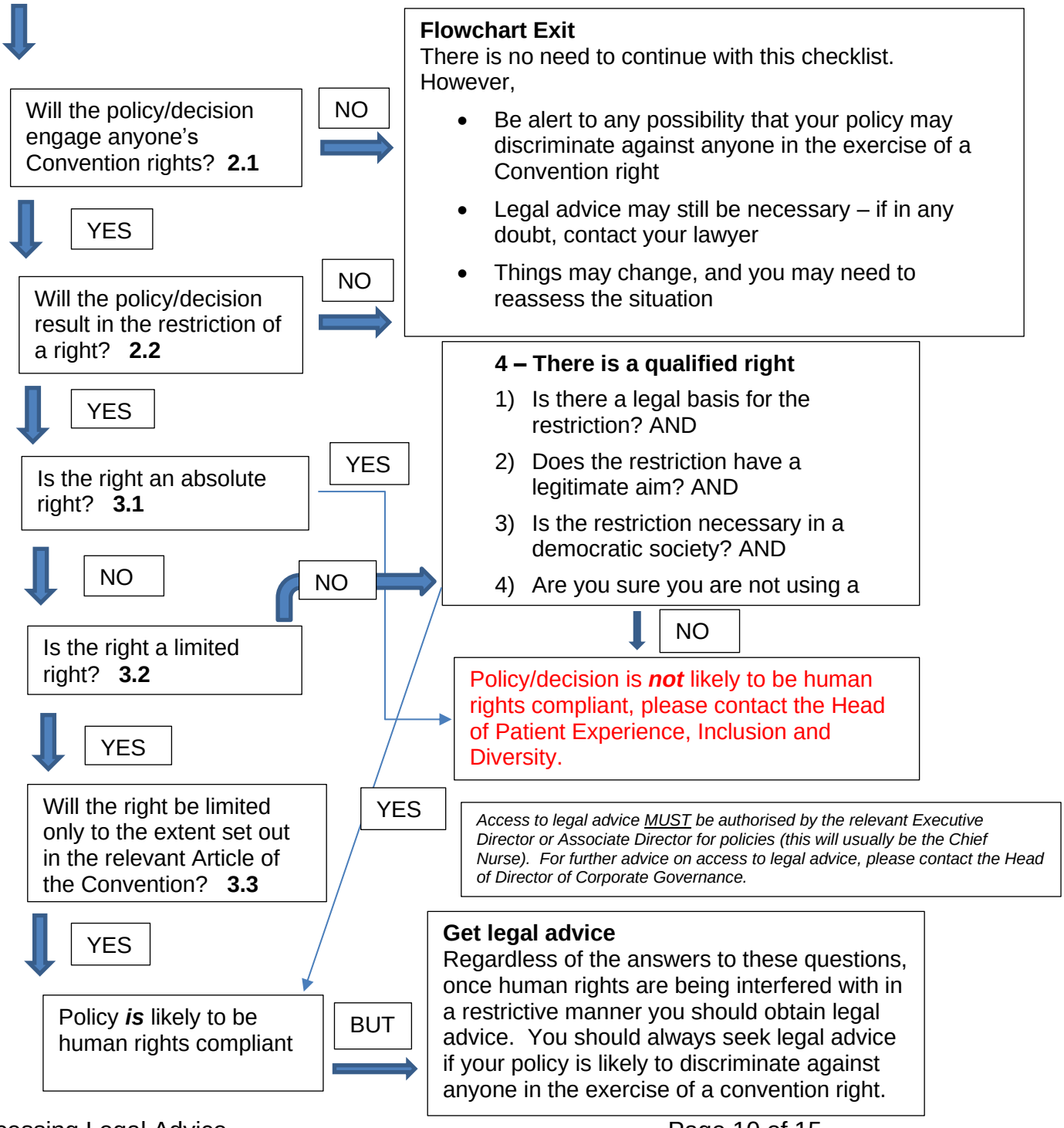
Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose 'Format Text Box' and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.

1.1 What is the policy/decision title? …… 1

1.2 What is the objective of the policy/decision? …… 1

1.3 Who will be affected by the policy/decision? …… 1



Appendix E – Development, Consultation and Verification

This policy was originally written in 2007. It has been periodically reviewed to ensure it meets the audit needs of the Trust.

The initial discussions regarding this Policy took place at EDG and were agreed in principle. The policy itself was developed by the Director of Corporate Governance and has been in force since August 2007. All staff were notified of this Policy via e-mail on its inception.

No formal consultation process took place. This is an internal Policy for Trust staff only.

Appendix F – Policy Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy template which can be downloaded on the intranet (also shown at Appendix G within the Policy).

1. Cover sheet ☒

All policies must have a cover sheet which includes:

- The Trust name and logo ☒
- The title of the policy (in large font size as detailed in the template) ☒
- Executive or Associate Director lead for the policy ☒
- The policy author and lead ☒
- The implementation lead (to receive feedback on the implementation) ☒
- Date of initial draft policy ☒
- Date of consultation ☒
- Date of verification ☐
- Date of ratification ☐
- Date of issue ☐
- Ratifying body ☐
- Date for review ☒
- Target audience ☒
- Document type ☒
- Document status ☒
- Keywords ☒
- Policy version and advice on availability and storage ☒

2. Contents page

3. Flowchart ☒

4. Introduction ☒

5. Scope ☒

6. Definitions ☒

7. Purpose ☒

8. Duties ☒

9. Process ☒

10. Dissemination, storage and archiving (control) ☒

11. Training and other resource implications ☒

12. Audit, monitoring and review ☒

This section should describe how the implementation and impact of the policy will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

Monitoring Compliance Template						
Minimum Require-ment	Process for Monitoring	Responsible Individual/ group/ committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/ committee for action plan development	Responsible Individual/group/ committee for action plan monitoring and implementation
A) Describe which aspect this is monitoring?	e.g. Review, audit	e.g. Education & Training Steering Group	e.g. Annual	e.g. Quality Assurance Committee	e.g. Education & Training Steering Group	e.g. Quality Assurance Committee

☒

13. Implementation plan

14. Links to other policies (associated documents) ☒

15. Contact details ☒

16. References ☒

17. Version control and amendment log (Appendix A) ☒

18. Dissemination Record (Appendix B) ☒

19. Equality Impact Assessment Form (Appendix C) ☒

20. Human Rights Act Assessment Checklist (Appendix D) ☒

21. Policy development and consultation process (Appendix E) ☒

22. Policy Checklist (Appendix F) ☒

Appendix G

NHS
Sheffield Health and Social Care
NHS Foundation Trust

REQUEST FOR LEGAL ADVICE

Name and Directorate of Person Making the Request	

Where significant pieces of work are anticipated (£10,000 or over), three quotes should be obtained from firms who are approved to supply legal services under the terms of the NHS North of England Commercial Procurement Collaborative (see the Director of Corporate Governance for advice in this regard). There is an extremely competitive market for legal services and, while the hourly rates of suppliers on the framework agreement have
been pre-tendered, experience shows that putting any established provider in a competitive situation will help to drive best value in terms of the quoted number of hours (and hence costs) to undertake any given piece of work.

Date request made:	
Name of Solicitor Firm:	
Nature of request:	One Off Advice: ☐ Ongoing Case: ☐
Reason for Request:	Please outline the reasons for your request for legal advice in sufficient detail for audit purposes.

Contact should **not** be made with solicitors until the legal advice request has been approved/signed off by the relevant Executive Director and Director of Corporate Governance ☐

What services will you require?	Telephone Advice ☐	E-mail Advice ☐
	Letter ☐	Review of Papers ☐
	Liaison with third party (e.g., ACAS) ☐	
Signature of Executive Director:		Date:
Countersigned by Budget Holder – **Deborah Lawrenson** Director of Corporate Governance		Date: