



# Policy:

## CG 009 - Claims Policy

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<b>Feedback On Implementation To</b>	Director of Corporate Governance

<b>Document Type</b>	Policy
<b>Document Version Number</b>	V7
<b>Date of Ratification</b>	14/06/2022 post Policy Governance Group
<b>Ratified By</b>	Audit & Risk Committee (ARC) and Quality Assurance Committee (QAC)
<b>Date of Issue</b>	June 2022
<b>Date for Review</b>	May 2024 (or earlier if required)  The original review date for this was policy was 30/04/2022 – received at PGG 30/05/2022 (Extended from 31/07/2021 by PGG on 27/09/2021, and then from 31/10/2021 by PGG on 25/10/2021)

<b>Target Audience</b>	Sheffield Health & Social Care NHS Foundation Trust Staff
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<b>Keywords</b>	Claims Litigation Legal Liability Negligence
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<b>Storage</b>	<p>The policy is available to all staff via the Sheffield Health &amp; Social Care NHS Foundation Trust intranet. Hard copies will be distributed to each directorate and also to central services. An e-mail will be sent to all staff informing them that the policy is available.</p> <p>Previous versions of the policy will be deleted by the Corporate Assurance Officer, however, a hard</p>
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copy of each previous version will be held by the Corporate Governance team *[currently versions 1-6 are held by the Complaints and Litigations team (former role)]*. Claims support was outsourced to Capsticks Claims Handling Service in November 2021 (in this policy this support is identified as Claims Manager (Capsticks) to provide administrative support and assistance for the handling of claims (clinical and non-clinical) overseen by the Director of Corporate Governance.

Version control is the responsibility of the Director of Corporate Governance. This is Version 7 of the policy.

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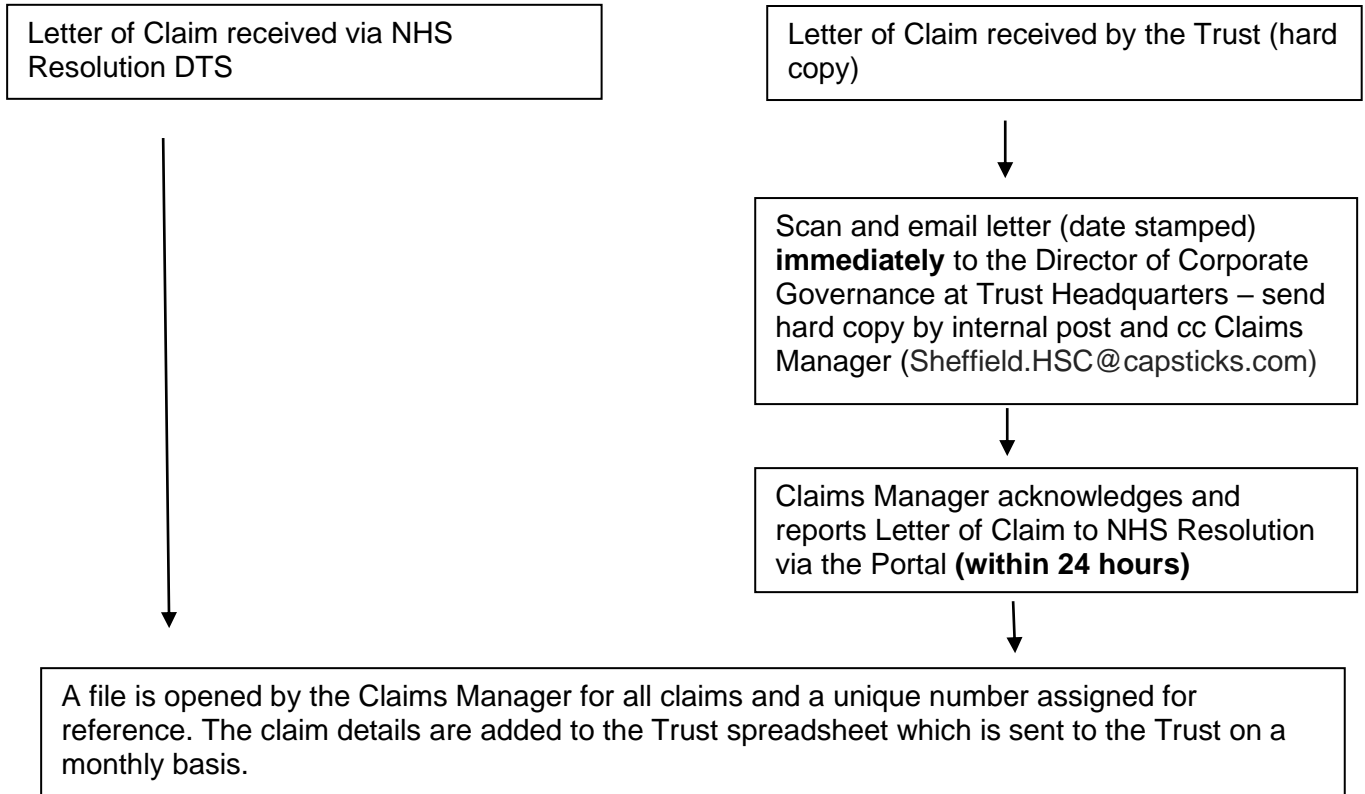
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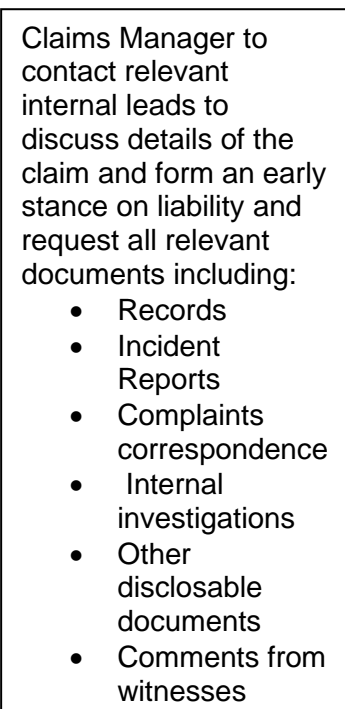
## Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
0.1	New draft policy created	July 2007	New policy commissioned by EDG on approval of a Case for Need.
1.0	Ratification and issue	November 2007	Amendments made prior to ratification.
2.0	Review / ratification / issue	November 2008	Full review completed and policy updated as needed to comply with regulatory requirements
3.0	Review on expiry of policy	November 2010	Full review completed and policy updated as needed to comply with regulatory requirements
4.0	Review on expiry of policy	December 2012	Full review completed and policy updated as needed to comply with regulatory requirements
5.0	Review / ratification / issue	August 2016	Full review completed and policy updated as needed to comply with regulatory requirements
6.0	Review / ratification / issue	June 2020	Review undertaken to reflect organisational changes and minor amendments to process to reflect practice.
7.0	Review/ratification/issue	June 2022	Review undertaken to reflect current structures and processes following outsourcing of claims support to Capsticks Claims team and to correct any out of date references. New flow chart included. An update if required will be brought to PGG in May 2024, earlier if required.

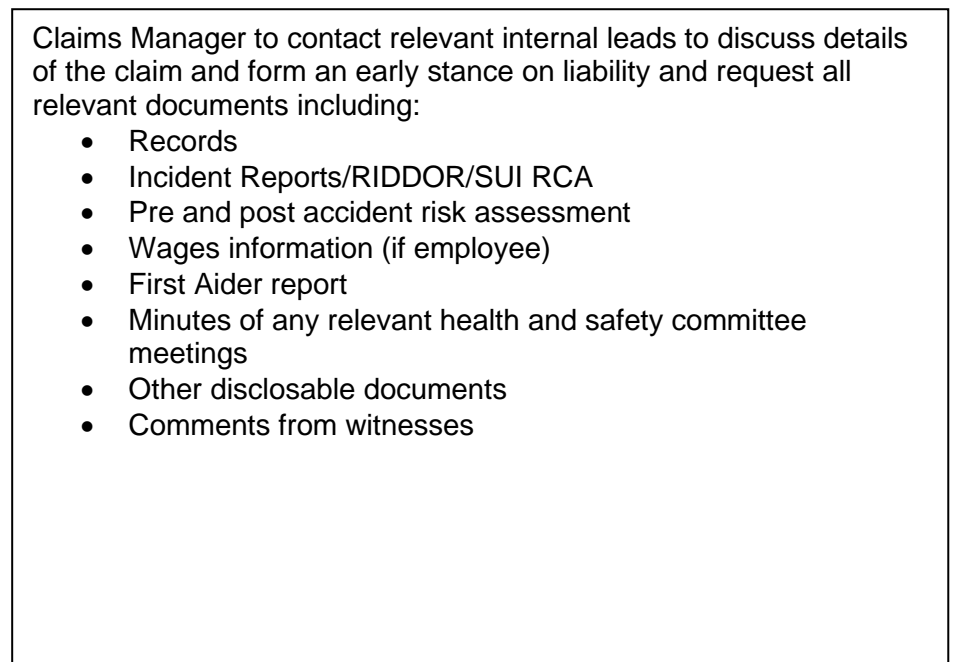
## Flowchart



### **Clinical Claims**



### **Non Clinical Claims**



Claims Manager collates information and sends to NHS Resolution and awaits further instructions

## **1. Introduction**

1.1 Sheffield Health & Social Care NHS Foundation Trust is committed to the effective and timely investigation and response to any claim that includes allegations of clinical negligence, personal injury, or loss or damage to property. The Trust provides an effective claims management service which deals sensitively and appropriately with requests for compensation following an adverse event with the emphasis being on:

- encouraging openness in line with the Trust's Being Open policy. All communication between the Trust, individual staff and teams, service users, their relatives and carers should be carried out as per the Being Open policy;
- promoting the proactive identification of potential claims at a stage when these can be more successfully investigated and when a better quality of evidence may be obtained;
- allowing claims which are well founded or which cannot realistically be defended to be correctly and promptly identified so that they may be settled without unnecessary delay, distress or avoidable escalation of costs;
- allowing the Trust and its insurers to be robust in defending unjustified claims and in other cases to limit its liability on the basis of appropriate evidence;
- providing a key resource to support and advise staff who are involved in claims, allowing them to minimise the stress and disruption that can follow when a claim is made;
- assisting individual staff, and the Trust as a whole, to learn from events which result in claims with a view to improving future practice/raising standards;
- promoting the monitoring of themes and trends arising from claims and potential claims, which may indicate areas of risk or weakness in Trust services where remedial work is necessary.

1.2 The Trust will follow the requirements of NHS Resolution in the management of claims

1.3 The Trust acknowledges its duty to ensure that appropriate financial and risk management systems are in place and that any losses are minimised, with specific reference to the NHS R standards and procedures.

## **2. Scope**

2.1 This policy sets out how clinical negligence and personal injury claims are handled within the Trust. It describes how service users, staff and carers who are involved in claims are supported. It outlines the schemes operated by NHS Resolution which indemnifies the Trust in accordance with the terms of those schemes, and it gives details of the duties involved.

2.2 The Trust is vicariously liable for the acts/omissions of its employees both past and present and, as such, all staff have a duty to co-operate fully in the investigation and management of any claim.

## **3. Definitions**

- 3.1 A claim is a demand for compensation made following an adverse event resulting in damage to property and/or personal injury.
- 3.2 A claimant is any person or their representative who instructs solicitors to act on their behalf to pursue a claim against the Trust, or who enters legal proceedings as a Litigant-in-Person against the Trust, or who pursues compensation.
- 3.3 The incident or situation in which loss or damage is alleged to have occurred is referred to in this policy as an 'adverse event'.
- 3.4 NHS Resolution is a Special Health Authority set up under Section 11 of the NHS Act 1977. Its date of commencement was 21 November 1995 and the current duties are established under the National Health Service Act 2006
- 3.5 The principal task of NHS Resolution is to provide expertise to the NHS on resolving concerns and disputes fairly, sharing learning for improvement and preserving resources for patient care. There are currently four schemes: -

**Clinical Negligence (CNST):** a scheme covering liabilities for alleged clinical negligence where the original adverse event occurred on or after 01 April 1995. These claims arise when it is alleged that a service user, or a witness to service user care, has been harmed due to a breach of the proper duty of care on the part of Trust staff.

Clinical negligence claims may be made by the service user or, following a death, by their next of kin.

The harm which forms the basis of a clinical negligence claim may arise in many circumstances, including:

- medication errors;
- failure to diagnose;
- failure to provide appropriate care;
- inappropriate advice to service users;
- failure to obtain consent.

**Employers' Liability (LTPS):** a scheme covering alleged liabilities for injury or harm affecting employees as a result of any failure of the Trust in its duty of care as an employer. This includes claims relating to:

- injury from slips, trips and falls;
- manual handling injuries;
- injuries as a result of assault by service users or visitors;
- work related or bullying related stress claims;
- industrial injuries due to exposure to substances, fire incidents, plant/equipment failure.

Employers' liability claims may be made by any person employed by the Trust at the time that the alleged adverse event occurred.

**Public Liability (LTPS):** the Trust is also liable for injury, harm or loss affecting members of the public or visitors to the Trust which may occur as a result of omissions or actions on the part of the Trust. These claims may relate to a wide range of situations including:

- personal injury sustained by visitors to NHS premises;
- breach of the Human Rights Act.

**Property expenses (PES):** a scheme relating to any expenses incurred from any loss or damage to property where the original loss occurred on or after 01 April 1999:

3.6 For the purpose of this document, the four schemes are referred to together as ‘the Schemes.’

3.7 **RIDDOR** is the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

## 4. Purpose

4.1 The policy sets out the approach which has been adopted by the Trust in delivering an effective claims management service as described in the introduction.

4.2 Adherence to the policy should ensure that:

- all staff are clear about the process for managing claims, including their own responsibilities in relation to this;
- the Trust complies with the requirements for membership of the NHS R pooling schemes and also with the requirements of the Pre-action Protocol for the resolution of clinical disputes, and the Pre-action Protocol for personal injury, thus avoiding the cost penalties associated with non-compliance.

4.3 The primary objective of this policy is to ensure the timely and appropriate resolution of claims following the fullest possible investigation. The Trust’s time limits and performance targets for dealing with claims are summarised in Appendix G.

4.4 The secondary objective is to ensure the thorough analysis of claims and the identification of themes and trends enabling the Trust to make any necessary changes to practice, protocol or workplace conditions as may be deemed necessary.

4.5 Information on the nature of claims received, the outcome, and any actions taken/lessons learned are fed back to Directorate senior management teams on a quarterly basis.

## 5. Duties

**The Director of Corporate Governance** is the Trust Board member with overall responsibility for claims management and will keep the Board, the Executive Directors’ Group, and the Quality Assurance Committee informed of major developments. The Quality Assurance Committee also has responsibility for monitoring claims actively throughout the Trust and will escalate any concerns to the Board or Executive Directors’ Group.

**The Capsticks Claims handling team (“the Claims Manager”) (Capsticks)** provide an outsourced service in the management of Claims and whilst they do not provide legal advice they are responsible for the conduct, control and documentation of all claims and potential claims subject to the instructions of the Trust. The Trust via the Claims Manager (Capsticks) obtains legal advice from panel firms as required or NHS Resolution via the contractual provisions in place with NHS Resolution.

The claims management procedures defined within this policy will be triggered by the receipt of all new claims, correspondence indicating that a claim is to be investigated or considered, Letter of Claim or Court Proceedings and/or notification of a potential claim.

The Claims Manager (Capsticks) will carry out such preliminary action, investigations, and analysis of reportable claims as is required by NHS Resolution and will liaise with NHS Resolution as necessary over the conduct of such claims.

The Claims Manager (Capsticks) will ensure that there is liaison with the relevant Directorate if corrective/remedial actions are required with guidance provided from the Director of Corporate Governance as required.

**The Medical Director** will be advised of all clinical claims and will be informed whenever it becomes necessary to make admissions as to liability in Letters of Response in respect of clinical claims.

**Clinical Directors/Service Directors** will be advised of all claims affecting their services. In respect of clinical claims, they will be responsible for ensuring that appropriate action is taken in respect of any issues that are identified during the course of the investigation.

In respect of personal injury claims, team/ward managers will provide such documentation for disclosure as required by the Complaints and Litigation Manager, for example, staff personal files, training records etc.

**All employees** of the Trust have a contractual responsibility to assist in the investigation of claims, both clinical and non clinical, as required of them by The Claims Manager (Capsticks) or the Director of Corporate Governance.

## 6. Process

6.1 On a day to day basis, local responsibility for dealing with all claims made against Sheffield Health & Social Care NHS Foundation Trust will rest with the Claims Manager (Capsticks) .

6.2 The Claims Manager (Capsticks) will make appropriate arrangements for the day to day handling of claims in accordance with agreed Trust procedures and NHS Resolution guidelines.

### 6.3 Reporting Guidelines

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

Under the CNST Reporting Guidelines, October 2008, when a significant litigation risk has been established and a realistic valuation of a possible claim has been made, the matter becomes reportable to the NHS R. One of five possible situations may arise:

- incidents reported which are graded red (National Patient Safety Agency Reporting Procedures (see Appendix F) that reveal a possible breach of duty leading to a potential large value claim (damages over £250,000) must be reported as soon as possible, usually before a claim is made i.e. before a Letter of Claim or Proceedings are received;
- claims arising from the alleged negligence or serious professional misconduct of a clinician or team;
- claims arising from a complaints investigation where the response, on the facts, indicates that an admission of liability has been implied;
- requests for disclosure of records where the preliminary analysis indicates the possibility of a claim with a significant litigation risk, regardless of value;
- letters of claim as the first indication of any action;
- the receipt of Court proceedings.

Every effort will be made to ensure that potential claims are brought to a satisfactory conclusion without the necessity of a Court hearing, by means of discussion, negotiation and, if appropriate, mediation.

#### 6.3.2 LTPS (Liabilities to Third Parties)

Under the RPST Reporting Guidelines all claims which are above the Trust excess (staff claims £10,000, other personal injury claims £3,000) are reportable to NHS Resolution via the electronic claims management reporting system.



## **6.4 Role of the Claims Manager (Capsticks) outsourced claims managers (Capsticks)**

### 6.4.1 The Claims Manager (Capsticks) will:

- receive, acknowledge, record and process all new claims received independently or from NHS Resolution that arise against Sheffield Health & Social Care NHS Foundation Trust and manage in accordance with NHS Resolution reporting guidelines.
- be responsible for ensuring that the Pre-Action Protocol for the Resolution of Clinical Disputes is followed forwarding them to NHS Resolution within the timescales laid down;
- identify and arrange for the preservation of relevant records and other items, such as equipment involved in adverse events etc;
- ensure that initial investigations have been made and a preliminary analysis has been compiled to establish early stance on liability.
- establish and, as necessary, maintain contact with relevant staff and former staff;
- identify if there are any reporting requirements to external organisations and whether such organisations should be involved in the investigations/Root Cause analysis;
- assist with the preparation of reports and other submissions as required for NHS Resolution, the Executive Directors' Group, the Trust Board, the Quality Assurance Committee and, if necessary, the Service User Safety Group. The Claims Manager (Capsticks) will prepare monthly reports on:
  - the number and aggregate value of claims and details of any individual claims;
  - the progress and likely outcome of these claims, including the expected settlement date, if possible;
  - the final outcome of the claim;
  - any proposed remedial action arising out of a particular claim.
- the Claims Manager (Capsticks) will ensure that risk management issues arising from claims are shared as necessary and the Head of Corporate Assurance will ensure that they are entered onto the Trust Risk's Register.
- the Corporate Assurance Officer, will ensure that Trust wide issues are shared with the Quality Assurance Committee and the Service User Safety Group as identified by the Claims Manager (Capsticks).
- the Claims Manager (Capsticks) will liaise with the Communications Manager as necessary where there is a possibility of publicity occurring as the result of a claim.

### 6.4.2 External agencies may need to be involved for example:

- the Health & Safety Executive where a RIDDOR report had been made relating to the original incident;
- HM Coroner – where the claim relates to a fatality;
- the Police – where a criminal offence is suspected or has occurred;
- professional regulatory bodies – where allegations of negligence are involved.

This list is not exhaustive.

6.4.3 Where claims have initially been investigated as a result of an incident report, appropriate external agencies will have been involved at that stage. In terms of new claims where investigations have not yet been carried out, the circumstances of each individual case will determine which external agencies should be brought into the investigation and reporting process and when.

## **6.5 LTPS Claims**

6.5.1 For all non clinical claims the ultimate decision as to whether admissions will be made rests with NHS Resolution, in consultation with the the Claims Manager (Capsticks) and the Director of Corporate Governance. This information will be relayed to the appropriate service once a decision has been reached.

## **6.6 Legal Expenses**

- 6.6.1 Most legal expenses arising from claims will be met directly by NHS Resolution. From time to time, however, the Trust may need to incur legal expenses in its own right.
- 6.6.2 The Claims Manager (Capsticks), will attend any Directions hearings before the District Judge arising from the defence of a claim and any other Court appearances as required or ensure appropriate alternative legal representation is provided.
- 6.6.3 In the event that it is deemed appropriate to defend a claim to trial, the Claims Manager (Capsticks) will work closely with the Trust's panel firm to ensure that witnesses who are required to provide information are supported through the process.

## **6.7 The Use of Legal Advisors**

- 6.7.1 Defence solicitors will be instructed by NHS Resolution and the Claims Manager (Capsticks) in collaboration with the Director of Corporate Governance where independent advice is sought. Staff should refer to the Accessing Legal Advice Policy available on the intranet.

## **6.8 Information on Claims**

- 6.8.1 The Claims Manager (Capsticks) will establish and maintain a database of all claims relating to the Trust, including information about the nature of each claim and in consultation with the database provided by NHS Resolution this will enable provision of relevant and timely information as required either by the Board, Executive Directors' Group or the Quality Assurance Committee. Due regard will be paid to the confidentiality of data relating to individuals. Data will be processed in compliance with GDPR tailored with the Data Protection Act 2018.

## **6.9 Delegated Financial Responsibility**

- 6.9.1 NHS Resolution has responsibility for the financial management of all clinical negligence claims. It also has responsibility for the financial management of all reportable LTPS and PES claims above the designated excess levels.

## **6.10 Risk Management Issues**

- 6.10.1 All staff are expected to co-operate fully in risk management issues. Where it is thought that there may be a possibility that a claim against the Trust may arise as the result of an incident, the Claims Manager (Capsticks) and the Director of Corporate Governance must be notified at the time at which an incident form is submitted.
- 6.10.2 For all such potential claims, a Root Cause Analysis should be carried out with witness statements. All information should be sent to the Claims Manager (Capsticks).
- 6.10.3 High standards of record keeping documentation are essential, especially in clinical records, to ensure that the facts are available in the event of a claim being made.
- 6.10.4 When staff are asked to provide reports, statements or comments, they will be reminded as necessary on whether their reports are potentially disclosable in the event of a claim proceeding and are asked to respond to requests promptly.
- 6.10.5 Claims are graded as low/medium and high risk by NHS Resolution and or panel firm and reported by the Claims Manager (Capsticks) see appendix C

## **6.11 Root Cause Analysis**

- 6.11.1 In line with national requirements, the Trust applies a Root Cause Analysis approach to investigations into serious incidents, complaints and claims.

## **6.12 Claims Management Procedure**

- 6.12.1 The Claims Manager (Capsticks) will be responsible for the following actions (in addition those in paragraphs 6.4) except where indicated :

## 6.13 Pre-action Protocols

6.13.1 Sheffield Health & Social Care NHS Foundation Trust 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 service user’s treatment, or where the service user is dissatisfied with that treatment and/or the outcome. (See the Trust’s Policy available on the intranet)
- encouraging the adoption of a constructive approach to complaints and claims, and accepting that concerned service users are entitled to an explanation and an apology if warranted, and to appropriate redress in the event of negligence
- building on and increasing the benefits of early but well informed settlement which genuinely satisfies both parties in dispute.

### 6.13.2 Pre-action Protocol for Clinical Negligence Claims

#### 6.13.3 Obtaining the Health Records:

The claimant and/or their legal adviser may request copies of the service user’s clinical records. This request should be made in writing to the Trust and managed through the team supporting subject access requests (SARs). These requests should adhere to the Department of Health Guidelines and should, when properly completed, constitute satisfactory evidence (for Trust purposes) of the service user’s consent for the release of their records to their legal and other expert advisers. This can be in the form of a Pre-action Protocol Letter before Action.

The Trust must provide copy records within **one month** of this request. In the rare circumstances that the Trust is unable to comply with a request within **one month**, the problem should be explained to the service user or their representative quickly, and details given as to what is being done to resolve it.

If the records are not provided to the service user or their representatives within **one month** the service user can apply to the Court for an order for Pre-action Disclosure. This will have adverse cost implications for the Trust.

#### 6.13.4 Letter of Claim

If the service user decides that there are grounds for a claim, they or their solicitors may send a **Letter of Claim** to the Trust

The Letter of Claim should be passed to the Claimant Manager (Capsticks) and reported to NHS Resolution as soon as possible

#### 6.13.5 Letter of Response

The Claims Manager (Capsticks) will co-ordinate the investigation of the claim in conjunction with NHS Resolution and/or panel solicitors within the timescale for the Letter of Response. NHS Resolution will provide a reasoned answer to it in the form of a **Letter of Response**. NHS Resolution will liaise with the Trust to determine which issues of breach of duty and/or causation are admitted and which are denied and why, admissions to be approved in line with the scheme of delegation. Documents must be enclosed which are material to the issues in dispute and which would be likely to be ordered to be disclosed by the Court during proceedings.

**6.13.6 It should be noted that admissions made in a Letter of Response are binding.**

## 6.14 Pre-action protocol for employers’ liability and public liability claims

### 6.14.1 Letter of Claim

Receipt of a Letter of Claim is likely to be the first indication the Trust receives of a potential injury claim although the adverse event may have been reported in accordance with the Trust's Incident Reporting Policy.

The Trust will conduct an immediate investigation into the issues raised. The Letter of Claim, together with the outcome of the investigation and a completed document list in accordance with NHS Resolution guidelines, will be sent to NHS Resolution within **28 days** if possible, but in any event within 42 days.

Under the protocol, the Claimant should not issue proceedings until after **3 months** from the date of the Letter of Claim, unless there is a limitation issue.

#### 6.14.2 **Letter of Response**

NHS Resolution will continue to investigate the claim in conjunction with the Claims Manager ("Capsticks") and within **3 months** of the acknowledgement of the claim, provide a reasoned answer to it in the form of a Letter of Response. If liability is denied, reasons must be given for the denial, and documents must be enclosed which are material to the issues in dispute and which would be likely to be ordered to be disclosed by the Court during proceedings.

The Letter of Response will usually be drafted by tNHS Resolution and/or panel solicitors with a copy to the Claims Manager (Capsticks).

#### 6.14.3 **Pre-action Protocol for Property Claims**

Claims for damage or loss of property will be handled in accordance with the Liabilities to Third Parties Scheme (LTPS) administered by NHS Resolution.

Damage, loss or destruction of Trust property will be investigated and reported in accordance with the Property Expenses Scheme (PES) administered by NHS Resolution.

### 6.15 **Investigation of Claims**

6.15.1 The receipt of any of the following will trigger an investigation:

- an incident which is reportable to NHS Resolution under the NHS Resolution Reporting Guidelines;
- a Letter of Claim; or
- a Claim Form.

6.15.2 Internal investigations **must** be commenced immediately upon receipt of one of the above. The Claims Manager (Capsticks) will liaise with Patient Safety Team to undertake an initial investigation to determine whether the claim has any merit and whether further in depth investigation is required.

6.15. Very serious claims are likely to have been the subject of an adverse incident report in accordance with the Trust's Incident Reporting, Serious Untoward Incident and/or Complaints Policies. NHS Resolution will be invited to link into that investigative process if that proves to be appropriate.

### 6.16 **Principal Aims of All Investigations**

6.16.1 The principle aims of any investigation will always be as follows:

- to identify the full names and titles of all staff involved;
- to establish an account of the original incident;
- to identify or maintain all written records;
- to establish and maintain contact with the staff involved and to obtain an in-house expert opinion.

6.16.2 The Claims Manager (Capsticks) will then pursue further investigations on behalf of NHS Resolution, depending on whether the claim is for clinical negligence, personal injury, or

property damage or loss to obtain further information if required.

6.16.3 The relevant Directorate is required to supply full copies all documentation requested by the Claims Manager (Capsticks) in conjunction with the investigation officer in order to assist in the investigation of claims.

### **6.17 Investigation of A Clinical Negligence Claim**

6.17.1 All Clinical Negligence claims will be investigated by the Patient Safety Team in conjunction with the Claims Manager (Capsticks), with support from the relevant Services as required.

6.17.2 It is important that appropriate support mechanisms for staff involved in traumatic/stressful adverse events are accessed.

6.17.3 At the request of NHS Resolution and/or Claims Manager (Capsticks) will seek information from all Trust staff who have been involved in the relevant episode of care. The objectives of this will be to gain appropriate information as set out above by: -

- obtaining preliminary comments from all potential witnesses;
- obtaining authority to release the medical records to the Claimant;
- obtaining details of any incidents and any other similar incidents;
- identifying any risk management issues, and if risk management issues are identified:
  - identifying the steps required to avoid a repeat incident and agree a plan for corrective action;
  - identifying a timescale for the implementation of corrective action;
  - if corrective actions are necessary, the relevant Service/Clinical Directors will be contacted and requested to take appropriate action;
  - taking an initial view on liability and then seeking the views of the Trust legal advisers if appropriate;
  - ensuring that further in depth investigation/Root Cause Analysis is conducted if it is deemed appropriate from the initial findings.

### **6.18 Investigation of A Personal Injury Claim**

6.18.1 All personal injury claims will be investigated by the Claims Manager (Capsticks), with support from the relevant Service as required.

6.18.2 The Claims Manager (Capsticks) will obtain the relevant incident report form and will conduct an initial investigation as for Clinical Negligence claims and will then report the claim to NHS Resolution who will continue the investigation.

6.18.3 There is no requirement to report the claim to NHS Resolution if it falls below the Trust excess. In these circumstances, the Claims Manager (Capsticks) may retain conduct of the claim subject to Trust instructions.

6.18.4 An NHS Resolution Claims Investigator or Panel solicitor may arrange a meeting via the Claims Manager (Capsticks) with the appropriate manager, line manager and any other relevant witnesses. The objectives of the meeting will be as set out in paragraphs 6.16.3 and also to: -

- obtain preliminary comments from all potential witnesses. If these have not already been obtained, and in any event, to corroborate the content thereof;
- confirm that all relevant documentation has been disclosed and to explore whether any other relevant documents might exist;
- obtain details of similar incidents and decide whether any risk management issues have been identified;
- decide on whether liability rests with the Trust and decide what actions will be taken in the immediate future.

### **6.19 Action, Learning and Analysis**

6.19.1 This section describes the process adopted by the Trust to ensure that appropriate action

and learning takes place as a result of the investigation and analysis of claims.

- 6.19.2 In many although not all cases, the event leading to a claim will already have been investigated (using Root Cause Analysis) through the serious incident reporting and management process or the complaints procedures and any identified remedial action will have been taken earlier in response to that investigation.
- 6.19.3 In other cases, the need for action as a result of claims may be evident from: -
- the Trust's preliminary investigation of the claim;
  - other evidence emerging in the course of the claims process;
  - the outcome of the claim;
  - identification of themes/trends following analysis of aggregated data.
- 6.19.4 Where a need for action/learning is identified as a result of a claim, the investigating officer in conjunction with the relevant service and/the Claims Manager (Capsticks) or they will prepare an action plan to identify learning.
- 6.19.5 In the event of an action plan arising from a claim this will be monitored by the Claims Manager (Capsticks) and the managerial lead in which the claim has arisen and completion of actions overseen through quarterly committee reporting on claims,
- 6.19.6 Actions taken following claims are intended to reduce risks and prevent recurrence of adverse events. It is important to ensure that actions taken are effective and do not result in risks being unwittingly transferred elsewhere. The effectiveness of actions taken is, therefore, assessed through ongoing monitoring of adverse event trends and, in some cases, by local or Trustwide audit.
- 6.19.7 The effectiveness of risk reduction measures is also monitored through the analysis of adverse event reporting patterns and adverse event trends. If an investigation on the analysis of data reveals significant risks or if significant risks remain after the completion of the action plan, a risk assessment will be undertaken. The outcome of the assessment will be discussed at the relevant Directorate Senior Manager's meeting and placed on the Directorate Risk Register.
- 6.19.8 Lessons learned from claims in relation to the practice of particular individuals and/or teams are shared with the individual and teams concerned.
- 6.19.9 Where a claims investigation raises issues of wider concern, summary and anonymised details are presented to the relevant Directorate Senior Manager's meeting. Where appropriate (e.g. where major resource or policy issues will be involved in addressing a concern) learning issues for claims investigations will be escalated via the Quality Assurance Committee to the Trust Board. The issues will also be given consideration by the Service User Safety Group.
- 6.19.10 Where more than one organisation is involved in an adverse event leading to a claim, relevant information in relation to the claim is forwarded to the organisation concerned.
- 6.19.11 The Trust participates in a range of national initiatives which draw on the findings of adverse events, including claims. This includes reporting through national confidential inquiries and participating in research projects and other initiatives.
- 6.19.12 An Annual Claims report is submitted to the Quality Assurance Committee and the Trust Board. This is a confidential document which includes information on all claims received during the previous 12 months and any outstanding claims from previous years.

## **6.20 Instructing NHS Resolution**

- 6.20.1 It is a requirement that the Trust must report all claims over the excess limit to NHS

Resolution.

6.20.2 The Trust will co-operate at all times with NHS Resolution. The Claims Manager (Capsticks) will respond to requests for further information and will work with that NHS Resolution and panel solicitors directly instructed by them to try and ensure they are in a position to meet the Court's timetable for conduct of a claim.

6.20.3 NHS Resolution provide the Trust with quarterly updates on the progress of all claims.

## 6.21 Resources

6.21.1 NHS Resolution will be responsible for:

- expenditure on the Schemes whether centrally resourced i.e. funded by the Department of Health, or by contributions from members;
- the cost of administering the Schemes and any additional tasks as specified;
- invoicing the Trust in respect of their handling fees and sub excess fees.

## 6.22 Support for Staff

6.22.1 The Trust recognises that involvement in any serious adverse event can have profound consequences on those staff involved.

6.22.2 Different individuals will have differing responses to the same event and will, therefore, require different levels of support.

6.22.3 An adverse event is one that invokes unusually strong emotions, overcoming normal coping abilities. Examples include the following:

- Claims, complaints, serious incidents;
- Allegations of negligence;
- Dealing with a major incident;
- Involvement in cases of safeguarding adults or children;
- Cases of harassment and/or bullying;
- Involvement in an incident of violence or aggression, whether as a victim or as a witness;
- Being called as a witness in a Court (including Coroners).

6.22.4 It is important that staff are kept fully informed of any investigation relating to an adverse event in which they have been involved.

6.22.5 In particular, they should be made aware when the relevant investigation has been completed and the findings, recommendations and any action to be taken should be shared with them.

6.22.6 The following support will be available to staff both **immediately** and on an **ongoing** basis from the time at which an adverse event is notified, throughout the investigation and until the case is closed:

- Support from their line manager;
- Support from the Claims Manager (Capsticks)
- Support from the Clinical Risk Manager (Incidents/Coroners);
- Support from the Safeguarding Lead;
- Support from Human Resources;
- Access to the Trust staff counselling service Workplace Wellbeing;
- Occupational Health (referral by Manager);
- Trust Chaplaincy service;
- Trade Union support;
- Relevant professional bodies, for example, GMC, NMC etc.

6.22.7 Staff will be made aware that the investigation of any claim takes place independently of any

disciplinary procedure and, where appropriate, in accordance with the Trust's Being Open Policy.

6.22.8 On receipt of a claim (whether Clinical Negligence, Employers' Liability, Public Liability or Property Expenses), the following staff will be notified as a matter of course:

- relevant Clinical and/or Service Director;
- relevant team/ward, unit or service manager.

6.22.9 Following the resolution of the claim, debriefing is available from the Claims Manager (Capsticks). All staff involved in a claim will be offered debriefing as a matter of routine.

6.22.10 Should any member of staff be called as a witness in respect of a claim, individual support will be provided by the Claims Manager (Capsticks) and/or any other legal advisors instructed by them.

6.23.11 Guidance will be provided on preparing witness statements for the Court where applicable.

6.22.12 Members of staff involved will be notified of the conclusion of the claim at the time of settlement.

## **7. Dissemination, Storage and Archiving (Control)**

7.1 The policy will be made available to all staff via the Sheffield Health & Social Care NHS Foundation Trust intranet. Hard copies will be distributed to each Directorate and also to central services. An e-mail will be sent to all staff informing them that the policy is available.

7.2 Previous versions of the policy will be deleted by the Corporate Assurance Officer, however, a hard copy of each previous version will be held by the Corporate Governance in the claims archive [*complaints and litigation to provide previous archive*].

7.3 Version control is the responsibility of the Claims Manager (Capsticks) and the Director of Corporate Governance.

7.4 This policy will be implemented within the Corporate Governance Team by the Claims Manager (Capsticks).

## **8. Training and Other Resource Implications**

8.1 Relevant staff are required to undertake ongoing professional training through attendance at relevant seminars, conferences etc. provided externally.

8.2 To facilitate continual improvement in the handling of claims, one-to-one training will be made available throughout the year for relevant managers involved in collecting information for claims.

8.3 Those members of senior staff involved in collecting information for claims are required to have completed Root Cause Analysis training.

8.4 In addition, the Claims Manager (Capsticks) will be available to work with groups of staff to address their specific training and learning needs.

8.5 All staff receive a briefing on risk management, including incident reporting, as part of the Trust Induction and are given a local briefing on reporting incidents as part of their local induction.



## 9. Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	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
NHS Resolution schemes relevant to the organisation (CNST,LTPS and PES)	Claims managed in accordance with Trust Claims Procedure	Claims Manager (Capsticks) and Director of Corporate Governance  Quality Assurance Committee  Directorate Leads  Service User Safety Group	Quarterly	Claims Manager (Capsticks)	Claims Manager (Capsticks)	Claims Manager (Capsticks)  Directorate Leads
Action to be taken including timescales	Weekly monitoring	Claims Manager (Capsticks) Directorate Leads	Weekly monitoring	Claims Manager (Capsticks)	Claims Manager (Capsticks)	Claims Manager (Capsticks)  Directorate Leads
How the organisation communicate with relevant stakeholders, such as staff claimants, NHS Resolution, solicitors	As necessary in accordance with Claims Policy	Claims Manager (Capsticks)	Weekly monitoring	Claims Manager (Capsticks)	Claims Manager (Capsticks)	Claims Manager (Capsticks)  Directorate Leads

- 9.1 The implementation of the procedure and compliance with NHS Resolution guidelines will be audited by the Claims Manager (Capsticks) and the Director of Corporate Governance on an annual basis.
- 9.2 Responsibility for monitoring national guidance (which may necessitate an early review) rests with the Claims Manager (Capsticks) who will advise the Director of Corporate Governance as required.

- 9.3 It is acknowledged that periodically, Internal Audit may review the claims process for compliance with relevant guidance and the current procedure. In addition, NHS Resolution case managers contact the Claims Manager (Capsticks) regularly with regard to the appropriate management of individual cases.
- 9.4 The effectiveness of this policy will be measured by:
- monitoring the number and outcome of claims; this is presented for review via the Quality Assurance Committee;
  - an annual audit of complaints, claims and serious incidents which will identify whether adverse incidents leading to claims have been reported to external partners and whether actions agreed in respect of claims investigations have been implemented. This audit will be led by the Quality Assurance team working with the Claims Manager (Capsticks) and Director of Corporate Governance as required to reflect claims data and presented to the Quality Assurance Committee;
  - monitoring compliance with the time limits identified in this policy. A report on compliance will be submitted by the Claims Manager (Capsticks) to the Director of Corporate Governance who will report to the Quality Assurance Committee via the Annual Claims Report. It will include a review of feedback from external agencies including NHS Resolution, Trust Solicitors etc;
  - support of staff involved in stressful claims will be included in an annual audit of arrangements to support staff who may experience stress as a result of complaints and/or claims. This audit will be led by the Claims Manager (Capsticks) and will be reported to the Quality Assurance Committee via the Annual Claims Report.
- 9.5 The Claims Annual Report will include data relating to the management of claims and a summary of the monitoring described above.

## 10. Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
Put new policy onto intranet and website and remove old version	Corporate Assurance Officer	As soon as ratified.	
Make staff aware of new policy via Communications Digest	Corporate Assurance Officer with the Communications team	First digest following ratification.	
All Managers to ensure that they make their staff aware of the new policy and its implications	All Trust managers	Within a week of being informed of the new policy via the Communications Digest.	

## 11. Dissemination Record

<b>Version</b>	<b>Date on website (intranet and internet)</b>	<b>Date of “all SHSC staff” email</b>	<b>Any other promotion/ dissemination (include dates)</b>
1.0	November 2007	November 2007	
2.0	November 2008	November 2008	
3.2	November 2010	November 2010	
4.0	December 2012	December 2012	
5.0	August 2016	August 2016	
6.0	31 July 2020	August 2020	
7.0	June 2022	June 2022	Will be shared on Jarvis

## 12. Links to Other Policies, Standards and Legislation (Associated Documents)

- 12.1 This policy links to Being Open Policy, Incident Reporting/Investigation Procedure, Complaints Policy, Guidance on Risk Assessment, Policy on Accessing Legal Advice - all are available from the Trust's webpage (intranet).
- 12.2 This policy is to be read in conjunction with the Trust's Policy for the Investigation of Complaints, Claims and Incidents.

## 13. Contact Details

Title	Name	Phone	E-mail
Director of Corporate Governance	Deborah Lawrenson	50803	<a href="mailto:deborah.lawrenson@schs.nhs.uk">deborah.lawrenson@schs.nhs.uk</a>
Claims Manager (Capsticks)	David Birkett	T: 020 8780 4879   M: 07702960649	<a href="mailto:david.birkett@capsticks.com">david.birkett@capsticks.com</a>

## 14. References

NHS Resolution Framework Document. Available from [www.resolution.nhs.uk](http://www.resolution.nhs.uk)

NHS Resolution Clinical Negligence Rules and Reporting Guidelines Fourth Edition – January 2007.  
Available from [www.resolution.nhs.uk](http://www.resolution.nhs.uk)

NHS Resolution Risk Pooling Scheme for Trusts Rules and Reporting Guidelines.  
Available from [www.resolution.nhs.uk](http://www.resolution.nhs.uk)

NHS Resolution LTPS and PES Rules. Available from  
Available from [www.resolution.nhs.uk](http://www.resolution.nhs.uk)

NHS Resolution Disclosure List. Available from [www.resolution.nhs.uk](http://www.resolution.nhs.uk)

Risk Management Standards for Mental Health and Learning Disability Trusts.

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](http://www.dca.gov.uk)

Department for Constitutional Affairs, 1998, *Pre-Action Protocol for Personal Injury Claims* [online]. London: The Stationary Office. Available from [www.dca.gov.uk](http://www.dca.gov.uk)

Association of Litigation and Risk Management (ALARM) [www.alarm.org](http://www.alarm.org)

# Appendix A – 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 can be found at <http://www.shsc.nhs.uk/about-us/equality--human-rights>

	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	N/A	N/A
DISABILITY	No	N/A	N/A
GENDER REASSIGNMENT	No	N/A	N/A
PREGNANCY AND MATERNITY	No	N/A	N/A
RACE	No	N/A	N/A
RELIGION OR BELIEF	No	N/A	N/A
SEX	No	N/A	N/A
SEXUAL ORIENTATION	No	N/A	N/A

**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: Policy Amended / Action Identified / no changes made.

Impact Assessment Completed by (insert name and date)

Deborah Lawrenson, May 2022

## Appendix B – Development, Consultation and Verification

As this policy is a statutory requirement which must comply with NHS R guidance there was no consultation process.

The policy has been revised in line with the Risk Management Standards for Trusts, latest guidance from the NHS Resolution and in line with the Trust's revised Policy on Policies.

## Appendix C – Risk grading

Extracted from: NHS Resolution Claims Procedure Manual

Data factor	Definition
<b>Probability</b>	<p><b><i>The probability of the claim succeeding</i></b> to be held with reference to the following criteria:</p> <p>Certain (94% chance) – <i>damages agreed (with or without agreement on the claimant's costs) or claim has discontinued and defence costs will be paid</i></p> <p>High (75% chance) – <i>where liability has been admitted or the evidence is such that it is clear that a damages payment will be required</i></p> <p>Medium (50% chance) – <i>where breach and/or causation is in dispute or there is insufficient information to form a view</i></p> <p>Low (25% chance) – <i>where there is clear and unchallenged evidence that the case is defensible</i></p> <p>Minimum (10% chance) – <i>for unchallenged repudiations</i></p>

