



Business Services  
Organisation

## Directorate of Legal Services

— PRACTITIONERS IN LAW TO THE  
HEALTH & SOCIAL CARE SECTOR —

2 Franklin Street, Belfast, BT2 8DQ  
DX 2842 NR Belfast 3



Your Ref:  
BMcL-0053-13

Our Ref:  
HYP W50/02

Date:  
25<sup>th</sup> April 2013

Mr B McLoughlin  
Assistant Solicitor to the Inquiry  
Arthur House  
41 Arthur Street  
Belfast  
BT1 4GB

Dear Mr McLoughlin

**RE: INQUIRY INTO HYPONATRAEMIA RELATED DEATHS -  
RAYCHEL FERGUSON PRELIMINARY**

I refer to the above matter and your letter dated 30<sup>th</sup> January 2013. I am instructed to reply as follows: -

- 1. All policies and guidance from 2000 (confirmed in an email from Ms Conlon on 8<sup>th</sup> April 2013 that the period is from 2000 to 2002) in relation to:**

**1a. medical risk management**

The Trust has made enquiries and carried out searches including searches of the Sperrin Lakeland Trust legacy intranet and cannot locate any policies/guidance from 2000 to 2002 in relation to Medical Risk Management. It is believed any policies or guidance would have been within the remit of Bridget O'Rawe, Director of Corporate Affairs.

**1b. claims management**

The Trust has made enquiries and carried out searches of the Sperrin Lakeland Trust legacy intranet and cannot locate policies or guidance from 2000 to 2002 in relation to Claims Management. Mr Kevin Doherty, Litigation Manager, has provided an incomplete document from his own files entitled "Claims Management Policy September 2003 Version 3". Mr Doherty does not have copies of the two earlier versions.

*Providing Support to Health and Social Care*



INVESTOR IN PEOPLE

### **1c. whistle blowing**

Please find enclosed the following for your attention: -

- 1) Chart entitled "Incident Investigation Procedure for Acute Hospital Services Directorate". Our client understands this procedure was likely to have been in place in 2000. Please note this document was forwarded under cover of our letter dated 25<sup>th</sup> February (BMcL-0033-12) and 29 March (AD-0528-13).
- 2) Sperrin Lakeland Trust Policy "Policy and Procedure for Raising Concerns" dated 2006. From page 3 of this document it is apparent this is an updated version of a March 2000 document and a July 1996 document however our client has been unable to locate these versions.
- 3) Departmental circular "Directions to NHS Trusts, Health Authorities and Special Health Authorities for Special Hospitals on Hospital Complaint Procedures" dated 28 July 1998.

### **1d. medical/clinical audit**

The Trust has made enquiries and carried out searches including searches of the Sperrin Lakeland Trust legacy intranet and cannot locate policies and guidance from 2000 to 2002 in relation to Medical/Clinical audit.

The Trust can however confirm as follows:

- (i) There were yearly Trust Audit Days within the Trust which started in 1998.
- (ii) There were annual audit reports and quarterly audit update reports but following extensive searches the Trust is unable to locate these reports.
- (iii) There were junior doctor Audit Days which involved a presentation for the best audit.

### **1e. morbidity/mortality meetings/reviews**

The Trust is not aware of any policies or guidance from 2000 to 2002 in relation to morbidity/mortality meetings/reviews.

### **1f. communications with parents**

The Trust has made enquiries and carried out searches including searches of the Sperrin Lakeland Trust legacy intranet and cannot locate policies or guidance from 2000 to 2002 in relation to communications with parents.

## **2. All files of the Trust, Westcare, and the Trust's solicitors in relation to the Clinical Negligence case brought in relation to Lucy Crawford's death**

A separate response to this request will follow.

**3. All files of the Trust, Westcare and the Trust's solicitors in relation to the Inquest into Lucy Crawford.**

A separate response to this request will follow.

**4. Mr Kevin Doherty's job description for the period of 2000-2002**

Please find attached a copy of Mr Doherty's job description.

Yours faithfully



John Johnston  
Solicitor

## 6.0 CLAIMS MANAGEMENT

- 6.1 Claims management is an integral element of the Trust's Risk Management Strategy. It is a risk function which is part of a group of functions that are interdependent and complementary.

These include:-

- Analysis of all adverse events/incidents and near misses.
- Management, investigation and, if required, root cause analysis of potentially serious adverse events.
- Continuous self-assessment of organisational controls assurance standards.
- ~~Continuous self-assessment of clinical and social care standards.~~
- Maintenance of an open, communicative and learning culture.

## 7.0 APOLOGIES AND EXPLANATIONS

- 7.1 The Trust encourages staff to offer apologies and/or explanations as soon as an adverse outcome is discovered.
- 7.2 Apologies – staff should express sympathy with the patient/client their relatives or representatives and express sorrow or regret at the adverse outcome. Such expressions of regret would not normally constitute an admission of liability, either in part or full. If appropriate, an offer of early corrective treatment or intervention should be made. Advice on accessing the Trust's Complaints system should also be offered.
- 7.3 Explanations – the Trust recognises that patients/clients and their relatives increasingly ask for detailed explanations of what led to adverse outcomes and believe some consolation is gained by them if they can see lessons have been learned for the future.
- 7.3.1 The Trust considers an explanation offered in good faith constitutes good professional practice, and provided that facts as opposed to opinions form the basis of the explanation, nothing is likely to be revealed which would not subsequently be disclosable in the event of litigation.
- 7.4 The Trust wishes to make clear that the above guidance on apologies and explanations applies to the provision of HPSS Indemnity to HPSS bodies and employers. Should any individual clinician/professional wish to adopt a particular policy vis-a-vis apologies and explanations in a matter which might expose them to an action brought against them as individuals, they should seek the advice of their medical defence organisation and/or professional body.

Claims Management Policy

12.5 Where legal advice allows, the Trust will endeavour to meet the following timetable.

- Medical records should be provided within 40 days of the request for them with any delay beyond this having to be explained to the claimant's solicitor.
- Acknowledge all letters of claim within 14 days of receipt.
- Provide a reasoned answer within 3 months of the letter of claim.

The Trust management of adverse events/incident policy details the policy on investigation.

12.6 Engagement of Expert Advice – The Litigation Officer in conjunction with the Legal Advisors and Director/Senior Manager/Professional Head responsible for the case will decide on the engagement of expert witnesses, insurance investigators, junior and senior counsel. The Litigation Officer will provide regular reports of costs incurred in the engagement of expert witnesses, investigators and junior and senior counsel to the Chief Executive and Director of Business Services.

12.7 Nuisance Claims - It is the policy of the Trust to provide a robust defence in relation to cases of doubtful merit, however small, purely on a 'nuisance value' basis.

12.8 Novel, Contentious or repercussive payments – It is the policy of the Trust to refer for approval to the DHSSPS all novel contentious or repercussive expenditure that have potential to set precedent in the HPSS or, appear to be test cases for class action, in accordance with Circular HSS (F) 20/98.

### 13 CLAIMS REVIEW

13.1 The Trust will establish a Claims Scrutiny Committee to progress all the necessary tasks required to successfully defend and settle claims with an estimated value in excess of £25,000 or graded priority one (See Appendix A).

The composition of the Scrutiny Committee is:-

- Chief Executive
- Medical Director
- Director of Business Services
- Director of Personnel
- Director of Finance
- Legal Representative
- Litigation Officer

The committee will meet, as appropriate, to ensure

- Reports are obtained from witnesses to the event
- Reports are obtained from independent professional staff as required
- Reports are obtained from expert professional staff
- Robust investigation in relation to issues surrounding the cases
- Agreement on course of action to be followed
- Lessons are learnt, action taken and information disseminated to relevant parts of the organisation.

13.2 Formal Case Review – The Director of Business Services, Medical Director, Litigation Officer and legal representative will formally review claims files every six months.

13.3 Clinical Negligence – Chief Executive's Confirmation Statement. The Director of Business Services will present a Clinical Negligence position paper by the end of May each year to facilitate completion of the "Chief Executive Sign-off Statement" detailed at Appendix B.

#### 14.0 ADMINISTRATION OF FINANCIAL ARRANGEMENTS

14.1 Financial Records – Details of total claims cost including settlements, claimants' costs, counsel, expert witnesses, compensation recovery unit etc will be held for each individual claim on the Datix System.

14.2 Payment of Accounts – The Trust's legal advisors will check account(s) from a claimant's solicitor and will forward request for payment to the litigation office. The Litigation Officer will authorise and forward to finance for payment within three weeks of the date of settlement as required by law.

The legal advisors will issue the cheque to the payee in settlement of account.

14.3 Submission of returns

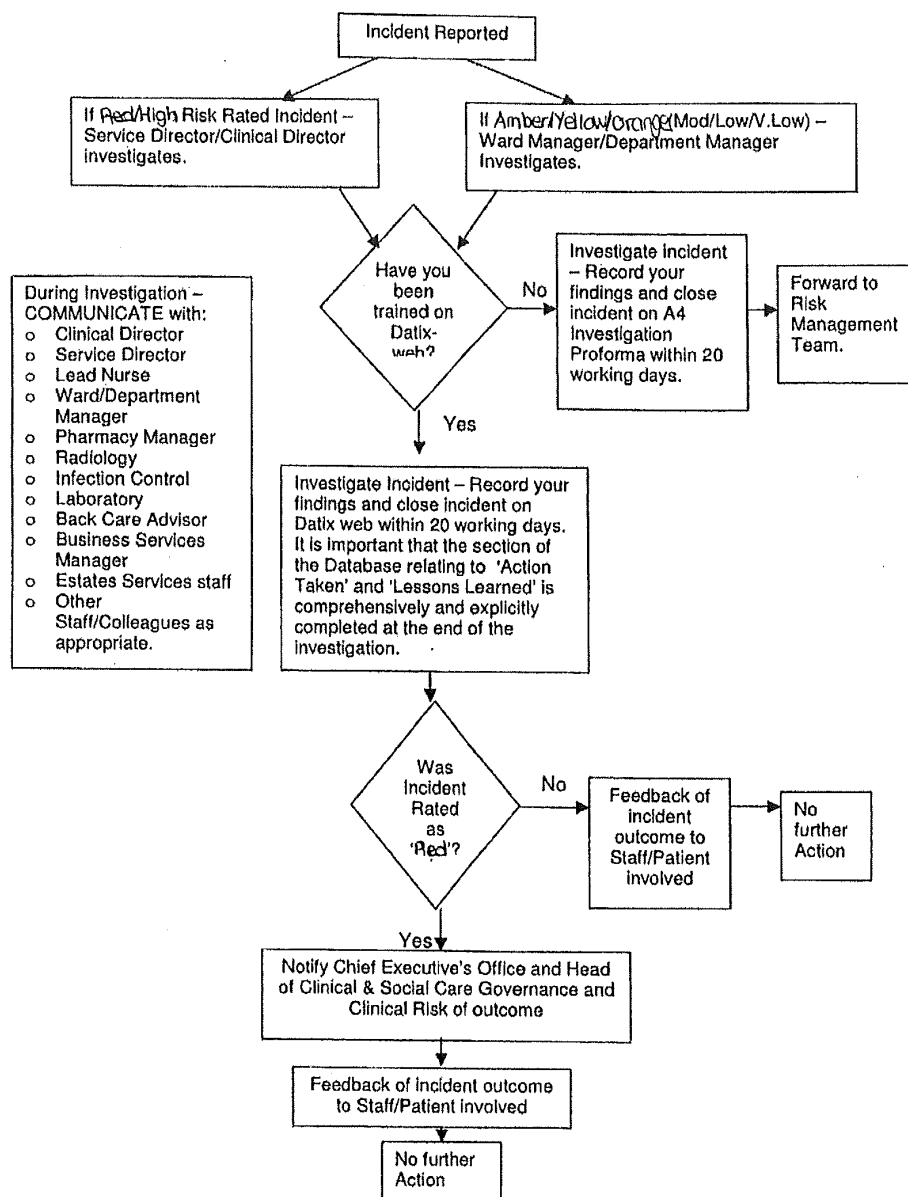
The Litigation Officer by 30<sup>th</sup> June each year will provide details of all potential settlements in the current financial year to the Central Services Agency and Finance Policy and Accountability unit at the Department (Appendix C, Annex 1). A copy will be sent to the Trust's Director of Finance.

14.4 Reimbursement of expenditure – Clinical Negligence

At the end of each month the Financial Accountant will submit a claim (Appendix C, Annex 2) with associated invoices through the Litigation Officer to the Clinical Negligence Central Fund for reimbursement. The costs to be recovered include:

SLT

# INCIDENT INVESTIGATION PROCEDURE FOR ACUTE HOSPITAL SERVICES DIRECTORATE





Whistle  
Blowing.  
M20053-13  
Q1c.

## SPERRIN LAKE LAND HEALTH AND SOCIAL CARE TRUST

### Policy and Procedure for Raising Concerns

1. This policy and procedure should be read in the context of Circular HSS (GEN 1) 1/96 "Guidance for Staff on Relations with the Public and the Media", and Circular HSS (GEN 1) 1/2000, "The Public Interest Disclosure (Northern Ireland) Order 1998 - Whistleblowing in the HPSS". It is intended to encourage a culture of openness and integrity in the way we manage and deliver Health and Social Care to our community. In addition, it acknowledges the legal responsibilities of the Trust as an employer, under the 1998 Order, to enable staff to express concerns without fear of recrimination or victimisation where concerns are raised in the public interest. This procedure does not preclude staff from raising issues directly with the relevant regulatory bodies where there are reasonable grounds for doing so.
2. **Key Principles:** The basic founding principles of this procedure are:
  - Individual members of staff have a right and a duty to raise with the Trust, as their employer, any matters of concern they may have in relation to the delivery of care or service to a patient/client.
  - The Trust and its Managers have a duty to ensure that staff are able to express concerns, and that the concerns are dealt with thoroughly and fairly.
  - Individual members of staff have an obligation to safeguard all confidential information to which they have access. Information relating to individual patients/clients must be treated as strictly confidential, except where public interests outweigh confidentiality.
  - Any breach, except where justifiable in the public interest, of this fundamental right of confidentiality in respect of an individual patient/client will be regarded as most serious and will result in disciplinary action.
  - Staff who raise concerns in a reasonable and responsible manner will be protected against potential victimisation.



### 3. Issues/Concerns Covered:

The following list of examples is not exhaustive. When in doubt, staff may wish to consult the Head of Clinical & Social Care Governance and Clinical Risk:

- ☐ Clinical Negligence/Clinical Competence
- ☐ Breach of Contract
- ☐ Breach of Administrative Law
- ☐ Fraud
- ☐ Crime including theft, abuse
- ☐ Danger to health and safety
- ☐ Miscarriage of justice
- ☐ Breach of legal obligation
- ☐ Conflict of Interests

### 4. Individuals Covered

This procedure applies to all staff including:

- ☐ Permanent post holders
- ☐ Temporary staff
- ☐ Agency staff
- ☐ Trainees on placement
- ☐ Locum and bank staff
- ☐ Volunteers

### 5. Informal Procedure

- The aim should always be for staff concerns to be resolved informally with the relevant Line Manager or Professional Supervisor.
- Where the concern can be acted upon, action should be taken promptly and the member of staff advised of the action taken.
- Where action is not possible locally, the reasons should be explained and the member of staff advised of their recourse to the formal procedure.
- Action and/or responses should be completed within 20 working days of the issue being raised.

## 6. Formal Procedure

- Where an informal approach proves ineffective, a member of staff may raise concerns with the Head of Clinical & Social Care Governance and Clinical Risk who is the Trust's officer for formal complaints/or alternatively the proposed lead professional for clinical and social care governance.
- Staff will be required to exhaust the informal process before referring a matter to the formal procedure.
- The Head of Clinical & Social Care Governance and Clinical Risk will have access to the Chief Executive, Chairman of the Trust's Audit Committee, the Clinical and Social Care Governance Committee and Ethical Committee and all Programme Directors, in order to engage the appropriate level of authority to enable the concerns raised to be addressed.
- The member of staff will be advised of any action taken.
- The Trust should seek to complete the formal procedure and provide a response to the individual raising the concern within 30 days of receipt of the formal approach - this may involve advising of plans for further enquiry/action.
- In exceptional cases where a matter remains unresolved, a panel involving the Trust's Chairman will be set up to consider the issues raised. The member of staff will be required to be present and may be accompanied by a staff organisation representative.

The primary purpose of this procedure is to ensure staff have a channel through which to voice concerns and to enable the Trust to initiate corrective action where deemed necessary and appropriate.

The Trust firmly believes that matters resolved internally in this way will be in the best interests of our staff, patients and clients, and in sustaining public confidence in our services.

*Head of Clinical & Social Care Governance and Clinical Risk*  
Trust Headquarters, Tyrone & Fermanagh Hospital, Omagh, Co Tyrone, BT79 0NS  
Tel: [REDACTED] Fax [REDACTED] or email [REDACTED]

Original July 1996  
Updated and adopted by Trust Board - March 2000  
Updated October 2006

uned/2975

October 2006

*Policy and Procedures for Raising Concerns*

3

ld.

To: Chief Executive - Health Authorities  
Chief Executive - NHS Trusts  
Chief Executive - Special Health Authorities  
Regional Office - Primary Care Leads  
Regional Office - Complaints Leads

28 July 1998

Dear Colleague

**DIRECTIONS TO NHS TRUSTS, HEALTH AUTHORITIES AND SPECIAL  
HEALTH AUTHORITIES FOR SPECIAL HOSPITALS ON HOSPITAL  
COMPLAINTS PROCEDURES**

Enclosed is an amendment to the Directions to NHS Trusts, Health Authorities and Special Health Authorities for Special Hospitals on Hospital Complaints Procedures issued in March 1996.

The amendment limits the investigation of complaints under the Hospital Complaints Procedures to matters other than those connected with personal medical services. Complaints about matters connected with personal medical services should be handled through Health Authority complaints procedures.

Any enquires about the Directions should be addressed in the first instance to Regional Complaints Leads.

Yours sincerely

Jenny Smith  
General Medical Services Branch

“complainant” means a person who makes a complaint about any matter connected with the provision of services at a hospital other than personal medical services<sup>b</sup> provided by an NHS Trust and, except in Part V of these Directions, “complaint” shall be construed accordingly;”.

Signed by authority of the  
Secretary of State for Health

29 June 1998

A member of the Senior Civil Service

---

<sup>a</sup> 1997 c 46  
<sup>b</sup> “Personal medical services” are defined in section 1 (8) of the National Health Service (Primary Care) Act 1977 (c.46)

# WESTCARE BUSINESS SERVICES

## JOB DESCRIPTION

**TITLE:** Head of Litigation Services

**REPORTS TO:** Westcare General Manager

**ACCOUNTABLE TO:** Westcare General Manager

**BASE:** Westcare Business Services, 12c Gransha Park, Londonderry

**GRADE:** Grade 6

## BACKGROUND

Westcare Business Services provides a range of support services to the Western Board and the three HSS Trusts within the Western Board area; Altnagelvin Hospitals HSS Trust, Foyle HSS Trust and Sperrin Lakeland HSS Trust.

The Litigation Service is an important component of Westcare providing specialist legal services to the Trusts, the Board and Westcare Business Services. Westcare is owned by a consortium of the Trusts and the Board and is accountable to them.

Westcare Litigation Services is located in Lime Villa, Gransha.

## JOB PURPOSE

The Head of Litigation Services will be accountable to the General Manager for the provision of quality services to the Trusts and the Board in accordance with the "Legal Services" Service Level Agreements.

As a member of the Westcare Departmental Managers Team the postholder will contribute to the corporate management and development of the organisation.

On an annual basis, through the Individual Performance Review Process, the Head of Litigation Services will agree key objectives with the General Manager. The following are the key areas of responsibility within which these objectives will be set:

## **PRIMARY FUNCTION**

The postholder will be responsible for the development and management of the required procedures and processes necessary to deal with all of the issues arising out of claims of medical negligence.

## **MAIN RESPONSIBILITIES**

### **1. Professional Negligence/Claims Management**

- i. Responsible for the development, implementation and maintenance of effective information systems to support the proper management of all claims lodged (including secure filing systems and costs records).
- ii. Instigating initial investigations into the circumstances of each claim, including the procurement of the necessary hospital notes and reports from the relevant professional personnel.
- iii. Responsibility for working with the CSA and other contracted solicitors in respect of the management of all outstanding claims and identification of Witnesses.
- iv. Responsible for providing the necessary information, support and advice to the WHSSB Director of Public Health and the Trusts Medical Directors to enable them to decide upon the appropriate action to be taken in respect of each claim.
- v. Responsible for the collection, collation and provision of all necessary information required to inform the Board's/Trust's Advisory Committee and Cases Committee on Medical Negligence.
- vi. Responsible for locating witnesses and advising them of the need to attend consultations and hearings.

### **2. Risk Management**

- i. Responsible for ensuring that those areas of practice which have been identified as liable to expose the Board/Trust to risk in respect of negligence claims are brought to the attention of the appropriate levels of management and medical practitioners.
- ii. Providing input to the training of Junior Medical Staff and Nursing Staff in respect of professional negligence issues.

### **3. Public and Employers Liability (other than Medical Negligence)**

- i. Responsible for the development and management of the required procedures and processes necessary to deal with Public and Employers Liability Claims in relation to WHSSB staff and Westcare staff and premises etc.

- ii. Responsible for the development, implementation and maintenance of effective information systems to support the proper management of all claims lodged.
- iii. Responsible for the maintenance of secure filing systems and other records as are necessary, including information in respect of all associated costs.
- iv. Instigating an initial investigation into the circumstances of each claim in consultation with the relevant Head of Department and relevant contracted solicitor.
- v. Responsible for the collection, collation and provision of all necessary information required to inform the Board's/Westcare's General Manager in the management of each claim.
- vi. Responsible for the implementation of the decision of the Board's/Westcare's General Manager in respect of the management of each claim.

#### 4. Administration of Justice Orders

- i. Responsible for identifying the relevant records which should be provided in compliance with Administration of Justice orders.
- ii. Responsible for the production of the list of records to be provided in compliance with Administration of Justice Orders.
- iii. Responsible for ensuring that all monies due in respect of the provision of records is received and distributed to the appropriate Trusts.

#### 5. General

- i. Responsible for the validation and approval of all accounts submitted by the CSA and other solicitors and barristers, reconciliation of expenditure records and projections of future costs.
- ii. Responsible for advising Trust Records Officers and Medical Staff in connection with the disclosure of notes and information to solicitors in Third Party cases.
- ii. Providing advice to Complaints Officers in respect of complaints which have the potential to become negligence claims.

#### 6. General Management Responsibilities

The Head of Litigation has line management responsibility for all staff in the department. This includes the requirement to:

- i. Review individually, at least annually, the performance of departmental staff, provide guidance on personal development requirements and advise and initiate, where appropriate, further training.

- ii. Maintain staff relationships and morale among departmental staff.
  - iii. Review the Service Level Agreements, organisation plan and establishment level for the department and recommend change where appropriate.
  - iv. Delegate appropriate responsibility and authority to staff.
  - v. Participate, as required, in the selection and appointment of staff in accordance with procedures.
  - vi. Take such action as may be necessary in disciplinary matters in accordance with procedures.
7. Other
- i. As a consequence of service changes and development, the duties and responsibilities as outlined in this job description may be reviewed and amended. The post holder will be expected to contribute to such a review.



#### GENERAL INFORMATION

Annual Leave - 25 days  
30 days

The successful applicant will be required to undergo medical examination by the Occupational Health Consultant.

The appointment is superannuable unless you opt out of the scheme or are ineligible to join.

The appointment will be subject to confirmation after a probationary period of not less than 6 months.

The precise provisions of the job description are almost certain to change and the requirements of the post will be constantly changing throughout the coming years as Westcare establishes itself and as Trusts develop. The Head of Litigation Services will be expected to respond to these changes in a positive manner. The Job Description, therefore, is not intended to be rigid or inflexible but should be regarded as providing guidelines within which the individuals works.

#### **WESTCARE BUSINESS SERVICES OPERATIONS POLICIES ON SMOKING, ALCOHOL AND HEALTH.**

OCTOBER 1996