

## **1. Introduction**

- 1.1 This policy sets out the Trust's procedures for handling clinical / social care practice negligence (i.e. professional negligence), employers liability, public/occupiers liability and employment law claims.
- 1.2 The policy gives a broad overview of the Trust's corporate Risk Management philosophy and methodology placing the management of claims in a wider risk and organisational context.
- 1.3 The policy details the various roles and responsibilities of key officers of the Trust who contribute to and manage the claims management process.
- 1.4 The policy reflects Departmental guidance as issued in a range of circulars and also embraces the principles of the Pre-Action Protocol for resolution of Clinical disputes. Some circulars and guidance include:
  - HSS (F) 20/1998 Clinical Negligence Claims Handling – Pre-Action Protocol for the Resolution of Clinical Disputes
  - HSS (F) 21/1998 Clinical Negligence Claims – Structured Settlements
  - HSS (F) 28/1999 Clinical Negligence Claims – Procedure for Submission of Settlements over £250,000 for Approval
  - HSS (F) 19/2000 Clinical Negligence Central Fund: Accounting Arrangements
  - HSS (F) 20/2002 Clinical Negligence Cases – Prevention of Claims And Claims Handling
  - HSS (F) 60/2007 Payments in respect of legal services Provision
- 1.5 This policy has been developed within the context of Equality and Human Rights statutory obligations and requirements.

Note: Pages Missing

## **2. Policy Context**

2.1 Claims management is an integral element of the Trust's Risk Management ethos.

2.2 Effective claims management is afforded a high priority within the Trust, which is underscored by a process committed to the systematic identification, analysis and control of risk.

2.3 The Trust will continue to raise awareness of risks in general and it is committed to the establishment of a supportive, open and learning culture that encourages staff to report mistakes, adverse events/incidents and near misses through established channels of reporting.

2.4 The Trust will continue to apply an approach, which will ensure that all claims are dealt with promptly, efficiently and comprehensively in an environment of openness that encourages parties to resolve disputes, reduce delays and costs and ultimately reduce the requirement for litigation.

2.5 The Trust will ensure that all claims are thoroughly investigated, lessons learnt and risk treatment plans implemented to reduce the likelihood of further similar adverse events occurring.

2.6 The Trust is clear that there is no merit in either defending the indefensible or delaying settlement without good reason.

## **3. Definition of Terms**

3.1 Clinical/Social Care (Professional) negligence claim – where a patient/client or their representative alleges a breach of duty of care by members of the Health and Social care professions employed by the Trust or by others consequent on decisions or judgements made by members of those professions acting in their professional capacity in the course of their employment, and which are admitted as negligent by the employer or determined as such through the legal process.

3.2 Employers Liability Claim – where a member of Trust staff alleges a breach in the duty of care that resulted in injury, damage or loss.

3.3 Public / Occupiers Claim – where a patient, client, relative, visitor or member of the public alleges that they have suffered injury, damage or loss due to the negligence of the Trust as a Landlord/occupier.

3.4 Employment Law Claims – where a job applicant or member of Trust staff alleges discrimination on the grounds of race, disability, sex and /or marital status, religious belief and /or political opinion.

3.5 Claimant – any patient, client or their representative, member of the public or employee who instructs solicitors to act on their behalf to pursue a claim against the

Trust, or who enters legal proceedings against the Trust or who pursues compensation.

3.6 Claim – where the context allows, any action against the Trust initiated by a claimant in pursuit of compensation.

#### **4. Confidentiality**

4.1 Confidentiality is of paramount importance both in relation to the personal information that may accrue and in relation to the Trust's claims management process and strategy in dealing with individual claims.

4.2 All staff involved in the claims management process for individual claims against the Trust will be required to ensure that there is no discussion about the matter except with those persons engaged by the Trust to manage the claim.

4.3 All claims information held by the relevant claims management office will be maintained in a strictly confidential manner and will be tightly controlled with access only authorised to those persons directly involved in the management of the claims.

#### **5. Staff Support**

5.1 The Trust recognises that there are occasions when staff may feel under particular pressures when claims are made against the treatment, care, services or management they have provided in good faith.

5.2 The Trust therefore believes that it is essential that staff are provided with adequate support in this process both in terms of their own well being, as well as in terms of explanation of and preparation for the legal process.

5.3 The Trust will encourage staff to utilise a number of support mechanisms as follows:

- Claims Manager Support
- Line Management Support
- Occupational Health Service
- Staff Care Services
- Staff representatives

5.4 The Trust requires all staff to co-operate fully during the investigation and management of claims including the release of all relevant information and documentation they hold in respect of any individual claim or investigation.

#### **6 Apologies and Explanations**

6.1 The Trust encourages staff to offer apologies and/or explanations as soon as an adverse outcome is discovered.

6.2 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.

6.3 The Trust wishes to make clear that the above guidance on apologies and examination 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.

## **7 Alternative Dispute Resolution**

7.1 Where the Trust believes that a claim is unlikely to be resolved satisfactorily alternative means of dispute resolution will be examined.

These include:

- Arbitration
- Mediation and determination by a recognised expert.

## **8. Roles and Responsibilities**

8.1 The Chief Executive as Accountable officer is responsible to the Trust Board for the management of all litigation cases.

8.2 The Medical Director is the Trust Director with delegated responsibility for the management of all litigation matters (other than employment law cases), and will provide periodic reports to the Board and/or its delegated committees.

8.3 The Director of Finance has the responsibility of overseeing the financial management of claims and also provides the authority for the Finance Department to issue funds when claims are settled.

8.4 The Head of Quality & Safety is the Trust's Responsible officer for Professional Negligence and Employers/Occupier's Liability Claims.

8.5 The Claims Manager will have responsibility for the management and administration of claims, and in that role, is the link person with the Trusts legal advisors.

8.6 The Director of Personnel will take the lead role on behalf of the Trust in respect of all employment law cases. Proposals concerning settlements will be fully discussed between the Chief Executive as Accountable Officer and the Director of Personnel.

11.5 *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.

11.6 *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 action, in accordance with Circular HSS (F) 20/98.

## **12. Management Reports**

12.1 The Trust Board and /or its delegated committee/s will receive periodic reports detailing:

- The number and aggregate value of all claims and details of any major individual claims.
- Progress and likely outcome of these claims.
- Final outcomes of all claims
- Remedial Action Taken

These reports will be in sufficient detail to enable the Board to form a view of the Trust’s liabilities and/ or contentious issues arising.

12.2 Further reports on relevant claims will be submitted to Directors/Senior Manager/Professional Leads and other Risk related Committees for the purposes of, but not limited to:

- Identifying risks poor practises and trends.
- Improving Health and Social Care provision
- Minimising risk of reoccurrence.

## **13 Claims Management Review**

13.1 In order to facilitate the principle of learning when things go wrong the Trust’s Legal Advisors will be requested to provide information on case settlement, for example-

- Strengths and weaknesses of defence case.
- Details of the full extent of the loss. Finance time and reputation.
- Proposed controls to prevent future loss
- What positives can we take from this case?
- Could we have dealt with this dispute in a different way?

13.2 The Claims Manager will ensure that relevant details at are shared across the Trust to achieve optimum learning.

13.3 Clinical Negligence – The Claims Manager will present a Clinical Negligence position paper by the end of May each year to facilitate completion of the ‘Chief Executive Sign-off Statement’.