



NHS Cambridgeshire (Cambridgeshire Primary Care Trust)

Claims Handling Policy and Procedure

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

Access to Legal Services

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1 INTRODUCTION

- 1.1 The Trust Board is committed to ensuring:
- the timely and effective management of claims and other legal actions against the Trust,
 - that the Trust learns from claims to prevent reoccurrence and monitors the effectiveness of the relevant procedures,
 - that Trust staff are supported during the investigation of a claim or other legal proceedings.
- 1.2 This document describes the claims management policy and procedures followed by the Trust and gives guidance on associated matters. The policy and procedures comply with the requirements of the National Health Service Litigation Authority (NHSLA) for the management of claims, and are based on current guidance issued by the NHSLA. Any future changes in guidance will be followed, and may supersede the procedures laid down in this document.

2 PURPOSE

- 2.1 This document was developed in order to:
- fulfil the Board's commitments as described in section 1.1 above,
 - ensure compliance with the requirements for membership of the National Health Services Litigation Authority's (NHSLA) Schemes.
 - support the Trust in its compliance with the NHSLA Risk Management Standards [2011/12]
- 2.2 This document describes the policy and procedures which apply to the management of the following types of claim:
- Clinical Negligence
 - Employer's Liability
 - Public Liability
 - Claims in respect of loss or damage to Trust property
- 2.3 Access to legal advice:
- This document also provides guidance/direction for seeking advice with respect to:
- Legal actions not covered by the NHSLA's schemes, for example claims for Judicial Review, general medico-legal queries, Inquests etc – see Appendix 9.
- 2.4 The policy and procedures are relevant to all Trust staff and ASP Risk Services staff.
- 2.5 The objectives of the procedures described are to:
- ensure the timely and effective management of claims and other legal actions against the Trust
 - ensure that the Trust learns from claims to prevent reoccurrence
 - ensure that Trust staff are supported during the investigation of a claim
 - ensure accountability and responsibilities for the management of all claims against the Trust are clearly defined

- ensure that the relationship between the Trust and ASP is clearly documented and agreed
- ensure that the Trust complies with the requirements for membership of the NHSLA 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, so avoiding the cost penalties associated with non-compliance.
- provide guidance on claims investigation
- provide direction for Trust staff seeking advice and support on miscellaneous matters related to legal claims not covered by the NHSLA's Schemes, and other matters where legal advice may be necessary
- recommend when external agencies should be involved in the investigation of a claim or legal matter
- describe procedures for monitoring the effectiveness of the policy and procedure.

3 GENERAL ISSUES SURROUNDING CLAIMS HANDLING

3.1 Definition of a claim and the NHSLA Schemes relevant to the organisation

3.1.1 The word "claim" refers to any approach to the Trust to request payment or action as compensation for an alleged wrong committed by the Trust or its staff, or any claim lodged by the Trust under the terms of the Property Expenses Scheme.

3.1.2 NHS Litigation Authority (NHSLA): the NHSLA is a Special Health Authority and thus part of the NHS. The principal task of the NHSLA is to administer 'schemes' to help NHS bodies pool the costs of any loss of or damage to property and liabilities to third parties for loss, damage or injury arising out of the carrying out of their functions. There are currently five schemes:

- The Clinical Negligence Scheme for Trusts (CNST) is a voluntary risk-pooling scheme for clinical negligence¹ claims arising out of incidents occurring after 1 April 1995, funded out of members' contributions.
- The Existing Liabilities Scheme (ELS) covers clinical negligence claims arising out of incidents which occurred before April 1995. It is not a contributory scheme: the costs of funding settlements made under ELS are covered centrally by the Department of Health
- The Ex-RHAs Scheme covers any clinical liabilities incurred by the Regional Health Authorities before their abolition in April 1996 with the NHSLA itself acting as defendant.

¹ A clinical negligence liability is defined for the purpose of this document as "any liability in tort owed to a third party in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of a duty of care owed by that body to any person in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act on the part of a person employed or engaged by [an NHS Trust] in connection with any relevant function of that [body]" See regulation (4) of the NHS (Clinical Negligence Scheme) Regulations 1996. SI. 1996/251

- The Liabilities to Third Parties Scheme (LTPS) covers non-clinical “third party” liabilities such as employers' liability claims (from straightforward slips and trips in the workplace to serious manual handling, bullying and stress claims); public and products liability claims (from personal injury sustained by visitors to NHS premises to claims arising from breaches of the *Human Rights Act*, the *Data Protection Act* and the *Defective Premises Act*); and there is also cover for defamation, professional negligence by employees and liabilities of directors. Like CNST, it is a voluntary scheme funded through members' contributions.
- The Property Expenses Scheme covers “first-party” losses by NHS bodies such as theft or damage to property. Again it is a voluntary scheme, funded through members' contributions

3.1.3 Main types of claim:

- Clinical negligence claims – injury to a patient as a result of treatment
- Employer's liability claims – injury to a member of staff at work
- Public liability claims – injury to a member of the public, otherwise than as a result of treatment
- Directors' and Officers' liability claims – protection for officers against whom action is taken personally
- Professional indemnity claims – insurance for the Trust against claims resulting from breaches of professional duty, slander etc
- Personal accident claims – for injury to staff caused by assault or to a member of an emergency call out team.
- Damage to or theft of Trust property, damage to or theft of patients' personal effects
- Claims not covered by the NHS's Schemes – see Appendix 9

3.2 Who may make a claim?

Any patient 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.

3.3 Triggers for invoking the claims procedure

The following events are regarded as identifying a potential claim against the Trust:

3.3.1 Receipt of **legal proceedings**, a **letter of claim** or a **letter indicating a likely claim** from a patient, member of the public or employee or from a solicitor – this should be passed to the ASP Claims Manager immediately.

3.3.2 Receipt of a request for **disclosure of records**:

- made by a solicitor which is not being made for the purpose of a claim against another party (e.g. no reason given or it states that it is being made in furtherance or investigation of a potential claim against the Trust);
- made by a patient/relative who states that they are making a complaint or claim against the Trust; or
- made by a patient/relative who does not give a reason for the request, in which case efforts should be made to discover the reason, either by review of the records or by asking the patient.

Such requests should be forwarded immediately to the ASP Information Governance Manager, who will handle the disclosure request and notify the ASP Claims Manager.

3.3.4 Receipt of a **complaint seeking compensation** – the Complaints Manager should notify and liaise with the Claims Manager.

3.3.5 A **serious incident** which may generate substantial compensation – the Risk Manager/Service Manager should notify and liaise with the Claims Manager.

All potential claims should be forwarded immediately to the ASP Claims Manager. See Appendix 15: Contacts within ASP

See Appendices 5, 6, 7 and 8 for details of claims handling procedures:

3.4 Delegation limits

3.4.1 Clinical Negligence Claims: All clinical negligence claims made against the Trust fall within CNST. Therefore only the NHSLA has authority to make or authorise the making of admissions or settling of any claim.

3.4.2 Employer's and Public Liability Claims: The Director of Finance has authority to agree settlement of claims below the excess values (total value including claimant and defence costs):

3.4.3 Defence documents connected with claims and other legal actions should be signed by the Chief Executive (or authorised Deputy), except for witness statements which should be signed by the member of staff making the statement.

3.5 Timescales and procedures for the exchange of information with other parties

3.5.1 It is important for all involved that reported claims are resolved as quickly as possible. The claims handling policy reflects the requirements of the justice reforms in the following ways:

- encouraging more pre-action contact with claimants,;
- better and earlier exchange of information;
- improved investigation;
- earlier settlement without the need for expensive litigation; and
- court proceedings to run smoothly where there is a need for litigation.

3.5.2 There are timescales relating to the period within which a claim should be brought – the 'limitation period'. For personal injury and clinical negligence claims the Claimant should issue their Claim Form through the Court within a period of three years of the date of incident which allegedly caused them harm or within three years of their 'date of knowledge' if this can be proven to be later. The two main exceptions to this are: children (their three year period does not commence until they reach the age of 18), or people under a 'disability' ie: 'of unsound mind' who are incapable of managing their own affairs (such people may bring an action at any time whilst the disability exists).

3.5.3 There are a number of timescale targets which apply to the claims management process. ASP, on behalf of the Trust, will normally aim to meet these targets:

Request for disclosure of records indicating potential for claim or Complaint seeking compensation or Serious adverse event		
↓		
Forward to Claims Manager	Staff receiving	Immediately
↓		
Acknowledge	Claims Manager	2 days
↓		
Obtain medical records, mark for retention, sort, copy, collate and disclosure within 40 days	Information Governance Manager with co-operation from relevant staff	40 days
↓		
Contact Complaints Manager and Risk Manager to find out if records already exist Complaints response to be sent if appropriate	Claims Manager Complaints Manager	ASAP 25 days
↓		
Seek statements from staff involved	Claims Manager	ASAP
↓		
CNST - prepare preliminary analysis and report to NHSLA LTPS – Initial Investigation and report to NHSLA is appropriate	Claims Manager	Two months ASAP
↓		
Letter of Claim Received		
↓		
Forward to Claims Manager	Staff receiving	Immediately
↓		
Forward to Litigation Authority	Claims Manager	CNST - within 24 hours LTPS – ASAP (after investigation)
↓		
Formal acknowledgement	Claims Manager	CNST - 14 days LTPS – 21 days
↓		
Response to Letter of Claim	Claims Manager/ NHSLA	3 months
↓		
Legal Proceedings Received (including Part 36 offers)		
↓		
Forward to Claims Manager	Staff receiving	Immediately
↓		
Notify Litigation Authority by telephone and forward documents	Claims Manager	Within 24 hours
↓		
Formal acknowledgement	Claims Manager	14 days
↓		
Service of Defence	NHSLA	28 days

3.6 Confidentiality

3.6.1 ASP Claims Managers and all Trust staff involved in a claim will follow the principles and procedures set out in the ASP Data Protection and Access to Records Policy.

3.7 Support mechanisms for patients/carers and staff

3.7.1 All Trust staff can obtain support and advice initially and throughout any legal process from the ASP Claims Manager, who will arrange for independent legal advice if appropriate. Staff may also consult their manager or Union representative. Please see the leaflet attached to this policy 'Facing Legal Action: An Employee's Guide' for information about support for staff.

3.7.2 All staff have access to a confidential counselling telephone service.

3.7.3 The effectiveness of the support provided for staff will be monitored via the use of the ASP Legal Services Evaluation questionnaire (Appendix 13)

3.7.4 Patients and carers bringing a claim against the Trust are able to access free advice through Citizens Advice Bureaux.

3.8 Clinical Negligence Scheme for Trusts (CNST)

See Appendix 5

3.9 Liabilities to Third Parties Scheme (LTPS)

See Appendix 6

3.10 Property Expenses Scheme (PES)

See Appendix 7

3.11 Existing Liabilities Scheme

See Appendix 8

4. DUTIES WITHIN THE ORGANISATION

4.1 Trust Board

The Trust Board has responsibility to ensure that systems are in place to manage claims in accordance with current legislation. The Trust Board will be informed about all claims so it can be assured that the claims management system within the organisation is working effectively.

4.2 Committee with overarching responsibility for claims management

The Governance & Compliance Committee has overall responsibility for the management of claims and has responsibility for

- reviewing the Claims policy and processes;

- maintaining an overview of incidents, complaints, claims and Patient Advisory Service information so that trends can be identified, action plans monitored and learning agreed and disseminated to appropriate stakeholders;
- identifying and managing any high or extreme risks identified by claims or other risk information, adding these to the risk register and monitoring the management of these risks;
- auditing the claims process;

4.3 Chief Executive and Director of Finance

4.3.1 The Trust Chief Executive is accountable for the proper and effective handling of claims within the Trust.

4.3.2 The Trust Director of Finance is responsible for managing payment of claims in accordance with Trust's Standing Financial Instruments. See Appendix 12, Financial Management.

4.4 Designated Board Member

4.4.1 The Director of Corporate Development and Performance is responsible for the proper and effective handling of claims within NHS Cambridgeshire.

4.5 Senior management

4.5.1 The Trust retains responsibility for claims made against it, but under the terms of the Service Level Agreement with Anglia Support Partnership (ASP) day to day management of claims and ad-hoc queries will be undertaken by the ASP Claims Manager.

4.5.2 ASP is responsible for ensuring that the appropriate procedures are followed in accordance with Appendices 5, 6, 7 and 8:

- When a formal complaint is pursued under the NHS complaints procedure and where there is a demand for compensation.
- When there is a request for disclosure for records under the relevant Pre-Action Protocol indicating that the claimant is contemplating legal action against the Trust
- When a letter of claim is received
- Where legal proceedings have been entered against the Trust.

And

- When advice, information or support is required with respect to claims/legal proceedings not covered by the NHSLA's Schemes, general medico-legal queries and other matters as described in Appendix 9

4.6 ASP Claims Manager

4.6.1 The ASP Claims Manager's role is to manage the handling of claims, support Trust staff and liaise with the NHSLA, Panel Solicitors, Trust officers, Claimants' Solicitors and others as necessary. The ASP Claims Manager will carry out such preliminary action, investigation and analysis of reportable claims as is required by the NHSLA and will liaise with the NHSLA as necessary over the conduct of such claims. ASP Claims Managers will consult relevant staff within the Trust regarding all significant

developments during the course of managing each claim, and will seek authorisation from the Trust as appropriate.

In summary, the Claims Manager is responsible for:

- receiving, acknowledging and assessing all new claims that may arise against the Trust;
- notifying the Trust (nominated contact) that a claim has been received;
- setting up and maintaining a claim file and recording details on the Datix database;
- notifying and liaising with the NHSLA and/or solicitors nominated by the NHS, as required and in accordance with the NHSLA's reporting requirements, in connection with claims;
- obtaining expert clinical advice (within or outside the organisation as appropriate);
- identifying, obtaining and/or arranging for the preservation of relevant records and other items, such as equipment involved in incidents, and disclosing copy records if required;
- obtaining more information from the patient or their solicitor if necessary and continuing to liaise with the patient/carer/solicitor during the course of the litigation process if appropriate;
- establishing and as necessary maintaining contact with relevant staff, and former staff, and obtaining information;
- establishing an objective account of the original incident, giving appropriate weight to the recollection of the staff originally involved (this may already be available from adverse incident report forms);
- undertaking the initial preliminary analysis of clinical negligence claims on facts, liability, causation and quantum;
- supporting staff involved in the litigation process;
- notifying and liaising with other agencies as appropriate during the course of a claim;
- ensuring that information obtained during claims investigations is shared with staff directly involved in the case and senior managers as appropriate for risk management purposes, and that lessons learned in the process of claims management are used for risk management purposes in the context of future service provision, as well as liaising closely with the staff managing complaints;
- systematically reviewing case files to ensure that claims are progressed and brought to a conclusion as swiftly as possible;
- notifying all relevant staff when the claim is concluded;
- making recommendations to managers on risk management issues, to identify any procedures requiring remedial action, including systematic review of all cases after closure, and inform the Trust Risk Manager and/or service manager who will allocate responsibility for any remedial action required;
- participating in risk management activities by contributing positively to educational programmes for the benefit of "front line" staff;
- ensuring that the Integrated Governance Committee and Board are provided with reports as set out in section 10;

- monitoring the effectiveness of the above.

4.7 Role of clinicians/specialist advisors

- 4.7.1 The ASP Claims Manager will seek clinical advice where appropriate, either independently or in liaison with NHSLA case managers. Clinicians within the Trust may be asked to provide advice within their specialty in connection with a claim, or independent advisers may be appointed where this is not possible/appropriate (eg insufficient expertise, or the need to eliminate bias).
- 4.7.2 The ASP Claims Manager will seek information and advice from other specialists, eg Safety Advisers, when appropriate.

4.8 Role of Trust staff

- 4.8.1 All Trust staff have a responsibility to notify the Claims Manager, in accordance with the attached procedures, of likely or actual claims received and to co-operate fully with the ASP Claims Manager in the investigation of claims and preservation of evidence.
- 4.8.2 The full co-operation of all Trust staff is essential to ensure that the opportunity to defend any claim is maximised (or in the case of property and contents claims, fully documented and substantiated). Witness statements (and where appropriate, opinions) shall be sought and carefully considered. ASP Claims Managers will request and provide general advice on writing comments and/or statements (see also Appendix 11, and the staff *Facing Legal Action: An Employee's Guide*). In some cases, solicitors will be involved in drafting statements.
- 4.8.3 In respect of clinical negligence claims, the clinician with responsibility for the overall care of the claimant will be consulted prior to release of medical records to the claimant and/or their nominated solicitor. The clinician responsible for the on-going care of the patient shall be kept advised of the progress of the claim, including details of the claim's resolution. Where necessary, the clinician responsible for the on-going care of the patient will ensure that appropriate steps are taken to ensure the continuing quality of the patient's care, taking into consideration relevant information obtained during the claims investigation.
- 4.8.4 Trust staff involved in a claim are encouraged to contact the ASP Claims Managers for information, advice or support on any matter (see Appendix 15, contacts). Members of staff are welcome to contact ASP either directly or through their line manager.
- 4.8.5 Appendix 11 and the staff leaflet contain further guidance to staff.
- 4.8.6 Trust staff are encouraged to participate in ASP training.

5 LINK WITH INCIDENT, RISK AND COMPLAINTS MANAGEMENT

- 5.1 The ASP Claims Manager is automatically notified of all serious incidents via the Datix system, and will take action as appropriate if a potential claim is identified. See the Trust Incident Reporting Policy.

- 5.2 Where, during the course of managing a claim, any risk management issues are identified, the ASP Claims Manager will report these immediately to the Trust Risk Manager and/or appropriate service manager and action will be taken according to the Trust's Risk Management policy.
- 5.3 The ASP Claims Manager will share the NHSLA clinical panel solicitors' risk management reports on CNST claims with the Trust Risk Manager and other appropriate colleagues for action (see letter to Trust Chief Executives from the NHSLA Chief Executive dated 2 February 2010 at www.nhsla.com).
- 5.4 The ASP Claims Manager is notified directly by the ASP Complaints Managers of all complaints which may give rise to a claim. See the Trust Complaints Policy.

5.3

6 EXTERNAL CONSULTATION AND COMMUNICATION WITH STAKEHOLDERS

6.1 Consultation Process

- 6.1.1 This policy was developed by ASP Risk Services in consultation with Trust Risk leads, and taking into consideration NHSLA guidance. There was no patient involvement.

6.2 Communication with stakeholders

- 6.2.1 The ASP Claims Manager is responsible for communication with stakeholders or ensuring that this is carried out by Trust staff. See section 4.6 above and section 8 below.

7 INTERNAL CONSULTATION, APPROVAL AND RATIFICATION PROCESS

7.1 Policy Approval Process and Ratification Process

- 7.1.1 The Trust's Governance and Compliance Committee has reviewed and approved this document.
- 7.1.2 The Trust Board has ratified this document.
- 7.1.3 Future versions will be revised by the ASP Claims Manager for approval by the Trust Governance & Compliance Committee.

8 LIAISON WITH THIRD PARTIES

- 8.1 The ASP Claims Manager is responsible for ensuring proper liaison with the NHSLA, Trust staff, solicitors, claimants and others as appropriate.
- 8.2 The Trust Incident Reporting Policy provides information regarding responsibilities for informing/involving external agencies after the occurrence of an adverse event.
- 8.3 During the course of claims investigations, it may also become evident that the involvement of other agencies is appropriate, and if so this will be undertaken by the ASP Claims Manager after consultation with relevant Trust staff if necessary. Examples of external agencies are:
- The Police (suspected criminal activity)
 - The Coroner (sudden or unexpected death)
 - Witness Care Team, Crown Prosecution Service (in the event of a criminal trial)
 - Other NHS Trusts (patient safety issues)
 - Professional Regulatory bodies (serious concern regarding professional performance/ fitness to practise – consult with Trust Medical Director)
 - Environmental Health (consult with Director of Public Health)
 - Strategic Health Authorities (Serious Untoward Incidents as defined in the Incident Reporting Policy – consult with Trust Risk Manager)
 - National Patient Safety Agency (including National Clinical Assessment Service)
 - Medical Devices and Healthcare Products Regulatory Agency (concerns about medicines or medical equipment – consult with Trust Risk Manager)
 - Health and Safety Executive (should be notified immediately by Risk Manager in the event of fatality or major injury or other event reportable under RIDDOR – see Incident Reporting Policy)

9 INVESTIGATION AND ROOT CAUSE ANALYSIS

- 9.1 The purpose of a detailed investigation is to determine the root cause of an incident and recommend action to be taken: refer to the Trust's Policy and Procedure for Recording, Reporting and Investigating Adverse Events.
- 9.2 All severe adverse events (those graded orange or red) or large value claims (in excess of £250,000) should be the subject of a detailed investigation. Other claims should be considered by the Risk Manager for detailed investigation.
- 9.3 Investigations should be carried out by a team nominated by the appropriate Director in liaison with the Risk Manager.
- 9.4 The investigation procedure to be followed is that in the Policy and Procedure for Recording, Reporting and Investigating Adverse Events
- 9.5 The results and recommendations of any investigation resulting from a claim, and actions taken as a result, should be reported to the Trust Risk Manager,

10 CLAIMS DATA COLLECTION AND ANALYSIS

10.1 Claims reports to the board and relevant committee(s)

10.1.1 The ASP Claims Manager will maintain a register of all claims against the Trust on the Datix Database. See Appendix 14.

10.1.2 The ASP Claims Manager will prepare and send to the Trust Risk Managers quarterly and annual reports on:

- The number and aggregate value of claims
- Details of individual claims
- The progress and likely outcome of these claims, including the expected settlement date
- The outcome of concluded claims
- Any proposed remedial action/risk management issues arising out of a particular claim
- Trends identified

10.1.3 The above processes will be monitored by audit.

10.1.4 The ASP Claims Manager will inform the Governance & Compliance Committee and Trust board of claims analysis.

10.1.5 The Trust Risk Manager is responsible for the analysis of incidents, complaints and claims on an aggregated basis (see Trust Complaints Policy and Procedure, Incident Reporting Policy and Procedure and Risk Management Strategy), and for reporting this to the Board

11 LEARNING FROM EXPERIENCE

It is important that all risk information is reviewed together so that trends are highlighted, action plans put in place and monitored, and learning is disseminated. This role is part of the terms of reference of the Clinical Quality Reviews with providers, the Independent Contractors Assurance Group and the Quality and Patient Safety Committee.

12 EQUALITY IMPACT ASSESSMENT

12.1 The ASP Head of Risk Services has undertaken the Equality Impact Assessment of this policy (Appendix 4).

13 REVIEW AND REVISION ARRANGEMENTS INCLUDING VERSION CONTROL

13.1 Process for Reviewing the Claims Handling policy

This policy will be reviewed annually, or more often if necessary, according to the process described in section 7.1 above.

13.2 Version Control

This is attached as Appendix 2.

14 DISSEMINATION AND IMPLEMENTATION

14.1 Dissemination of the policy

14.1.1 This policy is available in the Trust-wide policy folder.

14.1.2 A copy of this policy will be held on the ASP extranet in the Risk Services section.

14.1.3 Trust Risk leads will arrange for all managers to have access to the policy.

14.1.4 The Trust Director of Finance will ensure that the finance team have access to the policy.

See also Appendix 3.

14.2 Implementation of the policy

14.2.1 This policy will be implemented by the ASP Head of Risk Support Services and ASP Claims Managers.

14.2.2 Trust senior managers should ensure implementation of claims management procedures described in this policy, and that staff are aware of their responsibilities with respect to the identification of potential claims, co-operation with claims investigations and reporting to the ASP Claims Manager.

14.2.3 Training: Trust senior managers and others should attend relevant training provided by ASP (access via ASP training helpdesk). ASP Claims Managers will receive on-going training as necessary and appropriate.

15 DOCUMENT CONTROL INCLUDING ARCHIVING AND RETRIEVAL ARRANGEMENTS

Previous versions of this document will be kept and are available from ASP Risk Support.

16 MONITORING COMPLIANCE WITH AND THE EFFECTIVENESS OF THE CLAIMS HANDLING POLICY

The effectiveness of the claims handling policy and process will be monitored by the Governance & Compliance Committee on a rolling basis by:

- review of claims information and progress with claims
- review of timescales for claims handling
- review of claims handling evaluation forms
- review of outcomes of claims
- consideration of any lessons learnt during the handling of claims

The ASP Claims Manager will assess the effectiveness of claims handling by means of an evaluation form completed at the conclusion of each claim by the staff involved in the claim (Appendix 13).

The implementation of the policy will be audited once every three years.

17 REFERENCES

References in relation to claims handling

Department for Constitutional Affairs, 1998. [Pre-action Protocols for the Resolution of Clinical Disputes 1998/183](#) [online]. London: The Stationary Office. Available from: www.justice.gov.uk

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

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

The National Health Service Litigation Authority Framework Document. Available from www.nhsla.com (Publications - Claims publications)

Clinical negligence reporting guidelines fourth edition – January 2007. Available from www.nhsla.com (Publications - Claims publications)

Non-clinical claims reporting guidelines. Available from www.nhsla.com (Publications - Claims publications)

NHSLA Disclosure List. Available from www.nhsla.com (Publications - Claims publications)

Circular 02/02 'Apologies and Explanations' NHSLA (nhsla.com)

Independent Sector Treatment Centres (ISTCs) and CNST NHSLA January 2006 (nhsla.com)

NHSLA Risk Management Standards for Trusts (pilot) May 2007 (NHSLA.com)

18 ASSOCIATED DOCUMENTATION

Policies/Procedures:

- Department of Health Records Management: Code of Practice 2006
- ASP Records Retention Policy
- ASP Data Protection and Access to Records Policy
- Trust Complaints Policy and Procedure
- Trust Incident Reporting Policy and Procedure
- Trust Risk Management Policy

Appendix 1 Checklist for the Review and Approval of Procedural Document

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

	Title of document being reviewed:	Yes/No/Unsure	Comments
1.	Title		
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is guideline, policy, protocol or standard?	Yes	Title states both policy and procedure
2.	Rationale		
	Are reasons for development of the document stated?	Yes	Section 2.1
3.	Development Process		
	Is the method described in brief?	Yes	Section 6.1
	Are people involved in the development identified?	Yes	6.1; 7.1
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	
4.	Content		
	Is the objective of the document clear?	Yes	2.5
	Is the target population clear and unambiguous?	Yes	2.4; 4
	Are the intended outcomes described?	Yes	2.5
	Are the statements clear and unambiguous?	Yes	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Yes	17
	Are key references cited?	Yes	17
	Are the references cited in full?	Yes	17
	Are supporting documents referenced?	Yes	17
6.	Approval		
	Does the document identify which committee/group will approve it?	Yes	7.1.1; 7.1.2
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	n/a	
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how this will be done?	Yes	14.1; 14.2.1; 14.2.2; App 3
	Does the plan include the necessary training/support to ensure compliance?	Yes	14.2.3
8.	Document Control		
	Does the document identify where it will be held?	Yes	14.1
	Have archiving arrangements for superseded documents been addressed?	Yes	15; App 2
9.	Process to Monitor Compliance and Effectiveness		
	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Yes	16
	Is there a plan to review or audit compliance with the document?	Yes	16
10.	Review Date		

	Title of document being reviewed:	Yes/No/Unsure	Comments
	Is the review date identified?	Yes	Front page
	Is the frequency of review identified? If so is it acceptable?	Yes	Front page – annual review
11.	Overall Responsibility for the Document		
	Is it clear who will be responsible for co-ordinating dissemination, implementation and review of the document?	Yes	App 3

Individual Approval

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

Name		Date	
Signature			

Committee Approval

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

Name		Date	
Signature			

Acknowledgement: Cambridgeshire and Peterborough Mental Health Partnership NHS Trust

Appendix 2 - Version Control Sheet

Version	Date	Author	Status	Comment
1.1	Oct 07	Nicola Hallows, ASP Complaints and Claims Manager	Approve d by Board	Major revision of claims policy in place prior to Oct 07 in order to support the Trust to achieve compliance with NHSLA Risk Management Standards
1.2	Oct 08	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for approval	Minor change: Section 2.1 Date of NHSLA Risk Management Standards document updated
1.3	Feb09	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	4.6: change to sub-header 4.6.1: addition to 7 th bullet point 4.8.3: addition Section 6: additions
1.4	Nov09	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	18: first bullet point, relevant policy updated
1.4	Nov09	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	2.1 NHSLA Risk Management Standards – reference updated
1.4	Nov 09	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Appendix 5 – first paragraph updated CNST reporting guidelines
1.4	Nov 09	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Appendix 10 paragraph 1 updated NHSLA information re apologies and explanations
1.4	Nov 09	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Appendix 15 updated identity of ASP Head of Risk Support
1.4	Feb 10	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Section 5: change to header; change to order of paragraphs; addition of paragraph regarding NHSLA panel solicitors' risk management reports.
1.5	Jan 11	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	2.1 NHSLA Risk Management Standards – reference updated
1.5	Jan 11	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Appendix 9 – updates: commercial insurance and inquest support
1.5	Jan 11	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Appendix 10 paragraph 1 updated NHSLA information re apologies and explanations
1.5	Jan 11	Nicola Hallows, ASP Complaints and Claims Manager	Submitte d to Trust for Approval	Appendix 15 – updated ASP contact details
1.5	April 11	Trust Governance and Compliance Committee	Submitte d to Trust	Appendix 1 - Checklist for the Review and Approval of Procedural Document completed.

Appendix 3 - Plan for Dissemination of Claims Handling policy

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

Title of document:			
Date finalised:		Dissemination lead:	
Previous document already being used?	Yes / No (Please delete as appropriate)	Print name and contact details	
If yes, in what format and where?			
Proposed action to retrieve out-of-date copies of the document:			
To be disseminated to:	How will it be disseminated, who will do it and when?	Paper or Electronic	Comments

Dissemination Record - to be used once document is approved.

Date put on register / library of procedural documents		Date due to be reviewed	
---	--	--------------------------------	--

Disseminated to: (either directly or via meetings, etc)	Format (i.e. paper or electronic)	Date Disseminated	No. of Copies Sent	Contact Details / Comments

Acknowledgement: University Hospitals of Leicester NHS Trust.

Appendix 4 - Equality Impact Assessment Tool

Completed by ASP Head of Risk Services.

		Yes/No	Comments
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
2.	Is there any evidence that some groups are affected differently?	No	
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?		
4.	Is the impact of the policy/guidance likely to be negative?	No	
5.	If so can the impact be avoided?		
6.	What alternatives are there to achieving the policy/guidance without the impact?		
7.	Can we reduce the impact by taking different action?		

If you have identified a potential discriminatory impact of this procedural document, please refer it to ASP Head of Risk Support together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact Head of Risk Support, ASP

Appendix 5 Procedure for the management of Clinical Negligence Scheme for Trusts (CNST) cases, including requests for disclosure of records, serious incidents and complaints

CNST claims are those involving any clinical incident that occurred after 1 April 1995. The definition of a claim being ‘an allegation of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident which carries significant litigation risk for the Trust’. These claims will be managed by ASP Claims Managers in accordance with the CNST Reporting Guidelines (Fifth Edition – October 2008) and the Pre-Action Protocol published under the Civil Procedure Rules in 1999.

Independent Sector Treatment Centres (ISTCs) and CNST: Formally constituted ISTCs cannot be members of the CNST scheme, but arrangements have been made to allow ISTC providers treating NHS patients to benefit from the referring Trust’s CNST membership – therefore the same benefits of CNST coverage for clinical negligence will apply as they do where an NHS patient is treated in an NHS Trust hospital.

A1 Acknowledgement

- A1.1 A letter of claim must be forwarded by the ASP Claims Manager to the NHSLA immediately. The Claims Manager must send an acknowledgement of receipt to the claimant/claimant’s solicitors within 14 days, stating that the NHSLA will be dealing with the case - the letter should give no other information.
- A1.2 Legal proceedings should be notified to the NHSLA by telephone immediately and next steps agreed.
- A1.3 A request for disclosure of records should be acknowledged and dealt with in accordance with the ASP Data Protection and Access to Records Policy. The records must be disclosed within 40 days.
- A1.4 A complaint seeking compensation should be acknowledged by the Complaints Manager in accordance with the Trust Complaints Policy.

A2 Opening a file and collecting relevant information

- A2.1 The Claims Manager will open a claim file to include all correspondence and papers connected with the claim. A record must be made of all telephone conversations.
- A2.2 The Claims Manager will contact the relevant clinician and/or manager to request the original medical records (the department should retain a copy, clearly marked as such) and computer records.
- A2.3 The Claims Manager will contact the Complaints Manager and the Risk Manager to check whether there are complaints or incident records in existence.
- A2.4 Where statements from staff do not already exist, the Claims Manager will arrange for staff to provide comments (see Appendix 11). If staff have left the organisation, they should be traced (through their professional registering body if necessary) and contacted so that statements can be sought.

A3 Preliminary Analysis

A3.1 The Claims Manager will prepare a Preliminary Analysis of the claim (within 40 days of receiving a request for records, or as soon as possible in other cases) based on the information available. A preliminary analysis is a brief examination of the immediately available evidence which is tested against the legal criteria of breach of duty and causation, to see if there is a realistic prospect of a claim being made. The Preliminary Analysis should contain:

- (a) **synopsis and chronology** – brief outline of the main events including details of the parties involved
- (b) **possible care management problems** – the allegations made and other possible events where care may have deviated beyond acceptable parameters
- (c) **breach of duty** – a response to the allegations made and an indication whether the claim is considered to be defensible
- (d) **causation** – the alleged harm resulting from the care management problems and an indication of whether it is likely that the problems led directly to the loss or injury. This may be difficult to determine without further investigation/expert opinion.
- (e) **quantum** – an estimate of the possible compensation payable, together with claimant and defence legal costs. Guidance should be sought from reported cases and the Judicial Studies Board Guidelines. Advice may be sought from NHSLA staff.
- (f) **claimant's funding** – an indication as to whether the claimant is receiving Legal Services Commission, using a conditional fee agreement or supported by a union or other organisation.
- (g) **assessment of litigation risk:**
 - Low – no liability or no causation
 - Medium – likelihood of the claimant's success is equivocal and more investigation is required
 - High – the claim should probably be settled, or where expert opinions are adverse
- (h) **Action plan** – next steps proposed e.g. obtain expert clinical advice

A3.2 The Preliminary Analysis and any reports/opinions from clinicians should state that they are prepared in response to actual or potential legal action, otherwise they may be discloseable to the claimant.

A3.3 The Claims Manager should also grade the risk identified by the claim using the Trust's Incident Risk Scoring Matrix.

A4 Reporting to the NHSLA

A4.1 The Claims Manager will send the Preliminary Analysis to the NHSLA within two months of the identification of a claim. The following documents should also be sent:

- completed CNST claim report form
- copies of correspondence with the patient or their solicitor
- copies of comments or statements obtained from clinical staff as part of the preliminary analysis
- where relevant, the report of the investigation into an adverse event or response to a complaint.

A5 Further action by the NHSLA

- A5.1 The Claims Manager will facilitate the collection of further evidence and statements on behalf of the NHSLA or solicitors appointed by the NHSLA.
- A5.2 The Claims Manager will keep staff involved in the case informed as to the progress of the claim. When a claim reaches the stage of admission of liability or offer of settlement, the Claims Manager will liaise with the staff involved, the Trust Director of Finance and Director of Clinical Governance or other senior Trust staff as appropriate.

A6 Further action by the Trust

- A6.1 Where the investigation of a case has indicated that there are performance issues, the Claims Manager will consult with senior management colleagues in the relevant service area regarding the consideration of action to be taken to protect patients and the member of staff involved.

Appendix 6 Procedure for Management of Liabilities to Third Parties Scheme cases (usually Employer’s and Public Liability claims)

The ASP Claims Manager will ensure that all new claims reported to the NHS Litigation Authority include the following documentation:

- NHSLA LTPS Report Form
- Letter of Claim
- All documents relating to the type of claim being reported. A completed ‘NHSLA Disclosure List’ must accompany all reported claims, signed by an Executive Director of the organisation e.g. Chief Executive or Finance Director.

ASP Claims Managers will receive, assess and notify claims as follows:

- (i) Incidents prior to 1.4.99 – Claim reported to commercial insurer who will investigate claim in conjunction with ASP and the relevant Trust.
- (ii) Incidents after 31.3.99 – Staff and public liability claims reported under the NHSLA Liabilities to Third Parties Scheme (LTPS).

A1 Acknowledgement

- A1.1 The Claims Manager must send an acknowledgement of receipt to the claimant/claimant’s solicitors within 21 days. A letter of claim must be forwarded by the ASP Claims Manager to the NHSLA as soon as possible after investigation and collection of documentation, unless the likely value (including costs) is below 80% of the excess value when the Claims Manager may handle the claim, with the assistance of the Trust’s solicitors if required; alternatively, the NHSLA will handle the claim subject to payment of a small handling fee.
- A1.2 Legal proceedings should be notified to the NHSLA by telephone immediately and next steps agreed.
- A1.3 A request for disclosure of records should be acknowledged and dealt with in accordance with the ASP Data Protection and Access to Records Policy. The records must be disclosed within 40 days.
- A1.4 A complaint seeking compensation should be acknowledged by the Complaints Manager in accordance with the Trust Complaints Policy.

A2 Opening a file and collecting relevant information

- A2.1 The Claims Manager will open a claim file to include all correspondence and papers connected with the claim. A record must be made of all telephone conversations.
- A2.2 The Claims Manager will contact the relevant service manager to request relevant documentation (to include training records, risk assessments, incident reports etc).

A3 Initial investigation

- A3.1 The Claims Manager will obtain relevant information and comments on the allegations from appropriate staff (see Appendix 11), and carry out other investigations as appropriate (eg site visits).

A3.2 It should be borne in mind that statements taken and the investigation report produced may be discloseable to the defence in any legal action. Therefore care could be taken to ensure that they are:

- accurate;
- complete;
- factual; and
- based on evidence rather than supposition or anecdote.

A4 Reporting to the NHSLA

A4.1 Where:

- a letter of claim has been received,
 - the response by the Trust to a complaint implies an admission of liability, or
 - the investigation indicates a risk of litigation
- and
- the likely value of the claim (including both claimant's and defendant's costs) exceeds the excesses, or
 - regardless of value, the claim involves
 - death,
 - amputation of any limb,
 - major head injury,
 - absence from work for 10 consecutive days,
 - likely HSE prosecution,
 - multiple claims from a single cause, or
 - human rights issues

the Claims Manager shall notify the NHSLA as soon as possible. The following documents should be sent:

- completed LTPS report form
- copies of correspondence with the claimant or their solicitor
- reports of investigations into the incident
- copies of comments from supervisors and/or managers obtained as part of the investigation
- as much other documentation relevant to the incident as is available
- completed Personal Injury Protocol Standard Disclosure Lists

A5 Further action by the NHSLA

A5.1 The Claims Manager will facilitate the collection of further evidence and statements on behalf of the NHSLA or solicitors appointed by the NHSLA.

A5.2 The Trust (through the NHSLA) has three months in which to produce a detailed response to a letter of claim; if a claim form has been served, a Defence must be served within 28 days.

A5.3 The Claims Manager will keep Trust staff involved in the case informed as to the progress of the claim. When a claim reaches the stage of admission of liability or

offer of settlement, the Claims Manager will liaise with the staff involved and Trust the Trust Director of Finance and Director of Clinical Governance or other senior Trust staff as appropriate.

- A5.4 Where the investigation of a case has indicated that there are performance issues, the Claims Manager will consult with senior management colleagues in the relevant service area regarding the consideration of action to be taken.

Appendix 7 Procedure for Management of Property and Contents claims

ASP Claims Managers will receive, assess and notify property and contents claims covered by the NHSLA's Property Expenses Scheme (PES) in conjunction with the relevant service managers, as detailed in the NHSLA PES manual. The following claims will be reported to the Scheme:

- All cases where the potential will exceed the excess
- Cases within 20% of the excess, regardless of whether the Trust wishes the NHSLA to handle the claim on a sub-excess basis.
- Cases where the potential develops to the extent that the excess will be breached.

ASP Claims Managers will work with the NHSLA claims handler in investigating the claim and providing appropriate information and evidence as required.

A1 Property Expenses

A1.1 These are claims being made by the Trust where Trust or patients' property has been damaged or destroyed. Schedule 2 to the PES Rules sets out the qualifying expenses for which claims can be submitted.

D1.1 A1.1 Claims exceeding or within 20% of the PES scheme excesses (Buildings £20,000; Contents £20,000) should be reported by the Claims Manager to the NHSLA using the attached PES form.

A1.2 The Trust's Limit of Cover is £1 million.

D1.2 A1.3 Claims from patients for loss of small items (e.g. spectacles) should be processed through the Finance Department following completion of a losses and compensation form.

D1.3 A1.4 Claims below the excess will be handed by the Claims Manager in co-operation with the Estates Department and the Trust's solicitors, if necessary.

Appendix 8 Procedure for management of Existing Liabilities Scheme (ELS) cases

ELS cases are those involving any clinical incident that occurred prior to 1 April 1995, where settlement was or will be made after 1 April 1996. All the existing cases were transferred to the NHSLA for direct management in August 2000.

Any new ELS cases received after that date will be fully investigated upon receipt and reported to the NHSLA as follows:

- Claims with a value of more than £1m or which are novel, repercussive or contentious will be registered with the NHSLA immediately following receipt of a letter of claim.
- All other claims will be registered with the NHSLA when prior approval is required for a step, as detailed in NHSLA C2/99 ELS Protocol and Standard Report Format, dated 1 April 1999.

Appendix 9 Procedure for accessing legal advice and management of claims not covered by the NHSLA's Schemes

Staff seeking clarification on whether a claim may fall under one of the NHSLA's Schemes, or queries regarding any aspect of NHSLA Scheme cover, should contact the ASP Claims Manager.

Staff seeking legal advice, or guidance in relation to whether or not a legal opinion may be required are directed under the list of issues below. Where possible, advice will be provided in-house and where this is not possible, appropriate legal assistance will be arranged and the ASP Claims Manager will liaise between relevant staff and solicitors, including instructing appropriate solicitors and maintaining a case file. Any external legal costs arising will be payable by the Trust.

Clinical law: contact ASP Claims Manager or ASP Information Governance Manager

Commercial insurance: advice on indemnity and levels of insurance from ASP Claims Manager

Consent and capacity (Mental Capacity Act 2005): contact the ASP Information Governance Manager

Contracts e.g. contracts to supply: contact purchasing department

Employment law claims – claims of unfair dismissal, discrimination etc: refer to the Human Resources Department.

Ex-gratia payments There may be occasions when the Trust may wish to make an ex-gratia payment without an admission of liability. In these circumstances the claim is not within any NHSLA Scheme and the Trust would not be able to recover any costs from the NHSLA and would need to be satisfied that the CNST reporting guidelines had not been breached. Decisions on whether to settle claims which are not reported to the NHSLA will normally be based on an assessment of the likely outcome of the claim, on the balance of probabilities, if it should come to Court. Any decision on settling a claim must be authorised by the Chief Executive and/or the Director of Finance and should be based on the following considerations:

- The strength of the Trust's defence
- The relative costs of defending or settling the claim
- The likelihood of a settlement attracting further claims

Documentation showing the reasons for the decision should be kept on file. Contact ASP Claims Manager.

'Good Samaritan' acts: ASP Claims Manager

Human Rights Act: ASP Claims Manager

Income generation activities (activities relating to the provision of services, supplies or products for financial gain to parties outside the NHS): ASP Claims Managers.

Inquests: The ASP Complaints and Claims Department Manager will support and advise any staff members requested to attend an inquest or supply a witness statement and, where appropriate, will arrange representation for the Trust at an inquest and assistance for staff.

Judicial Review: ASP Claims Manager

Motor vehicles: Knowles Associates 01206 257201

Products Liability: ASP Claims Manager

Real Property (legal questions, not insurance issues): Properties Manager

Research: Research Governance Manager

Small loss and compensation claims (eg damage to staff clothing and property): claims should be passed to the ASP Claims Manager with a completed Loss and Compensation form (available from ASP Claims Manager) and payment will be agreed at the discretion of the Trust Director of Finance and budget holder.

Social Care – legal issues Peterborough area only: Peterborough City Council legal department

Witnesses for the prosecution in criminal trials: ASP Claims Managers will provide support and information for staff, including where necessary accompanying staff to trials and liaison with the Court Witness Service where appropriate.

Appendix 10 – Apologies and Explanations

- 1 The NHSLA has issued guidance (NHSLA Circular 02/02 issued on 11 February 2002 headed 'Explanations and Apologies', re-issued on 15 August 2007 and 1 May 2009 – letter from NHSLA to all NHS bodies) encouraging staff to be open and honest with patients and their families when there has been an unexpected outcome – it therefore encourages apologies, explanations of facts (as opposed to opinions) and expressions of sympathy as good practice.
- 2 However staff should take care not to indicate to patients or their families that they believe that the Trust is actually liable in a matter or that they consider that compensation is definitely due to them. For the Trust to be liable and for compensation to be due there must have been (a) a breach of our duty of care to the patient which (b) has caused compensatable damage. Often on further investigation it becomes clear that either there has not been an actual breach of duty or that if there has, it has not caused the damage i.e.: the damage would have happened anyway.
- 3 In summary, the NHSLA will not make a point against any NHS body or any clinician seeking NHS indemnity, on the basis of an expression of regret or factual explanation offered in good faith before litigation begins.

Appendix 11 Support and guidance for staff

Detailed advice is given in the leaflet attached to this policy 'Facing Legal Action: An Employee's Guide'.

General guidance for staff in the preparation of comments and statements in connection with legal action appear below:

- 1 There will be occasions where staff are providing the Trust (as employer) with formal witness statements to assist it to defend claims of various kinds made against it. All staff are reminded that when providing factual statements for any purpose they are obliged to provide the Trust with a full, comprehensive and honest account. Failure to do so may result in significant risk to the Trust in financial terms and act to the detriment of its reputation generally. In addition the providing of intentionally untrue or misleading information in a statement will also place the individual open to disciplinary action by the Trust and/or professional bodies and in some cases, action against them by the Courts.
- 2 Once a claim has been notified to the Trust the Claims Manager will seek to contact appropriate staff witnesses. (This may include former employees). At this stage the member of staff will simply be asked to provide written comments on the allegations which have been made and a factual account of their personal involvement in the incident or (in the case of clinical negligence claims) episode(s) of treatment. They may refer to the records to refresh their memory. In many cases such informal statements provided by staff may prove sufficient to deal with the claim.
- 3 Once formal legal proceedings against the Trust have been commenced (and in the case of some significant claims prior to this) the Claims Manager in association with the legal advisers acting on behalf of the Trust will arrange to interview the key witnesses. These interviews will take place in negotiation with the member of staff (and/or their manager) at a date, time and venue convenient to them.
- 4 A formal statement will be compiled on the basis of the information given by the witness during these interviews and will be forwarded to the witness for consideration. The witness will be advised that they should make any amendments or additions they feel are necessary before signing the statement. Under the Civil Procedure Rules it is a requirement that the statement should include a 'statement of truth' i.e. the witness will be signing to indicate that the information they have given is true to the best of their knowledge. If a witness were to sign a statement knowing it to contain false statements then he/she may be personally answerable to the Courts for contempt of the Court.
- 5 Once a claim has been formally instigated against the Trust it will be incumbent on the Trust to serve a defence document in the prescribed timetable. This document will usually be compiled, issued and served by the solicitor acting on behalf of the Trust (or other adviser) and will be based on the factual details previously collated from contemporaneous records, witness statements and other investigations (including in many cases the reports of independent experts). The defence document is required to incorporate a Statement of Truth signed by the individual nominated to sign on behalf of the Trust, usually an Executive Director.
- 6 To enable the Chief Executive to sign on behalf of the Trust, copies of the key supporting documents (most notable the statement of claim, witness statements and expert reports) will be made available by the Claims Manager. In some cases the signatory may wish to have access to the Trust's file of the claim before signing. It

will be incumbent on the Trust's legal (or other) advisers to bring to the attention of the individual signing the defence on behalf of the Trust any doubts or other queries about the content of the various documents. As with individual witnesses the signatory of the statement of truth will be answerable to the Court if it is signed by them in full knowledge that it contains untruths falsely or maliciously presented.

Appendix 12 Financial management

- 1 The NHSLA is responsible for the overall determination of how a claim is handled within the relevant Scheme, and for negotiation and authorisation of out-of-court settlements, but will take the views of the Trust into account. N.B. NHSLA authorisation is required before admissions may be made and monetary compensation may be offered. In the absence of such authorisation, the NHSLA will not reimburse Trusts either for the compensation awarded or for any of the costs generated. Any such payments made by a Trust will fall outside the scheme and could possibly result in criticism from auditors.
- 2 Responsibility for the accounting and management of clinical negligence claims rests with the NHSLA (although the Trust retains legal responsibility for such claims). In respect of other legal claims such as personal injury (under Liabilities to Third Parties Scheme), property losses, and other legal actions not covered by the NHSLA's Schemes, the Trust must make financial provisions for the excess amounts or other legal expenses.
- 3 The Trust maintains a register of losses and compensation payments made.
- 4 The current NHSLA Scheme excesses are as follows:

<u>Scheme</u>		<u>Excess applicable</u>
CNST		No excess
Property Scheme	Expenses	Buildings: £20,000 Contents: £20,000
Public liability		£3,000
Employer's liability		£10,000
Product liability		£3,000
Professional indemnity		£3000

- 5 All Trust payments to the NHSLA, except defence panel solicitor costs, will be funded direct by the Trust up to the point the applicable 'excess' threshold is breached. The Trust is notified by email or fax from the NHSLA of any sums the NHSLA Litigation Authority has agreed to pay arising out of the handling of the claim. The notification will take the form of a 'requisition', together with appropriate supporting documentation.
- 6 In order to ensure the completeness and accuracy of Trust accounts, the ASP Claims Manager will notify the Trust Director of Finance via email of any claim lodged against the Trust and all claims made by the Trust in respect of Trust property, upon receipt (or submission). In addition, the Trust will be provided with a quarterly reports on all legal claims. In all instances the Finance Director will be given the maximum possible notice by the Claims Manager of any cash payments associated with legal claims.

Appendix 13 ASP Risk Services: Legal Service Evaluation

The ASP Risk team aims to provide partner teams and individuals with fast, responsive claims management and legal advice.

Please take a few minutes to tell us how we are doing. Your responses will be kept confidential and only used to improve the service.

1. Which Trust do you work for: _____

2. Was your contact for:

- General legal advice
- A legal claim
- Witness support at Court

3. Was the advice/claim concerning:

- You personally as part of your employment
- Your team

Please rate your satisfaction with the service – please circle one number

0 = Not applicable 1 = Very Dissatisfied 2 = Dissatisfied 3 = Neither Satisfied nor Dissatisfied 4 = Satisfied 5 = Very Satisfied

1. Ease of reaching an appropriate ASP advisor, eg Claims Manager	0	1	2	3	4	5
2. Timeliness of initial response by ASP advisor	0	1	2	3	4	5
3. Understanding of your query/request by ASP advisor	0	1	2	3	4	5
4. Ability to resolve query/request or make appropriate referral	0	1	2	3	4	5
5. Contact with you/your team during the claim/other legal process	0	1	2	3	4	5
6. Provision of support to staff directly affected by a claim/legal process	0	1	2	3	4	5
7. Knowledge of relevant legal procedures	0	1	2	3	4	5
8. Communication about legal procedures	0	1	2	3	4	5
9. Courtesy	0	1	2	3	4	5
10. Overall rating of your engagement with the service	0	1	2	3	4	5

11. Is there anything we could do to improve our service?

**Please return to ASP Customer Services, Vinery Road, Cambridge, CB1 3DX
in the freepost envelope provided**

Appendix 14 Datix Database

A database of all claims relating to the Trust is maintained by ASP Claims Managers. Data will be processed in compliance with the Data Protection Act 1998.

Contents of Database:

- 1 Patient's details (name, age, date of birth, date of death).
- 2 Claimant's name.
- 3 Claimant's solicitor.
- 4 Details of all members of staff involved, including specialty and degree of involvement.
- 5 Location of Incident.
- 6 Date of incident.
- 7 Date of notification of claim.
- 8 Specialty or department of treatment (for clinical negligence cases).
- 9 Nature of incident.
- 10 Resulting harm or disability.
- 11 Estimate of Quantum.
- 12 Estimate of claimant's costs.
- 13 Other parties involved in claim and proportionate share of costs.
- 14 Probability.
- 15 Defence solicitor.
- 16 Estimate of defence costs.
- 17 Stage of claim.
- 18 Outcome.

Appendix 15 Contacts within ASP

Nicola Hallows, Complaints and Claims Manager

01223 477760

nicola.hallows@asp.nhs.uk

Anglia Support Partnership, 18 Vinery Road, Cambridge CB1 3DX

Responsible for: Overall management of ASP claims handling and inquest management services; handling claims received by NHS Cambridgeshire, NHS Peterborough, Cambridgeshire Community Services; legal advice; NHSLA Scheme coverage queries (including income generation activities).

Katie Bamber, Complaints Manager

01223 477760

katie.bamber@asp.nhs.uk

Anglia Support Partnership, 18 Vinery Road, Cambridge, CB1 3DX

Responsible for: Handling claims received by the Cambridgeshire and Peterborough Foundation Trust

Lill Glover and Carol MacKay, Claims and Inquest Managers (job share)

01223 477760

lill.glover@nhs.net; carol.mackay@asp.nhs.uk

Anglia Support Partnership, 18 Vinery Road, Cambridge, CB1 3DX

Responsible for: Management of inquests involving Cambridgeshire and Peterborough Foundation Trust

Mary Mitchell, Head of Risk Support

01223 884195

mary.mitchell@asp.nhs.uk

Anglia Support Partnership, 18 Vinery Road, Cambridge, CB1 3DX

Out of hours advice is available through Mills and Reeve (solicitors) – information with Trust on-call managers.