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Claims Management Policy

CONTENTS

SECTION	INDEX TOPIC	PAGE
PART ONE	OVERVIEW	3
1	Introduction	3
2	Definition of a Claim	3
3	Duties	4
4	NHS RESOLUTION schemes relevant to the Trust and the role of NHS Resolution	4
PART TWO	CLAIMS MANAGEMENT AND COMMUNICATION WITH RELEVANT STAKEHOLDERS	
5	Receipt and Management of Claims: action to be taken	4
6	Disclosure of Documents	7
7	Clinical Negligence Claims	8
8	Settlement of a Claim	8
9	Reporting	8
10	Training	8
11	Consultation	8
12	References	8
13	Associated Documents	9
PART THREE	MONITORING	10

CLAIMS MANAGEMENT POLICY

PART ONE – OVERVIEW

1. Introduction

- 1.1 Shropshire Community Health NHS Trust (the Trust) is committed to effective and timely investigation and response to any claim which includes allegations of clinical negligence or personal injury (public and employer liabilities).
- 1.2 The Trust will adhere to the requirements of NHS Resolution in the management of claims.
- 1.3 All staff are expected to apply the principles of good claims management and risk management and this Policy should be read in association with the Trust's 'Incident Reporting Policy, including the procedure for serious untoward incidents and investigation of incidents, complaints and claims'. It is expected that the handling and investigation of claims, and their contributing factors, will be undertaken in accordance with that Policy and Procedure, including the use of root-cause analysis techniques as and when appropriate. The process should ensure that action points are identified to prevent a recurrence of the situation that led to a claim being made against the Trust.
- 1.4 The Trust will adhere to the pre-action protocols for the resolution of clinical disputes and personal injury claims in the interests of encouraging a climate of openness when something has 'gone wrong' with a patient's treatment or the patient is dissatisfied with that treatment and/or outcome. The Trust encourages the adoption of a constructive approach to claims, accepting that concerned patients are entitled to an explanation and apology if warranted, and to appropriate redress in the event of negligence.
- 1.5 The purpose of claims investigation is not to apportion blame, but to examine systems and processes. On occasion, the outcome of an investigation may be a recommendation that disciplinary action is taken against a member of staff, however, this would only be in accordance with the Trust's Disciplinary Policy.
- 1.6 Damage, loss or destruction of the Trust's property will be investigated and reported in accordance with relevant finance procedures and/or the Property Expenses Scheme (administered by NHS Resolution). The Assistant Director of Finance (Financial Services) is the designated responsible officer for the management of these processes.

2. Definition of a Claim

- 2.1 A claim is *'any demand, however made, but usually by the patient's legal adviser, for monetary compensation in respect of an adverse incident leading to a personal injury, loss or damage to property'*.
- 2.2 This Policy relates to Clinical Negligence Claims (injury to a patient as a result of treatment), Employer Liability Claims (injury to staff at work) and Public Liability Claims (injury to a patient or member of the public not as a result of treatment or damage/loss of property).
- 2.3 The formal claim will usually arrive in the form of a letter from a Solicitor acting on behalf of a claimant, their representative or estate (referred to as a 'Letter of Claim'), stating that the client intends to take legal action in respect of a particular set of circumstances and will request voluntary disclosure of all records, medical records, etc as applicable.

3. Duties

- 3.1 The Director of Governance is the Designated Board Member, with an explicit link to governance, who has overall responsibility for the management of any claim made against the Trust.
- 3.2 The Head of Risk and Governance is the designated officer for the co-ordination and handling of clinical negligence and third party liability claims on a day-to-day basis.
- 3.3. All Directors, Managers and staff of the Trust are responsible for co-operating fully with the Head of Risk and Governance, Director of Governance, the Trust's Solicitors and NHS Resolution in the investigation and handling of claims and potential claims.
- 3.4. As many claims have strict timescales for response, it is important that staff respond quickly to all requests for information, statements and copies of records.

4. NHS Resolution schemes relevant to the Trust and the role of NHS Resolution

- 4.1 NHS Resolution is the operating name for the National Health Service Litigation Authority (NHSLA) The NHSLA is a Special Health Authority, which was established in November 1995 under Section 11 of the NHS Act 1977.
- 4.2 The principal task of NHS Resolution is to administer schemes set up under Section 21 of the National Health Service & Community Care Act 1990. These schemes 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 in existence:
 - Clinical Negligence Scheme for Trusts (CNST) – covering liabilities for alleged clinical negligence where the original incident occurred on or after 1 April 1995
 - Existing Liabilities Scheme (ELS) – covering liabilities for clinical negligence incidents which occurred before 1 April 1995
 - Liability to Third Party Schemes (LTPS) – covering liabilities to any third party where the original incident occurred on or after 1 April 1999
 - Property Expenses Scheme (PES) – relating to expenses incurred from any loss of damage to property where the original loss occurred on or after 1 April 1999
 - A scheme covering the outstanding liabilities for clinical negligence in respect of the former Regional Health Authorities
- 4.3 The overall aims of NHS Resolution, in administering the schemes, are to promote the highest possible standards of patient care and to minimise the suffering resulting from any adverse incidents which do, nevertheless, occur. NHS Resolution will provide efficient, effective and impartial administration of the schemes.
- 4.4 The Trust obtains its legal advice for clinical negligence and third party liabilities from NHS Resolution. Defence Solicitors will be instructed direct by NHS Resolution and not by the Trust.

PART TWO – CLAIMS MANAGEMENT AND COMMUNICATION WITH RELEVANT STAKEHOLDERS

Timescales for claims management actions

The table on the next page details the timescales to be observed for the actions below

Clinical Negligence Claims	
Prompt	Required action and timescale
Request for disclosure of medical records	Disclosure should be provided within 28 days . A fee can no longer be charged for disclosure.
Receipt of Letter of Claim	Report case to NHS Resolution within 72 hours
Receipt of Letter of Claim	Acknowledge receipt of Letter of Claim within 14 days .
Receipt of Part 36 offer by Claimant	Immediate notification to NHS Resolution
Issue of legal proceedings	Immediate notification to NHS Resolution
Liabilities to Third Parties Claims (Employer Liability Claims and Public and Product Liability Claims)	
Prompt	Required action and timescale
Receipt of Letter of Claim	
Notification of claim to NHS Resolution	Any further correspondence from or on behalf of the Claimant and any proceedings or written notice of proceedings must also be notified to NHS Resolution as soon as possible .
Receipt of Letter of Claim	Collect and collate records and any other information relating to the incident and the person(s) involved, including incident reports, complaint files and any data held on computer files which are not routinely printed and stored in hard copy format; and identify all relevant personnel and their contact addresses and telephone numbers and send to NHS Resolution as soon as possible after receipt of Letter of Claim.
Receipt of Letter of Claim	The Letter of Claim should be acknowledged within 14 hours
Receipt of Part 36 offer	Immediate notification to NHS Resolution

5. Receipt and Management of Claims: action to be taken

- 5.1 It is important that anyone receiving or becoming aware of a claim or potential claim pass the information immediately to the Head of Risk and Governance, who is the officer authorised to handle claims on behalf of the Trust. This may, for example, be a letter from a Solicitor acting on behalf of a claimant, or direct from the claimant or their next of kin or appointed representative. It may also arise from the outcome of a complaint, incident, request for health records, etc. In particular, a formal Letter of Claim or service of proceedings, including 'Particulars of Claim', must be passed on immediately as there are strict timescales for response as detailed above
- 5.2 Acknowledgement of receipt of the claim letter will be undertaken by the Head of Risk and Governance.
- 5.3 A clinical negligence claim does not take away the Trust's legal duty to provide copies of health records, but this will be actioned via the Claims Policy. The Trust will ensure that

it acts in accordance with pre-action protocols, including providing copies of health records in accordance with Department of Health guidelines on access to records.

- 5.4 If the request for access to medical records does not indicate a potential claim, even if received via Solicitors, then the request should be actioned by the appropriate Data Protection Co-ordinators within the relevant Directorate under the Trust's Records Management Policy. However, even in these circumstances where there is no letter of claim, if the Designated Officer, on reviewing the notes before granting access, decides there is a potential for a claim, they should refer the request to the Head of Risk and Governance who will seek further advice.
- 5.5 The Head of Risk and Governance will co-ordinate the following actions on receipt of a claim:
- check that the claim or potential claim is the responsibility of the Trust
 - inform the Director of Governance
 - open a Claim File and co-ordinate day-to-day management
 - acknowledge initial letters and forward to the Trust's Solicitors or NHS Resolution Claims Manager as appropriate for pre-action protocol (NB any formal Letters of Claim will be passed to NHS Resolution for acknowledgement)
 - where proceedings have been received without prior notice, immediate contact will be made with NHS Resolution to agree appropriate actions
 - notify the relevant Director of Service and request information which, depending on the clinical negligence or third party claim will, for example, include:
 - incident reports
 - investigation reports
 - preliminary comments on the claim from key staff/Managers
 - health records
 - statements from key staff or witnesses
 - health & safety reports, RIDDOR reports
 - employment or occupational health records
 - risk assessments
 - training records
 - staffing levels
 - photographs,
 - risk management issues identified and actions taken or planned
(this list is not exhaustive and further documentation may be required depending on the case or subsequent request from NHS Resolution or Solicitors)
 - where appropriate instruct and liaise with the Trust's Solicitors to undertake pre-action protocol in relation to clinical negligence claims and disclosure of health records, and prepare preliminary reports in readiness for submission to NHS Resolution
 - report cases to NHS Resolution in accordance with their reporting guidelines
 - liaise with Claims Investigators, Handlers, Managers and Panel Solicitors appointed by NHS Resolution
 - on conclusion of a claim, notify staff involved of the outcome
 - Liaise with services in relation to investigation, in line with the investigation section of the Incident Reporting Policy
- 5.6 NHS Resolution, on receipt of a reportable claim, will in due course advise the Trust of the possible outcome and will ask for evidence of any corrective action, if this has not already occurred.
- 5.7 NHS Resolution ultimately determines how a reportable claim is handled and authorises settlements, but will take the views of the Trust into account. NHS Resolution in consultation with the Trust, will specify which issues of breach of duty and/or causation are admitted and which are denied and why. NHS Resolution Claims Handler or

appointed Solicitors will advise the Trust on the progress of the claim, together with any potential for media interest and likely Court dates.

- 5.8 The Trust will co-operate with NHS Resolution Investigators, Claims Handlers and appointed Solicitors at all times.
- 5.9 Directors will ensure that all relevant information is provided, on request, via the Head of Risk and Governance.
- 5.10 Disclosure of evidence will only be undertaken by either NHS Resolution or the Trust's Solicitors.
- 5.11 Staff will co-operate with any initial or subsequent investigations necessary for the management of the claim. The Trust's Managers will support staff who need to be interviewed, provide statements or attend proceedings as witnesses during management of a claim.
- 5.12 The Head of Risk and Governance will liaise with other external stakeholders, including the coroner, other NHS bodies and Trusts, local authority and the Police, obtaining legal advice when necessary

6. Disclosure of Documents

- 6.1 High standards of record keeping documentation are essential in the management of a claim.
- 6.2 All efforts must be made to preserve all relevant documentation when an incident, which may potentially result in a claim, is identified or when a potential claim is received. This includes, for example, incident forms, reports, reviews, complaint correspondence if applicable, internal correspondence related to the case, medical records if appropriate, policies and procedures which may have a direct impact on the case, etc.
- 6.3 In respect of clinical negligence claims, once formal litigation has commenced, the Trust, via its Solicitors or NHS Resolution, must disclose all documents relevant to the claim.
- 6.4 In respect of third party liability claims, the Trust, via NHS Resolution , must disclose all documents relevant to the claim.
- 6.5 If additional records are discovered during the life of a claim they should be disclosed to the claimant, via either NHS Resolution or the Trust's Solicitors as applicable, subject to any objection taken on the grounds of relevance or privilege.

7. Clinical Negligence Claims

- 7.1 When a significant litigation risk has been established and a realistic valuation of a possible claim has been made, the matter should be considered for reporting to NHS Resolution. This includes:
 - Incidents which are graded red under the Incident Reporting Policy which reveal a possible breach of duty leading to a potential large value claim.
 - Claims arising from complaints investigations where the response, on the facts, indicates that an admission of liability has been implied.
 - Requests for disclosure of records where the preliminary analysis indicates the possibility of a claim with a significant litigation risk, regardless of value.

Letters of Claim must be reported as soon as possible

8. Settlement of a Claim

- 8.1 NHS Resolution ultimately determines how a claim is handled and authorises settlements, but will take the views of the Trust into account.
- 8.2 NHS Resolution has responsibility for the financial management of all reportable clinical negligence claims and third party liability claims.
- 8.3 In respect of non-reportable claims, the decision to settle or contest a claim will, in most circumstances, be based on advice obtained from the Trust's Solicitors and in accordance with the Trust's Scheme of Delegation. The Head of Risk and Governance will report the matter to the relevant Committee of the Board, including the basis of an assessment of the risk of losing, against the cost in legal fees of continuing. Settlement of claims of doubtful merit, purely on a 'nuisance value' basis will be avoided. In respect of non-reportable claims, the Trust would not be able to recover any costs from NHS Resolution.
- 8.4 All financial issues, monitoring and reporting are the responsibility of the Assistant Director of Finance (Financial Services).

9. Reporting

- 9.1 The Head of Risk and Governance will meet regularly with the Director of Governance to discuss the receipt, handling and management of claims.
- 9.2 An anonymised monitoring report on claims management will be produced annually for consideration by the Quality & Safety Committee, to consider claims handling arrangements, numbers, outcomes, trends and lessons learned.
- 9.3 If necessary, exception reports will be taken to the Executive Team and/or the Quality & Safety Committee, or any other appropriate Forum, as agreed with the Director of Governance.
- 9.4 Any risk management issues arising from claims will be shared as appropriate with relevant Directors across the Trust, including lessons learned in the context of the quality of future service provision.
- 9.5 Notification of new claims related to Third Parties will be forwarded to the Assistant Director of Finance (Financial Services) for financial monitoring and reporting purposes.

10. Training

- 10.1 Appropriate key Managers and other staff will be trained on incident investigation and, if appropriate, root-cause analysis and should apply this training to the investigation of claims.

11 Consultation

Consultation has taken place with the Complaints Manager and Assistance Director of Finance

12 References

NHS Resolution scheme rules

13 Associated Documents

- Complaints and Concerns policy
- Risk Management Policy

- Scheme of Delegation
- Incident Reporting Policy

PART THREE - MONITORING

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements	Acting on recommendations and Lead(s)	Change in practice and lessons to be shared
a. Duties.	Head of Risk and Governance	Review, report and by spot checks	Ongoing (i.e. through spot checks and as issues arise) and through case reporting	The Head of Risk and Governance will keep under review the duties set out in this policy and will raise any changes to be made with the Director of Governance. Any changes in duties will be reported to the relevant Committee and amendments will be made to this policy.	Appropriate amendments will be made to this policy to reflect any changes made to duties.	The Corporate Risk Manager will be responsible for notifying/implementing any changes to duties within a specific timeframe providing training, raising awareness and putting in processes where required.
b. NHS RESOLUTION schemes relevant to the organisation	Head of Risk and Governance	Ongoing monitoring of relevant regulation and guidance in respect of schemes	Ongoing	The Head of Risk and Governance will notify the Director of Governance, relevant staff and the appropriate Committee of any guidance or regulations affecting the operation of NHS Resolution schemes.	Appropriate amendments will be made to this policy to reflect any changes made in respect of the operation of the schemes.	The Head of Risk and Governance will be responsible for ensuring that any process changes are implemented and cascaded to staff providing training where appropriate.
c. Action to be taken, including timescales	Head of Risk and Governance	Ongoing and on a case by case basis as they arise	Ongoing and case by case	The Director of Governance, relevant staff and appropriate Committees will be provided with timely updates on individual cases as they progress. An annual monitoring	The Head of Risk and Governance and appropriate Directors will be responsible for ensuring that any action following the settlement/conclusion of cases are implemented within specific timeframes.	Any changes in practice following the investigation of claims will be implemented by appropriate Directors and staff within specified

				report on claims management and actions taken will be provided to the Quality and Safety Committee.		timescales.
d. How the organisation communicates with relevant stakeholders, such as staff, claimants, NHS RESOLUTION, solicitors, HM Coroner etc.	Head of Risk and Governance	Ongoing liaison throughout individual claims management to ensure any specified timescales are met	On case by case basis	The Head of Risk and Governance will report any communication issues affecting claims management to the Director of Governance, relevant staff and appropriate Committees.	The Head of Risk and Governance and relevant staff will be responsible for implementing any action affecting communication with relevant stakeholders.	Any lessons learnt in relation to communication will be cascaded to staff by the Head of Risk and Governance through timely updates with training being provided where appropriate.
e. How the organisation monitors compliance with all of the above	Quality and Safety Committee	Report	On exception basis and by annual reporting	The Quality and Safety Committee will scrutinise reports to ensure that effective arrangements are in place for claims management.	The Head of Risk and Governance will be responsible for ensuring that any recommendations made by the Quality and Safety Committee are implemented within specified timescales.	Any changes in claims management will be cascaded by the Head of Risk and Governance to relevant staff and training will be provided where appropriate.