



# CLAIMS HANDLING POLICY

<b>POLICY NO &amp; CATEGORY</b>	<b>CG03</b>	<b>Corporate Governance</b>
<b>Version number and date</b>	<b>7</b>	<b>November 2020</b>
<b>Ratifying committee or executive director</b>	<b>Trust Clinical Governance Committee</b>	
<b>Date ratified</b>	<b>December 2020</b>	
<b>Next anticipated review</b>	<b>December 2023</b>	
<b>Executive director</b>	<b>Executive Director of Nursing</b>	
<b>Policy lead</b>	<b>Head of Legal Department</b>	
<b>Policy author (if different from above)</b>	<b>Trust Lawyer</b>	
<b>Exec Sign off Signature (electronic)</b>		
<b>Disclosable under Freedom of Information Act 2000</b>	<b>Yes</b>	

## POLICY CONTEXT:

- The requirements of this Policy apply to all Trust staff at all sites.
- This Policy sets out procedure for the reporting, investigation, and management of actual and potential claims.

## POLICY REQUIREMENT (see Section 2):

- The Trust will follow the requirements and note the recommendations of NHS Resolution (NHSR), mandated by the Department of Health/NHS England, in the management of claims. It shall also comply with UK legislation and statutory instruments as applicable, including but not limited to the Civil Procedure Rules 1998 currently in force and associated Pre-Action Protocols (e.g. for Personal Injury Claims and Resolution of Clinical Disputes), Employment Rights Act 1996.

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## **1. Introduction**

### **1.1. Rationale (why)**

Birmingham and Solihull Mental Health NHS Foundation Trust recognises that there will be occasions when individuals will consider that they have legal grounds to start a claim against the Trust. The purpose of this policy is to provide a mechanism for identifying and responding to claims.

### **1.2. Scope (when, where and who)**

This policy applies to actual and potential claims (e.g. for clinical negligence, personal injury, employment) brought against the Trust, which may or may not fall to be administered by NHS Resolution (NHSR) in collaboration with the Trust's Legal Department. NHSR provides indemnity cover to NHS providers and handles legal claims made against NHS bodies through different schemes, the most commonly used by Birmingham and Solihull Mental Health NHS Foundation Trust being the Clinical Negligence Scheme for Trusts (CNST) and Liabilities to Third Parties Scheme (LTPS).

This policy does not apply to the ex gratia claim procedure which offers financial compensation to staff, service users and visitors for hardship, or for loss of or damage to personal property where the Trust is at fault. Details of the ex gratia claim procedure are available to view on the Trust's intranet page.

The Trust will follow the spirit of this policy in the management of its own property claims which may fall to be administered under NHSR's Property Expenses Scheme. Subject to the stipulated exclusions, the Trust may pursue a claim for reimbursement following a property damage expense – arising from accidental loss, destruction of or damage to the property of the Trust.

Every member of staff is expected to cooperate fully with the Trust Legal Department and any appointed external solicitors in the investigation and management of claims.

### **1.3. Principles**

The Trust's aim is to:

- take a systematic approach to claims handling in line with best practice and guidance issued by the Department of Health/NHS England, NHSR and the Courts;
- ensure that claims against the Trust are handled fairly and consistently;
- take a proactive approach to try and resolve justified claims efficiently, and defend unjustified claims robustly;
- ensure that lessons are learned from claims and appropriately shared in order to help reduce adverse incidents and the likelihood of claims being made in the future.

## 2. Policy

The Trust is committed to effective and timely investigation of and response to any claim. The Trust's aim is to reduce the incidence and adverse impact of claims by adopting a prudent risk management approach that includes continuous review and a systematic approach to claims handling in line with best practice and guidance issued by the Department of Health/NHS England, NHR and the Courts.

## 3. Procedure

### 3.1. Classification of claims

Claims can be divided into a number of sub groups and will be classified by the Trust in one of the following categories (this is not an exhaustive list):

Clinical Negligence	<p>This is a claim where an individual has been injured as a result of the negligence of another person. The negligence must have fallen short of acceptable professional standards and the harm suffered must be shown to be directly linked with the failure of the healthcare professional.</p> <p>For the Trust, it is common for clinical negligence claims to arise following adverse findings at inquests (investigation held in public at a coroner's court to establish the circumstances surrounding a service user's death).</p> <p>Clinical Negligence claims are reported to NHR as the Trust is a member of NHR's Clinical Negligence Scheme for Trusts (CNST) which handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995 (or when the body joined the scheme, if that is later). The NHS body remains the legal Defendant but NHR takes over full responsibility for handling the claim and meeting the associated costs.</p>
Personal Injury	<p>This type of claim can be brought by NHS staff, service users and members of the public.</p> <p>The Trust generally handles two types of personal injury claim:</p> <ul style="list-style-type: none"><li>a. Employers' liability – this is a claim against an employer by a staff member following an adverse incident at work resulting in injury or loss.</li><li>b. Public liability – this is a claim against a public body (which includes a NHS Trust) by an individual following an adverse incident on the organisation's premises or third party premises resulting in injury or loss.</li></ul> <p>Causes of action giving rise to personal injury claims are straightforward slips and trips, serious workplace manual handling incidents, bullying and stress and unlawful detention.</p>

	<p>Personal injury claims (non-clinical) are reported to NHSR as the Trust is a member of NHSR's Liabilities to Third Parties Scheme (LTPS) which handles all employers' liability and public liability claims against member NHS bodies where the incident in question took place on or after 1 April 1999 (or when the body joined the scheme, if that is later). The NHS body remains the legal Defendant. LTPS claims are subject to excesses (£3,000 for public liability, £10,000 for employers' liability), with members responsible for funding below-excess claims themselves. NHSR will handle claims below the excess for members at no cost.</p>
Employment Tribunal claims	<p>These are claims brought by individuals who deem that have been treated unlawfully by their employer, a potential employer or a trade union. Unlawful treatment can include unfair dismissal, discrimination and unfair deductions from pay.</p>
Human Rights Act (HRA) 1998	<p>This is a claim against a public body by an individual for acting incompatibly with their rights under the HRA 1998.</p>
Judicial Review	<p>Any person with a sufficient interest in a decision or action by a public body can ask the court to review the lawfulness of a decision made (or lack of a decision made) or action taken (or lack of action taken).</p> <p>Judicial review is only available when there are no meaningful alternative ways that the dispute can be resolved.</p> <p>Decisions of public bodies can be challenged on a number of different grounds, e.g. the decision is irrational, the procedure followed is unfair or biased. If an application is successful, the court has four potential orders it can grant to the Claimant:</p> <ul style="list-style-type: none"> <li>• Quashing order – the original decision is declared invalid and the public body has to take the decision again.</li> <li>• Prohibiting order – the public body is forbidden from doing something unlawful in the future.</li> <li>• Mandatory order – the public body is ordered to do something specific which it has a duty to do.</li> <li>• Declaration order – e.g. a declaration on a way to interpret the law in future.</li> </ul>

### 3.2. Identification and reporting of a claim/potential claim

3.2.1. Actual claims will be apparent from receipt of a Letter of Notification, Claim Form or Letter of Claim. Such correspondence is usually sent by solicitors acting on behalf of a Claimant (the party bringing the claim).

3.2.2. An example of a potential claim is where the Trust receives a letter enclosing an 'application on behalf of a patient for medical records for use when court proceedings are contemplated'. Again, such correspondence is usually sent by solicitors acting on behalf of a Claimant (where medical records are requested, the Legal Department

will liaise with the Care Records Department to determine which department will assume conduct of the matter).

- 3.2.3. Any correspondence received in the Trust, to whomever it is addressed, which indicates that the intention is to make a claim against the Trust must be forwarded to the Legal Department without delay.

### **3.3. Management of claims**

- 3.3.1. Upon receipt of a formal claim or notification of a potential claim by post or fax, the Legal Department shall promptly review the correspondence to determine the appropriate classification of the matter. The Legal Department shall then proceed to open an electronic and/or paper file for the purpose of storing all related correspondence. The claim shall also be added to Safeguard, the case management system.

*\*\*In respect of claims, the Legal Department does not accept service of documents by email.*

- 3.3.2. Formal claims must be reported promptly (or in any event, in accordance with NHR guidance) to NHR via the NHR's electronic Claims Management System. Once the claim has been submitted, NHR will make contact with the member of the Legal Department who reported the matter to confirm whether the claim will be managed under one of its schemes and if so, the details of the NHR case handler and the designated claim reference. NHR will continue to liaise with the Trust Legal Department for the duration of the claim.
- 3.3.3. NHR might elect to appoint external solicitors (referred to as 'panel solicitors') from its panel of law firms for clinical and non-clinical claims. Panel solicitors will take over full responsibility for handling the claim with assistance from the Trust Legal Department.
- 3.3.4. In respect of potential claims, the Legal Department shall review and assess the correspondence to determine whether there is a serious risk of litigation. If it is felt that there is a significant risk, the Legal Department will refer the matter to NHR for consideration of whether it can be handled under one of the schemes or whether it should be managed in-house by the Trust Legal Department.
- 3.3.5. For potential claims, the Legal Department will continue to monitor the risk status of the matter as it progresses. If at any point a significant litigation risk is established, the matter will be reported to NHR without delay.
- 3.3.6. Where appropriate, the Legal Department will acknowledge receipt of the correspondence in accordance with prescribed legal procedure, such as that set out in the Civil Procedure Rules or other statutory instrument (e.g. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2020). In some cases, the Legal Department will not be

required to acknowledge the correspondence if the matter has been referred to NHSR which will undertake the task of acknowledging correspondence itself.

- 3.3.7. Within seven working days of receipt of a formal claim, the Legal Department will notify those colleagues as deemed appropriate of the circumstances of the claim for information purposes (e.g. Executive Director of Operations, Estates & Facilities and Health & Safety Departments for LTPS claims; Medical Director and Clinical Director of the relevant service area for CNST claims). The team will also contact the staff involved or identified within the claim to ask for comments. These will then be forwarded to NHSR or Panel firm.
- 3.3.8. The Legal Department will continue to keep those colleagues identified for the purposes of clause 3.3.7 above and those staff involved in the claim updated on key developments as and when such developments arise, e.g. an admission of liability is to be made, payment of damages, scheduled court proceedings, etc.
- 3.3.9. Where media interest is anticipated in relation to a claim or is already apparent, the Legal Department will report the matter to the Chief Executive and the Head of Communications and Marketing for advice and/or instructions.
- 3.3.10. The Legal Department will ensure that claims are formally responded to either by itself or by its proxies (NHSR or panel solicitors) in accordance with mandatory timeframes set out in UK legislation/statutory instruments.
- 3.3.11. The Legal Department shall regularly review the file status of open claims and ensure that databases are kept up to date to reflect the current state of play.
- 3.3.12. The Legal Department shall ensure that files are closed and archived appropriately following the conclusion of claims in line with GDPR. For this purpose, the Legal Department must adhere to the minimum retention periods set out in the Records Management Code of Practice for Health and Social Care 2016.

#### **3.4. Involving external agencies**

3.4.1. Some cases may be sufficiently serious to:

- refer to the Police;
- involve external agencies such as the Local Authority/Council.

If it is deemed by staff that cases require escalation due to the degree of seriousness, they should immediately be referred to the Legal Department which will raise the matter with appropriate colleagues.

## 4. Responsibilities

4.1. The Trust Board member with responsibility for claims will be the Executive Director of Nursing who will keep the Board informed of major developments on claims related issues via the Associated Director of Governance and Head of Legal Department

4.2. . The Head of the Legal Department will be responsible for ensuring arrangements are in place for the efficient and proactive management of claims, reporting directly to the Executive Director responsible, and will ensure the following:

- monitoring of the progress and outcome of claims, including expected settlement dates;
- maintenance of the claims databases held locally within the department including Safeguard case management system;
- maintenance and storage of paper and electronic files and archiving as and when required;
- the provision of claims data to the Clinical Governance Committee via the Integrated Quality Report in accordance with the Trust's Reporting, Management and Learning from Incidents Policy;
- the provision of reports on the management and progress of current claims to the Executive Directors/Trust Board, as and when required;
- relevant professional advice or approval is sought as and when required from the Executive Directors/Trust Board;
- timely co-operation with requests from the Trust's external legal advisers for information or assistance.

4.3. The Trust Lawyer, working with the Legal Department, has day to day management responsibility for all claims .The conduct and control of all claims and claims documentation is the responsibility of the Legal Department which will ensure continuity of cover in the event of absence, through whatever means appropriate.

4.4. Every member of staff must reasonably co-operate with the Legal Department and any appointed external solicitors in the assessment, investigation and management of claims. This includes but is not limited to complying with requests for information, participating in staff interviews, providing witness statements, attending court hearings.

4.5. If co-operation from staff is not forthcoming, the Legal Department reserves the right to escalate the matter via the management hierarchy. Unreasonable

failure to co-operate may lead to the Trust taking appropriate action against individuals.

4.6. A summary of responsibilities is set out below:

<b>Post(s):</b>	<b>Responsibilities:</b>
<b>Executive Director of Nursing</b>	To keep the Board informed of major developments on claims related issues via the Associated Director of Governance and Head of the Legal Department
<b>Head of the Legal Department</b>	Responsible for ensuring arrangements are in place within the Legal Department for the efficient and proactive management of claims.
<b>Trust Lawyer</b>	To hold day to day management responsibility for all claims
<b>Legal Department</b>	To retain conduct and control of all claims and claims documentation, and ensure continuity of cover in the event of absence, through whatever means appropriate.
<b>Service, Clinical and Corporate Directors</b>	Upon receipt of notifications of claims, to take appropriate action (e.g. disseminate relevant information to their service area) and liaise with the Legal Department as and when required.
<b>All Staff</b>	Must reasonably co-operate with the Legal Department and any appointed external solicitors in the assessment, investigation and management of claims.

## 5: Development and Consultation process

<b>Consultation summary</b>		
<b>Date policy issued for consultation</b>	September 2020	
<b>Number of versions produced for consultation</b>	1	
<b>Committees / meetings where policy formally discussed</b>	<b>Date(s)</b>	
<b>PDMG</b>	28 <sup>th</sup> October 2020	
<b>Where received</b>	<b>Summary of feedback</b>	<b>Actions / Response</b>
N/A	N/A	N/A

## 6: Reference documents

- NHSR Clinical Negligence Scheme For Trusts Membership Rules April 2001 (revised 1 May 2014); <https://resolution.nhs.uk/services/claims-management/clinical-schemes/clinical-negligence-scheme-for-trusts/>
- NHSR Liabilities To Third Parties Scheme Membership Rules October 2014; <https://resolution.nhs.uk/services/claims-management/non-clinical->

## [schemes/risk-pooling-schemes-for-trusts/liabilities-to-third-parties-scheme/](#)

- NHSR Property Expenses Scheme Membership Rules October 2014; <https://resolution.nhs.uk/services/claims-management/non-clinical-schemes/risk-pooling-schemes-for-trusts/property-expenses-scheme/>
- Records Management Code of Practice for Health and Social Care 2016; <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/codes-of-practice-for-handling-information-in-health-and-care/records-management-code-of-practice-for-health-and-social-care-2016>
- BSMHFT The Reporting, Management & Learning from Incidents Policy (RS02,Version5). <http://connect/corporate/governance/Policies/The%20Reporting,%20Management%20and%20Learning%20from%20Incidents%20Policy.pdf>

### **7: Bibliography**

- Database of all UK legislation: [www.legislation.gov.uk](http://www.legislation.gov.uk);
- Civil Procedure Rules: [www.justice.gov.uk/courts/procedure-rules](http://www.justice.gov.uk/courts/procedure-rules).

### **8: Glossary** consisting of:

- Litigation: the process of taking legal action;
- Liability: responsibility or answerability in law;
- Legislation: law which has been enacted by an assembly or body which the authority to do so or the process of making it;
- Statutory instrument: a form of legislation which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act. They are also referred to as secondary, delegated or subordinate legislation.
- Safeguard: The Trust's electronic case management system supplied by Ulysses.
- Service of documents: bringing documents used in court proceedings to a person's attention either by postal or personal delivery. That person is usually the Claimant or Defendant in the proceedings.

### **9: Audit and assurance** consisting of:

<b>Element to be monitored</b>	<b>Lead</b>	<b>Tool</b>	<b>Frequency</b>	<b>Reporting Committee</b>
Provision of information to Trust Board of major developments on claim related issues	Executive Director of Nursing	Escalation Report from IQC	On Case by Case Basis	Trust Board
Monitoring of progress and outcome of claims	Executive Director of Nursing	Integrated Quality Report	Quarterly	Integrated Quality Committee
Monitoring of specific issues in each claim	Trust Lawyer	Monthly reviews of paralegal case files	Monthly	Not Applicable
Monitoring of claims procedure	Head of Legal Department	Reviews on relevant file	Quarterly	Not applicable
Communication of risk management recommendations arising from claims	Head of Legal Department	Integrated Quality Report	Quarterly	Integrated Quality Committee

## **10: Appendices**

### 10.1. Appendix 1 – Equality Impact Assessment



## 10.1. Appendix 1 – Equality Impact Assessment

### Equality Analysis Screening Form

A word version of this document can be found on the HR support pages on Connect  
<http://connect/corporate/humanresources/managementsupport/Pages/default.aspx>

<b>Title of Proposal</b>	<b>Claims Handling Policy</b>		
<b>Person Completing this proposal</b>	Safia Khan	<b>Role or title</b>	Head of Legal Department
<b>Division</b>	Corporate	<b>Service Area</b>	Legal Department
<b>Date Started</b>	August 2020	<b>Date completed</b>	September 2020
<b>Main purpose and aims of the proposal and how it fits in with the wider strategic aims and objectives of the organisation.</b>			
To provide details of the procedure for the reporting management and investigation of actual and potential claims against the Trust			
<b>Who will benefit from the proposal?</b>			
All Trust employees			
<b>Impacts on different Personal Protected Characteristics – Helpful Questions:</b>			
<i>Does this proposal promote equality of opportunity? Eliminate discrimination? Eliminate harassment? Eliminate victimisation?</i>		<i>Promote good community relations? Promote positive attitudes towards disabled people? Consider more favourable treatment of disabled people? Promote involvement and consultation? Protect and promote human rights?</i>	
<b>Please click in the relevant impact box or leave blank if you feel there is no particular impact.</b>			

<b>Personal Protected Characteristic</b>	<b>No/Minimum Impact</b>	<b>Negative Impact</b>	<b>Positive Impact</b>	<b>Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.</b>
<b>Age</b>	N/A	N/A	N/A	N/A
Including children and people over 65 Is it easy for someone of any age to find out about your service or access your proposal? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
<b>Disability</b>	N/A	N/A	N/A	N/A
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
<b>Gender</b>	N/A	N/A	N/A	N/A
This can include male and female or someone who has completed the gender reassignment process from one sex to another Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your proposal?				
<b>Marriage or Civil Partnerships</b>	N/A	N/A	N/A	N/A
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
<b>Pregnancy or Maternity</b>	N/A	N/A	N/A	N/A
This includes women having a baby and women just after they have had a baby Does your service accommodate the needs of expectant and post natal mothers both as staff and service users? Can your service treat staff and patients with dignity and respect relation in to pregnancy and maternity?				
<b>Race or Ethnicity</b>	N/A	N/A	N/A	N/A
Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees What training does staff have to respond to the cultural needs of different ethnic groups? What arrangements are in place to communicate with people who do not have English as a first language?				
<b>Religion or Belief</b>	N/A	N/A	N/A	N/A

Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area? When organising events – Do you take necessary steps to make sure that spiritual requirements are met?				
<b>Sexual Orientation</b>	N/A	N/A	N/A	N/A
Including gay men, lesbians and bisexual people Does your service use visual images that could be people from any background or are the images mainly heterosexual couples? Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?				
<b>Transgender or Gender Reassignment</b>	N/A	N/A	N/A	N/A
This will include people who are in the process of or in a care pathway changing from one gender to another Have you considered the possible needs of transgender staff and service users in the development of your proposal or service?				
<b>Human Rights</b>	N/A	N/A	N/A	N/A
Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger? The detention of an individual inadvertently or placing someone in a humiliating situation or position?				
<b>If a negative or disproportionate impact has been identified in any of the key areas would this difference be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)</b>				
	<b>Yes</b>	<b>No</b>		
<b>What do you consider the level of negative impact to be?</b>	<b>High Impact</b>	<b>Medium Impact</b>	<b>Low Impact</b>	<b>No Impact</b>
	N/A	N/A	N/A	N/A
If the impact could be discriminatory in law, please contact the <b>Equality and Diversity Lead</b> immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required.				
If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the <b>Equality and Diversity Lead</b> before proceeding.				
If the proposal does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the <b>Equality and Diversity Lead</b> .				

<b>Action Planning:</b>
How could you minimise or remove any negative impact identified even if this is of low significance? n/a
How will any impact or planned actions be monitored and reviewed? n/a
How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.
Please save and keep one copy and then send a copy with a copy of the proposal to the Senior Equality and Diversity Lead at <a href="mailto:hr.support@bsmhft.nhs.uk">hr.support@bsmhft.nhs.uk</a> . The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis.