

Trust Policy

Leagl Services Department

Claims Policy

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1.0 Introduction

Barnsley Hospital NHS Foundation Trust acknowledges its duty to ensure that appropriate financial and risk management systems are in place and any losses are minimised.

This policy is to set out the process for managing all claims and inquests in accordance with any guidance from the Legal Services Department, the NHS Litigation Authority (NHS LA) and other applicable insurers'. The Trust complies with the requirements of the Pre-Action Protocol for the Resolution of Clinical Disputes, the Pre-Action Protocol for Personal Injury and the Civil Procedure Rules.

The policy has been developed in order to describe:

- Key duties in respect of claims management
- The requirements of the NHS LA schemes relevant to the Trust (CNST, LTPS & PES)
- Action to be taken, including timescales
- Support procedures for staff involved with claims and/or inquests.
- Communication with relevant stakeholders
- The process for monitoring compliance with all of the above

Clinical negligence - the NHS LA handles all clinical negligence claims against member NHS bodies.

As part of the CNST scheme the NHS LA may agree to fund (in whole or part) the costs associated with an inquest hearing where there is a clear risk of a claim arising from the subject matter of the inquest.

The Trust will handle any claim it receives in accordance with its Claims Handling Procedure (see Appendix 1). Such procedures will:

Incorporate guidance issued by the NHS LA or other insurer
Reflect guidance received from the NHS Executive

The Trust will handle any inquest in accordance with its Inquest Handling Procedure (see Appendix 2).

Liabilities to Third Party Schemes - LTPS covers employers' liability claims, from straightforward slips and trips in the workplace to serious manual handling, bullying and stress claims. In addition, LTPS covers public and product 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*. There is also cover for defamation, professional negligence by employees and liabilities of directors.

Property Expenses Scheme - PES provides cover for "first party" losses such as theft or damage to property.

Detailed information on the scope of these schemes is set out in the LTPS and PES rules, while the LTPS reporting guidelines and RPST report form set out how members should report claims. Claims can now also be reported electronically via the NHS LA Claims Management System (CMS).

2.0 Objective

Clinical negligence and personal injury litigation is a rapidly growing cost to the NHS. It is the Trust's policy to maintain membership of the NHS Litigation Authority's (NHS LA's) Schemes for **Clinical Negligence (CNST)** **Liabilities to Thirds Parties (LTPS)** and **Property Expenses Scheme (PES)**. Claims handling and co-ordination is carried out in line with current best practice, and in accordance with guidance issued by the NHSLA.

The aim of this policy is to ensure that the Trust fulfils its duties in the handling of all claims, potential claims and inquests. Effective management of claims, potential claims and inquests are required in order that information is collected to help facilitate wider organisational learning and ensure healthcare governance issues are addressed, to secure savings in the cost of litigation and to manage issues that may raise media interest to protect the reputation of the Trust and its staff.

3.0 Scope of Policy

All employees of Barnsley Hospital NHS Foundation Trust should be aware of the Policy.

4.0 Policy

Claims Handling Procedure

The Trust's Claims Handling Procedure (see appendix 1), to be read alongside current NHS LA guidelines, sets out the detailed procedure to be followed for potential clinical negligence claims from Request for Records Disclosure stage through to Settlement and Archive.

Notification of a Claim

The Trust can be notified of a claim or a potential claim via the DATIX incident report system.

The Trust Solicitor should be provided with all correspondence relating to requests for disclosure; possible claims arising out of complaints, SI's or inquests; a formal Pre-Action Protocol Letter of Claim; or Service of Court proceedings, so that these can be entered into the DATIX system.

Inquests

Where legal representation has been engaged either directly by the Trust or through the NHS LA inquest funding protocol, the Trust Solicitor shall clarify at the pre-inquest witness meeting whether the case is likely to require the Legal Service

Manager's attendance at the inquest hearing. This decision will need to be taken on a case by case basis considering the relative complexity and risk of the particular inquest case and the support required by the particular staff witnesses called.

External Legal Advice

Where staff identify that legal advice is required they should contact the Legal Services Department in the first instance to identify if this can be provided by the Trust Solicitor. If this is not the case then external legal advice will be authorised. The member of staff should follow the procedure to access legal advice set out in Appendix 3. No external advice should be sought without prior authority.

5.0 Roles and Responsibilities

Chief Executive

The Chief Executive has ultimate responsibility for all claims against the Trust and for ensuring that robust systems are in place for the management of claims.

Director of Nursing & Quality

The Director of Nursing & Quality is the Board Member/Director with overall responsibility for Risk Management including claims management and through the Head of Quality and Clinical Governance or Trust Solicitor will keep the Governance Committees and Trust Board informed of any major developments.

Governance Lead

The Governance Lead is responsible for ensuring that all potential claims arising from SI's are directed to the Legal Services Department. The Governance Lead is responsible for making sure information is collected from the DATIX system to help facilitate wider organisational learning and ensure healthcare governance issues are addressed.

Trust Solicitor

The Trust Solicitor is responsible for ensuring that there is a policy and procedures in place for the management of all claims made against the Trust, and appropriate resources to manage the demand on the service. The Trust Solicitor is also responsible for maintaining programmes of insurance or membership of the NHS LA, and co-ordinates the appointment of Trust Legal Advisors.

The Trust Solicitor will complete an analysis of breach of duty and causation on all potential claims and consider the proposed future action on such matters with the Claims Co-ordinator.

Where the Trust seeks legal advice on health matters this must be directed to the Trust Solicitor in the first instance. This will be dealt with in accordance with the procedure for obtaining legal advice. (Appendix 3)

Trust Solicitor and Claims Co-ordinator

The Trust Solicitor and Claims Co-Ordinator and responsible for the day-to-day management and co-ordination of the claims and inquests. On a day-to-day basis they are responsible for:

- All clinical negligence claims, EL claims, PL claims against the Trust
- Ensuring support is provided to all staff involved in the claims and/or potential claims and/or inquests.
- To manage 'in-house' claims and potential claims which do not require referral to the NHS LA. This will involve managing ex-gratia payments in accordance with the requirements of the Trust.
- To report relevant claims and inquests to the NHS LA via the CMS.
- Liaise closely with the NHS LA and Panel Solicitors in progressing claims that have been reported on the CMS.
- To act as Trust contact for HM Coroner and attend inquest hearings or arrange external legal representation if necessary. The decision to instruct external solicitors will be made by the Trust Solicitor.
- To establish and maintain an accurate information on all the claims, potential claims and inquests on DATIX. This will include current status, potential value and solicitors costs and estimated year of settlement.
- To ensure regular reporting to the Patient Safety Group and Trust Litigation Group when admissions of liability are considered/ to be made or a claim is to be settled.
- To ensure a systematic approach to the analysis of claims and inquests. Regular reporting of data and consideration of claims and inquests will be done through the Trust Litigation Group.

External Legal Advisers

The Trust may appoint legal advisers to provide a range of legal services, including advice on clinical negligence, inquests, health and regulatory matters. The decision to instruct external legal advisers must be dealt with in accordance with the procedure for obtaining legal advice. (Appendix 3)

The Trust recognises that the NHS LA has a panel of Legal Advisors and will instruct a Panel Firm in relation to certain claims notified to it by the Trust. The current Panel Solicitors are DAC Beachcroft. The Trust will handle such claims in accordance with guidance issued from time to time by the NHS LA.

Subject to any requirements of the NHS LA or other insurers, legal advice will be considered and obtained at appropriate stages. This will be determined by the Trust Solicitor and Claims Co-ordinator.

Speciality and Departmental Managers

All identified claims or incidents that may give rise to a claim, must be notified to the Trust Solicitor or Claims Co-ordinator as soon as practicably possible. This includes-

Clinical negligence
Employer liabilities

Public and products liabilities
Directors' and Officers' Liabilities
Professional Indemnity
Personal Accident
Income Generation Activities
Property damage
Business interruption
Money
Goods in transit
Engineering
Fidelity guarantee
Fidelity guarantee (*Charitable Funds*)
Contract works

Managers should also alert the Trust Solicitor of any untoward incident having a significant potential for a claim, identified through the Incident Reporting procedure, and follow-up investigations or other mechanism. Serious Untoward Incidents must be highlighted as soon as practicably possible, and with the outcome to any local investigation (Root Cause Analysis) completed.

The Complaints Manager considers each and every formal complaint for the potential for a Claim for compensation of other loss. If a potential claim is identified the Complaints Manager will report this to the Trust Solicitor.

All Trust Staff

All Trust staff must ensure they are familiar with the Claims Policy and Procedure.

Staff must alert Speciality or Department Managers to incidents which they believe may lead to a claim by completing an incident form.

All staff (including retired or -those having left the Trust's employment) must also cooperate with investigations by providing comments and statements when requested in a timely fashion.

6.0 Associated documentation and references

References

Current CNST Reporting Guidelines
Reporting Claims to the NHS LA
CNST/LTPS/PES Membership Rules
Chief Coroners Guidance Notes
Claims Handling Procedure (appendix 1)
Inquest Procedure (appendix 2)
Procedure for obtaining legal advice (appendix 3)
Duty of Candour – Being Open Policy
Incident Reporting Policy

7.0 Training & Resources

Knowledge & Skills

It is a requirement of identified post holders within the Legal Services Department to have a relevant qualification or equivalent experience for claims handling and/or to advise on the law relating to hospitals and negligence.

Directors and Managers are also expected to have an appropriate level of knowledge and experience to manage claims in accordance with the law, and the hospital's procedure.

Training

The role of the Learning & Development Department in liaison with Departmental Managers is to identify training needs via staff appraisal to ensure relevant training programmes are established if necessary. Programmes of learning and training which cover basic awareness of claims handling for managers are available and will continue to be developed and maintained within the Trust to ensure high standards of practice.

Training programmes include:

Investigation of Incidents, Complaints and Claims

Risk Awareness (for Senior Managers) and Risk Registers

3 day Health & Safety Training

On induction into their department all staff will receive a local induction to include formal teaching and guidance for processes that may be required in the investigation and avoidance of untoward incidents and subsequent claims. This induction may be complemented by a preceptorship programme. This induction will include how to report a claim on the current reporting system, DATIX. Staff will also be made aware of incidents that may result in a claim. In high risk specialties, i.e. Maternity Services, additional guidelines are made available for staff to follow at local level.

All staff must follow the Incident Reporting policy and procedures and the opportunity to identify potential claims will become known contemporaneously and be handled accordingly.

Claims Data

The Legal Services Department will maintain a database of claims information on the Datix system. The information held will be used to populate internal governance reports as required in accordance with monitoring arrangements, please see the reporting arrangements section for full details.

8.0 Monitoring and Audit

The Trust will ensure that there continues to be a mechanism whereby the Trust Solicitor or Claims Co-ordinator can notify any relevant risk management issue which has been identified during claims handling to appropriate individuals or groups within the Trust. Specifically this will include Directors, Quality and Governance Committee, Governance Lead, Patient Safety Group, , and Health and Safety Group where further consideration and action may take place.

To ensure proper review and governance, the Patient Safety Group is updated on new and on going claims assessed by the Trust Solicitor on preliminary investigation

as being of a medium / high probability outcome on a monthly basis. Additionally all new Requests for Disclosure of Records are reported to the Litigation Group where claims analysis is undertaken. The Litigation Group provides a brief assessment of the Claim and risk factors that will direct the subsequent investigation and claims handling. Minutes/Action Sheets are maintained.

A monthly activity analysis is reported to individual Clinical Business Units (CBU's) and to the Patient Safety Group and onward to the Quality and Governance Committee as required. For Non-Clinical Claims a formal report on each claim is made to the Quality and Governance Committee and payments made are reported directly to the Audit Committee for scrutiny.

An annual report providing detailed analysis of trends and risk management issues is provided to the Quality and Governance Committee.

Day to day monitoring of this policy is the responsibility of the Trust Solicitor.

9.0 Equality and Diversity

Trust is committed to an environment that promotes equality and embraces diversity in its performance as an employer and service provider. It will adhere to legal and performance requirements and will mainstream equality and diversity principles through its policies, procedures and processes. This policy should be implemented with due regard to this commitment.

To ensure that the implementation of this policy does not have an adverse impact in response to the requirements of the Equality Act 2010 this policy has been screened for relevance during the policy development process and a full equality impact analysis conducted where necessary prior to consultation. The Trust will take remedial action when necessary to address any unexpected or unwarranted disparities and monitor practice to ensure that this policy is fairly implemented.

This policy and procedure can be made available in alternative formats on request including large print, Braille, moon, audio, and different languages. To arrange this please refer to the Trust translation and interpretation policy in the first instance.

The Trust will endeavor to make reasonable adjustments to accommodate any employee/patient with particular equality and diversity requirements in implementing this policy and procedure. This may include accessibility of meeting/appointment venues, providing translation, arranging an interpreter to attend appointments/meetings, extending policy timeframes to enable translation to be undertaken, or assistance with formulating any written statements.

9.1 Recording and Monitoring of Equality & Diversity

The Trust understands the business case for equality and diversity and will make sure that this is translated into practice. Accordingly, all policies and procedures will be monitored to ensure their effectiveness.

Monitoring information will be collated, analysed and published on an annual basis as part Equality Delivery System. The monitoring will cover the nine protected

characteristics and will meet statutory duties under the Equality Act 2010. Where adverse impact is identified through the monitoring process the Trust will investigate and take corrective action to mitigate and prevent any negative impact.

The information collected for monitoring and reporting purposes will be treated as confidential and it will not be used for any other purpose.

CLAIMS HANDLING PROCEDURE

GENERAL PRINCIPLES

This procedure applies to all claims and potential clinical negligence claims. In all circumstances the prompt notification of claims is imperative. Any incident or complaint, that may give rise to a claim, must be reported to management at the earliest opportunity.

Signing of Legal Documents. In law, the Trust remains the Legal Defendant to all claims. Therefore, Trust Officers must sign all Defences and other Legal Documents such as Statements of Truth., Consent Orders and Lists of Documents. Those officers currently authorised to sign such documents are the Director of Nursing and Quality, Medical Director, Trust Solicitor and Chief Executive. If none of the above are available a request can be made to another Director.

CLAIMS ADMINISTRATION

CLINICAL NEGLIGENCE CLAIMS (CNST/ELS)

There are no excesses applicable to any of the clinical negligence schemes (CNST/ELS).

All 'potential' clinical negligence claims will be handled by the Trust Solicitor and Claims Co-ordinator. All clinical negligence claims will be handled by the Trust Solicitor and Claims co-ordinator.

Potential claims may come to the Legal Service Team's attention initially through:

- Incident reports from DATIX
- Patient Complaints
- Serious Incident Investigations or,
- Request for disclosure of medical records.
- Pre Action Protocol Letter of Claim
- Service of Proceedings

Most frequently potential claims come to the Trust's attention as request for records disclosure. Only those record requests relating to a potential claim against the Trust are dealt with by the Legal Services Department. Subject access request and request in relation to third party litigation (i.e. personal injury claims) are dealt with by the Medical Records Unit.

Procedure

- Please see the Standard Operating Procedure for disclosure and clinical negligence claims for full procedural details. This can be accessed through SharePoint.

- All requests for records disclosure relating to potential clinical claims are logged onto Datix database and a paper file created with its unique DATIX reference number by the Legal Services Administrator. New disclosures will be discussed at the Litigation Group monthly in order to consider immediate litigation risk.
- The Legal Services Administrator must acknowledge the request for records within 14 days and send an invoice for £50 administration charge. Once the £50 has been paid the 40 day time limit for disclosure commences. A receipt for the fee payment and confirmation of the date when records disclosure is due will then be sent.
- Upon other notification of a potential claim, the Trust Solicitor/ Claims Co-ordinator will log the matter onto DATIX and create a paper file with its unique DATIX reference number.
- The Trust's internal checklist is added to the paper claim files and completed at each stage.
- The Claims Co-ordinator will then search for any relevant complaints or SI's to obtain all related documentation.
- The matter will then be reviewed by the Trust Solicitor to decide if a written report is required by a lead clinician. This may be discussed at the Litigation Group if appropriate.
- Where it is identified a report is required the Trust Solicitor or Claims Co-ordinator will request the lead clinician provides an overview of the patient care, identify any care management issues, identify any relevant policies and procedures, provide an opinion on breach of duty, causation and condition and prognosis, if appropriate, and identify any risk management issues. This report should state it is being prepared in response to actual or contemplated legal action.
- Once this evidence has been collated the Trust Solicitor will undertake a preliminary review to assess breach of duty and causation against the legal criteria to decide if there is a realistic prospect of a claim being made. This assessment must be made within 60 days of the disclosure request.
- In addition the claims manager will comply with the NHS LA Guidelines for reporting claims. This identifies the following timescales for reporting potential claims:

<p>Serious incident where investigations suggest that there have been failings in the care provided and there is the possibility of a large value claim. £500,000 plus.</p>	<p>Report to NHSLA asap but no later than 3 months from when you became aware of the matter</p>
<p>Disclosure request or limitation extension request and internal investigation (e.g. complaint review or incident investigation) reveals a possibility of a claim with a significant litigation risk regardless of value.</p>	<p>Report to NHS LA asap but no later than 1 month from receipt of the disclosure request.</p>
<p>Letter of claim served and/or Part 36 offer received and/or proceedings received.</p>	<p>Report to NHSLA using Claim Report Form within 24 hours of receipt with completed documentation to follow</p>

	within 2 weeks.
Group action – adverse issue with the potential to involve a number of patients	Report irrespective of whether a claim has been notified asap but no later than 1 month from when you became aware of the matter.
Serial Offender claims	Report irrespective of whether a claim has been notified asap

- The information will be sent to the NHS LA via the CMS and electronically by the document transfer system (DTS). This information should include a completed CNST Claim Report Form, copies of relevant correspondence, copies of clinicians statements/reports, relevant policies and procedures and where relevant complaint file or SI.
- The information will form the basis of the NHS LA's advice to the Trust on the future management of the claim. This could take the form of in-house handling under NHS LA instruction or instruction of Panel Solicitors.
- The Legal Service Manager and/or Claims Co-ordinator will be in close liaison with the NHSLA and/or Panel Solicitors about the progression of the claim.
- For in-house claims the NHSLA Authority is required before any admission of liability is made or any monetary compensation is offered. In the absence of such authorisation, the NHSLA will not re-imburse the Trust either for compensation awarded or costs. Such payments will fall outside of the CNST and therefore must be approved by the Director of Finance.
- The NHSLA will always liaise with the Legal Services Department before making any admissions for breach of duty or causation. The Legal Services Department must speak to the relevant clinicians or discuss the matter at the Litigation Group to obtain agreement before admissions are approved. The Legal Services Department will always obtain the agreement of a Director before any admissions are made for claims exceeding a damages value of £500,000..
- A formal Letter of Response will be sent from the NHSLA with the Trust's agreement to the content (unless in the event of a denial of liability in a case with a damages reserve of £50,000.00 or less, where a Letter of Response will be sent under the Panel Firm's delegated authority).
- All payments in settlement of clinical negligence claims are made by the NHSLA. Once the Legal Services Department are notified of settlement of a claim the financial information must be updated on DATIX.
- All staff members involved with the claim will be informed and supported by the Legal Services Department. If the matter is to go to Trial the members of staff will be notified and supported as required.
- On admission of liability and/or settlement of a claim the Trust Solicitor will report this to the Patient Safety Group.
- On conclusion of the claim the Trust Solicitor will ensure that all relevant staff members have been informed of the outcome, DATIX has been updated and original records have been returned to medical records.

- LTPS and PES claims are now likely to be notified to the Trust via the Portal.
- Claims which are entered into the portal will be sent directly to the NHS LA. The Trust will then receive a DTS from the NHS LA notifying them of this claim.
- Any claim which has not been sent through the portal should be reported to the NHS LA immediately.
- The claim will be entered onto the DATIX system and a paper file opened with the unique DATIX reference. This file will be kept up to date.
- Once the file has been opened the Trust Solicitor and/or Claims co-ordinator will obtain the documents relevant to the matter, liaise with relevant departments such as Estates, Human Resources, Occupational Health etc.
- The documents will then be sent to the NHS LA with the Trust's view on the claim.
- The Trust Solicitor and/or Claims co-ordinator will liaise closely with the NHS LA and/or Panel Solicitors in respect of the claim.
- The outcome of the claim will be reported to the relevant stakeholders at its conclusion.

All claims must be notified promptly to the NHS LA to ensure indemnity is provided. The Claims Co-ordinator will assume responsibility for acknowledgement, notification and provisional investigation of any claim in liaison with the Clinical Director, Head of Nursing and General Manager for the CBU. This will include the requirement to submit a Disclosure Statement to the NHS LA under the authority of the Trust Solicitor within the prescribed deadline. Claims will be forwarded to the NHS LA by the Claims Co-ordinator in accordance with the scheme rules, and will maintain on-going liaison with relevant authorities regarding the progress of the claim.

File Closure and Archiving

Claims

On settlement of claims, electronic Datix files are closed and the paper files are archived on site.

Records disclosure

For adult record disclosure requests, files are closed if no further correspondence is received within 6 months of record disclosure. Prior to closure, checks will be made with the person who requested disclosure. If it is indicated the matter is on-going then the file will remain open for a further 6 months.

For records requests relating to minors or patients under a disability, files are closed if no further correspondence is received 12 months post record disclosure. Prior to closure, checks will be made with the person who requested disclosure. If it is indicated the matter is on-going then the file will remain open for a further 12 months.

If the legal representative is no longer instructed the Datix electronic file is closed and paper file archived. For those matters where no response is received, the file is retained in Legal Services for 12 months. If no further correspondence is received

after this period the file is closed on Datix and the paper file is archived. An electronic copy of the disclosure request and file should be retained in all cases.

The archived paper files and electronic files, after 10 years, will be securely destroyed.

AUDIT

The Legal Services Department self audits compliance with benchmark standards (e.g. 40 day disclosure standard) and reports to the Quality and Governance Committee on a quarterly basis on receipt of quarterly reports from the NHSLA.

It is recommended that from time to time Internal Audit randomly review claims files for compliance with relevant guidance and the above procedure. In addition, the NHSLA will arrange to examine a sample of claims as part of the external risk management standards assessment.

REFERENCES

Information, scheme rules, and Guidance can be found at www.nhsla.com or the hospital intranet.

INQUEST HANDLING PROCEDURE**GENERAL PRINCIPLES**

The Trust will provide an effective and timely response to any request by the coroner for assistance with his investigations in to the death of any patient where an inquest has been opened.

All members of staff are required to fully co-operate in the preparation of evidence fro submission to the coroner in a manner consistent with the Trusts openness policy. Staff are also reminded that the GMC and NMC recognise the practitioners have a professional duty to co-operate with the Coroner in his investigation of deaths.

CORONER

The Coroner is an independent Judicial Officer appointed and paid by the Local Authority. The Coroners responsibility is to investigate the circumstances and causes of death in certain cases.

The Coroner is obliged by law to hold an inquest in certain circumstances. An inquest must be held where the death is violent or unnatural, there has been a sudden death, the cause of which is unknown or there has been a death in custody or state detention.

The purpose of the inquest is to establish who the deceased was, when, where and how the deceased came by their death. The inquest is not to apportion blame and is not concerned with civil or criminal liability.

PROCEDURE

- Deaths within the Trust that are reported to the Coroner must also be reported to the Legal Services Department so that an assessment of the litigation risk can take place. Notification of inquests may be made to the team via the mortality review, SI's, complaints, clinicians or the Coroners office.
- Inquests notified to the Legal Services Department will be reviewed by the Trust Solicitor.
- The inquest will be entered onto the DATIX system and a paper file opened with the unique DATIX reference.
- The medical records will be obtained along with any relevant complaint correspondence or SI investigation. The Trust Solicitor/ Claims Co-ordinator will review the relevant information and identify the key staff who are likely to be required at inquest.
- Key staff who have been identified will be asked to provide a statement in contemplation of litigation within 21 days. The Consultant under whom the patient had been admitted may be asked to prepare an overview report/statement within 21 days.
- Once the statements have been produced they will be sent to the Coroner for his review of the matter. The Coroner may request statements from further members of staff and these members of staff will be notified immediately and requested to prepare a statement within 21 days.

- The Trust Solicitor/Claims-co-ordinator will support the members of staff through the process.
- The Coroner will set the date of inquest and confirm which witnesses he will require attendance from.
- Following the inquest all relevant staff will be informed of the outcome.
- The outcome of the inquest will be reported back to the litigation group and Patient Safety Group.

STATEMENT CONTENT

Statements should not be written from memory. The medical records should be reviewed and records cross referenced. Any incorrect or misleading information will need to be explained in the witness box. The statement should therefore be reviewed carefully before it is submitted.

Trust Policies, NICE Guidelines and any investigation reports should be considered.

The statement should contain the qualifications and experience of the member of staff. It should provide a factual chronology/overview giving times and dates. It should not express opinion outside of the clinicians field of expertise. Full details of the structure and content required for statements will be provided by the Legal Services Department when a statement/report is requested.

INQUEST SUMMONS

The Coroner has the power to call anyone as a witness if they are able to provide any information that will assist him establish how the deceased came by their death. The relevant members of staff will be informed of the date of the inquest. The Coroner may issue a summons to the witnesses. If the member of staff is unable to attend the inquest the Coroner will be informed immediately. He may reschedule the inquest. He does have the power to insist on a witnesses' presence. Attendance at the inquest, once summoned, is mandatory. Failure to attend an inquest may result in a fine not exceeding £1,000 and/or imprisonment.

PREPARATION

Before the inquest a Pre Inquest Meeting will be held with the Trust Solicitor and/or the Trust's appointed external Solicitor for any witness who is required to attend the inquest.

The Pre Inquest Meeting may take place with the individual witness or with all witnesses together as a group meeting. At the meeting the inquest process will be explained, witness queries will be answered, support will be provided, possible issues that may arise at inquest will be identified and discussed and conflicts will be identified.

THE INQUEST

The inquest is held in open court. At the inquest the usher following people may be in attendance – Usher, pathologist, witnesses, family, families legal representation, Trust legal representative, press and public.

Evidence is given under oath. The Coroner will ask questions of the witness and may ask them to elaborate. If the witness is unable to answer any question they should say so and never attempt to guess. Medical records should be referred to when giving details of medical treatment. They will be available to the witness in the witness box. Once the coroner has completed his questioning the family/ families legal representative will have the opportunity to ask questions followed by the Trust's Legal representative.

JURIES

There are a number of instances where a jury must be called by the coroner. If the inquest falls under one of these instances the witnesses will be advised.

VERDICT

The coroner may adjourn the inquest to a later date if further witnesses are required. The coroner will normally deliver his verdict once all the evidence has been heard.

The coroner has the power to issue a report where evidence gives rise to a concern that a similar death may occur in the future. He will do this where he feels action should be taken to reduce the risk of further deaths. If a Schedule 5 letter is sent, the Trust must respond within 56 days.

Schedule 5 notices (Prevention of Future Death Reports) are sent directly to the Chief Executive. These should be copied to the Trust Solicitor along with the response so that these can be monitored.

MEDIA

Members of the press may be present at the inquest. There may also be television crews outside the court if the inquest is high profile. Any staff approached by members of the media for comment regarding the inquest should refer any such request to the Communications Office.

PROTOCOL AND PROCEDURE FOR ACCESSING EXTERNAL LEGAL ADVICE

INTRODUCTION

This document sets out Barnsley Hospital NHS Foundation Trust's approach to ensuring that legal advice is obtained from the most appropriate source. It is important to strike a balance between the sensible use of public funds and the need to minimise risk to the organisation.

This procedure is implemented to ensure financial probity, to create an audit trail and to comply with external scrutiny.

SCOPE

This procedure applies to all circumstances where staff require legal advice on any issues connected with the business of Barnsley Hospital. This also applies to Instructing Solicitors.

The procedure applies to all staff including temporary and agency staff. There is to be NO direct approach to external legal advisers without proper authorisation.

OBTAINING LEGAL ADVICE

Authorised Persons

In the FIRST instance all requests for legal advice should be authorised by the Trust Solicitor.

If the Trust Solicitor is unavailable the following staff are authorised to access legal advice and authorise other staff to request:

Chief Executive

Medical Director

Director of Nursing and Quality

Director of Finance and Information

Associate Director of HR

In an emergency or if out of hours the on call Director must be contacted for authorisation.

When Advice Might be Required

Examples include:

Capacity, consent and treatment – adults and children

Corporate governance and public law

Clinical governance and healthcare law, health and social care, mental health etc

Contract and commercial law

Corporate finance, partnership

Employment law

Equality and Human Rights Act

Health and Safety including corporate manslaughter

Information Governance – data protection, freedom of information, access to records

Property transactions

The above list is not exhaustive and other areas may require specific legal advice

Internal Support and Expertise

Expertise exists within Barnsley Hospital and this expertise should be sought in the first instance, e.g from safeguarding, IG, security, Human Resources.

Only when this expertise is not sufficient due to the complexity of the matter, or where there is action which only a legally qualified officer can undertake, should advice be sought from the Trust Solicitor.

The Trust employs a Solicitor who is able to advise on many areas of law. Should the Trust Solicitor be unable to assist due to capacity or knowledge then authorisation will be given for external legal advice to be sought.

External Legal Advice

Barnsley Hospital is signed up to the North of England Commercial Procurement Collaborative, Legal Services Framework Agreement. Only the Legal Firms list within this agreement may be instructed. The current Legal Firms listed in this agreement are; Browne Jacobson LLP, Capsticks Solicitors LLP, DAC Beachcroft LLP, DWF LLP, Hempsons Solicitors, Hill Dickinson LLP, Mills & Reeve LLP and Weightmans LLP.

The agreement offers key benefits including:

30 minutes free advice on any issue

2-20 non-chargeable training day/workshops

Discounted rates

Possibility of fixed fees

Instructing Solicitors

Once authorisation has been obtained, Solicitors may be approached for legal advice.

Advice should be sought and obtained in writing. However, where 30 minutes free telephone advice will be sufficient then this should be obtained and a full note of the conversation made.

The request for advice must be made in writing (email is acceptable but consideration should be given to Data Protection)

The request must include a request for an estimate of time and cost. It should include details of all relevant factors, provide or reference all necessary documentation and outline the specific issues on which advice is being sought.

Where advice sought is urgent this can be obtained by telephone but an estimate of costs must be provided over the telephone and the arrangements must be confirmed in writing.

Payment for Legal Advice

The cost of legal advice will come out of the budget of the Department/ CBU who made the request.

The Legal Services Department will be provided with the monthly invoices for sign off. Each item for which payment is requested will be cross-referenced to ensure that the requirement re authorisation was complied with.

Procedure for Obtaining Legal Advice

- Liaise with Internal expertise initially to establish if the matter can be dealt with in-house i.e. Safeguarding / IG team / Security
- Liaise with Trust Solicitor (ext1656) to see if in-house legal advice can be provided, the Trust Solicitor will confirm if the Legal Services Team have the capacity and/or knowledge to deal with request directly.
- If the in-house legal team are unable to assist the Trust Solicitor will provide authorisation to obtain external legal advice.
- The Legal Advice Request Form should be completed and emailed to the Legal Services Team bdg-tr.legal-services@nhs.net
- The Trust Solicitor will complete the form confirming which Legal Firm should be used, the level of seniority of Solicitor required to advise, if a fixed fee could be negotiated and that authorisation has been given.
- If out of hours the form should be sent to the relevant Director who will complete the form.
- The Form will be returned to the requestor and Legal Advice may then be sought.
- Once the advice is provided the form should be completed by the requestor and returned to Legal Services with a copy of the legal advice provided.

In an emergency, contact the on-call Director for verbal authorisation. Telephone advice may then be sought. The Legal Advice Request Form should be completed and sent to Legal Services retrospectively and asap.

Learning

The Trust Solicitor will compile a Litigation Bulletin, from time to time, for clinicians and senior managers which will include details of the most commonly requested pieces of legal advice and the advice given in order to aid learning and reduce costs. The bulletin will also contain information on relevant case law updates.

The nature of requests for legal advice will be closely monitored and the Trust Solicitor will hold a master file of legal advice received, ensuring that duplicate requests for legal advice are not made.

LEGAL ADVICE REQUEST FORM

This form is to be completed by any staff requiring legal advice. Sections 1 and 2 must be complete before Legal Advice is sought. Section 3 should be completed following receipt of the legal advice and the form returned electronically with copies of the written advice to Legal Services. [Bdg-tr.legal-services@nhs.net](mailto:bdg-tr.legal-services@nhs.net)

SECTION 1 – DETAILS OF REQUEST

Requestor	
Department	
Date	
Description of Issue	

SECTION 2 – AUTHORISATION

Authorised by	
Legal Firm to be used	
Level of seniority of Solicitor (if necessary)	
Fixed fee?	
Type of advice	30 min telephone adv <input type="checkbox"/> Written advic <input type="checkbox"/>
Date	

SECTION 3 – ADVICE OBTAINED

Date requested	
Estimate of cost given/ fixed fee agreed	
Method of advice (email/ letter/ telephone) If telephone state length of call	
Name of Solicitor	
Advice attached	
Date received	

Attach a copy of the legal advice or summary of telephone advice received to this form. Return the form to: Legal Services bdg-tr.legal-services@nhs.net

Glossary of Terms used within Policy

Clinical negligence claim – Allegations of negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident that carries a significant litigation risk for the Trust.

CNST – Clinical Negligence Scheme for Trusts

CMS – NHS LA’s Claims Management System

EL – Employers Liability

ELS – Existing liabilities Scheme

LTPS – Liability to Third Parties Scheme

NHS LA – National Health Service Litigation Authority

Non-clinical negligence claim - A demand for compensation made following an adverse incident resulting in damage to property and/or personal injury.

PES – Property Expenses Scheme

Request for disclosure – Request for records made under the subject access provisions of the Data Protection Act 1998 or the Access to Health Records Act 1990

Appendix 5

Maintain a record of the documents history or reviews and key changes made, including versions and dates)

Appendix (must always be the last appendix)

Version	Date	Comments	Author
1	October 2006	Policy Issued	J Harris, Risk Manager
2	August 2007	Amendments made	J Harris, Risk Manager
3	February 2009	Amendments made	J Harris, Risk Manager
4	November 2014	Amendments made and approved at Risk Management Group	M Whittle, Legal Services Manager
5	12/04/2016	Amendments made to update policy in line with department/structure changes and new Policy format. Also External Legal Advice procedure updated – this was agreed by ET.	M Whittle, Trust Solicitor

Review Process Prior to Ratification:

Name of Group/Department/Committee	Date
Patient Safety Group	12/04/2016