

POLICY ON HANDLING OF CLAIMS

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Accessibility

Worcestershire Health and Care NHS Trust has a contract with Applied Language Solutions to handle all interpreting and translation needs. This service is available to all staff in the trust via a free-phone number (0800 084 2003). Interpreters and translators are available for over 150 languages. From this number staff can arrange:

- Face to face interpreting
- Instant telephone interpreting
- Document translation
- British Sign Language interpreting

Training and Development

Worcestershire Health and Care NHS Trust recognises the importance of ensuring that its workforce has every opportunity to access relevant training. The Trust is committed to the provision of training and development opportunities that are in support of service needs and meet responsibilities for the provision of mandatory and statutory training.

All staff employed by the Trust are required to attend the mandatory and statutory training that is relevant to their role and to ensure they meet their own continuous professional development.

WORCESTERSHIRE HEALTH AND CARE NHS TRUST
POLICY ON HANDLING OF CLAIMS

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1 INTRODUCTION

- 1.1 This policy has been drawn up in line with guidance issued by the Department of Health and NHS Litigation Authority (NHSLA). It recognises the need to ensure appropriate handling of claims as they occur and the importance of taking action to minimise such claims through risk management. It accords with the requirements of the National Health Service Litigation Authority's Risk Pooling Scheme for Trusts (RPST) Risk Management Standard, Criterion 5 (Rev.03 October 2002).
- 1.2 The policy has also been developed in line with the Trust's governance arrangements and the NHSLA's Risk Management Standards for Community, Mental Health and Learning Disability Services (April 2008). The Trust's audit programmes and reviews of clinical activities will recognise and apply lessons to be learnt from claims and risk management experience locally and beyond.

2 PURPOSE of POLICY

This policy explains how claims against the Trust should be handled. It describes the risk pooling schemes that have been created by the NHSLA that the Trust contributes to. It lists the external agencies that the Trust relates to.

3. DEFINITIONS

There are three types of claims that are likely to be made against the Trust:

- injury to patients during the course of treatment (clinical negligence)
- injury to staff during the course of their employment (employer liability)
- injury to visitors on Trust premises (public liability)

4 RESPONSIBILITIES AND DUTIES

4.1 Trust Board is responsible for

- 4.1.1 Setting policy for the organisation through powers delegated to relevant committees;
- 4.1.2 Ensuring policy is implemented through agreed management arrangements;
- 4.1.3 Ensuring they are alerted to relevant issues arising that may affect policy

4.2 Chief Executive

The Chief Executive has overall responsibility for ensuring that all claims are dealt with effectively and efficiently in line with this Policy.

4.3 Directors

The responsibility for handling claims against the Trust rests with the Company Secretary who will ensure that claims are managed properly and that the risk management process takes proper account of the lessons to be learnt from such claims. Any investigation will be carried out with regards to the Trust's own Incident Reporting Policy and root cause analysis procedures.

4.4 Service Delivery Unit Leads, Senior Clinical Staff and Managers

Any letter intimating that a claim will be made against the Trust received by service delivery unit leads, senior clinical staff and managers or their subordinates must be referred without delay to the Company Secretary.

5 NHS LITIGATION AUTHORITY (NHSLA)

The NHSLA administers two schemes and the Trust contributes to both of them:

- **The Clinical Negligence Scheme for Trusts (CNST)**

This scheme was established with effect from 1 April 1995.

- **The Risk Pooling Scheme for Trusts (RPST) – covering Property Expenses Scheme (PES) and Liabilities to Third Parties Scheme (LTPS)**

This scheme was established with effect from 1 April 1999.

Full details of the each Scheme's coverage, Membership Rules and claims reporting arrangements can be found on the NHSLA web site at www.nhsla.com.

The NHSLA has developed a set of Risk Management Standards. These are subject to periodic review. Details can be found on the NHSLA web site. Trusts are assessed at three levels with one being the lowest and three the highest. The higher the level of assessment the greater the discount that is applied to the contribution levels to the aforementioned risk pooling schemes.

6 COMMERCIAL INSURANCE COVERS

6.1 The Facilities Department will arrange Engineering Insurance and Inspection cover in respect of lifts, hoists and pressure vessels across the Trust.

6.2 It should be noted that prior to 1 April 1999 Property and Liability to Third Party claims were covered by commercial insurance. The relevant commercial insurers will cover any claims preceding this date.

7 PROCEDURE FOR HANDLING CLAIMS

7.1 The Company Secretary will ensure that claims are handled in accordance with the revised reporting guidelines issued to Trusts on 1 October 2008. The following key points are relevant to the Trust.

- The Trust will be required to handle claims to the NHSLA's minimum standard and to secure access to appropriate expertise
- A letter of claim is the likely first indication of any action. In the case of clinical negligence this must be reported to NHSLA within 24 hours of receipt by the Company Secretary's Office (NHSLA Clinical Negligence Reporting Guidelines fifth edition effective from 1 October 2001). Receipt of the letter should be acknowledged within the timescale stipulated in the letter of claim and should identify that the NHSLA will be dealing with it. In the case of RPST a letter of claim should be reported to the NHSLA at the earliest opportunity. A Letter of Claim should, as far as possible, be acknowledged on the 20th day after the date on the Letter indicating that the matter has been reported to NHSLA. (NHSLA Non-Clinical Claims Reporting Guidelines – revised January 2011).
- All legal proceedings must be notified immediately

- Claimant's Part 36 Offers must be notified to NHSLA by telephone and followed up by fax
 - The requirements of the Data Protection Act 1998 and Pre-Action Protocol for the Resolution of Clinical Disputes must be complied with
 - Requests for disclosure of medical records must be processed within 40 days
 - Checks must be undertaken to ensure that sufficient initial information has been provided by patient or adviser and to request more if necessary
 - There must be a preliminary analysis of every case in which records are requested
 - Arrangements should be made to collect, retain, paginate and index relevant records
 - A system must be in place for identifying *all* adverse incidents, significant litigation risks etc
 - When a significant litigation risk has been established, and a realistic valuation of a possible claim has been made, the matter will become reportable to NHSLA. This will usually be within 2 months of request for records or sooner if event is serious
 - To comply with the Pre-Action Protocol for the Resolution of Clinical Disputes a detailed response will need to be made to the claimant's representative within 3 months
- 7.2 The Company Secretary will ensure that Case Managers and Claims Inspectors appointed by the NHSLA, as required, will have access to the Medical Director, Executive Nurse, clinical leads, medical records staff, clinical, administration and clerical staff, directors and senior managers together with relevant documentation.
- 7.3 The Company Secretary will ensure claims against the NHSLA's Liability to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES), (collectively known as the Risk Pooling Scheme for Trusts – RPST) – are handled in accordance with NHSLA guidance.
- 7.4 On receipt of a claim involving a serious incident the Company Secretary will inform the Director of Quality and Executive Nurse (or other nominated Director). The Company Secretary will, in turn, establish whether the incident has already been recorded and is the subject of investigation by the appropriate Service Manager. The Director of Quality and Executive Nurse will also ensure that all appropriate external agencies have been notified and will determine whether the nature of the incident is such that a root cause analysis should be undertaken. A list of external agencies is attached at Appendix 1.

8 REPORTING ARRANGEMENTS

- 8.1 The Company Secretary will monitor the progress of all claims and provide a summary report to the Quality and Safety Committee on an annual basis. He will provide the Director of Finance or their nominee with FRS12 information from the NHSLA and requests from the NHSLA for payments to be made. For NHSLA Risk Management standards and RPST the delegated limit will be the equivalent of the scheme excess (see below).

Type of Cover	Excess Each and Every Claim
Employers' Liability (RPST)	£10000
Public Liability (RPST)	£3000
Products Liability (RPST)	£3000
Professional Indemnity (RPST)	£3000
Property Expenses – Buildings (RPST)	£20000
Property Expenses – Contents (RPST)	£20000

8.2 A nominated Senior Financial Accountant will monitor the provision that has been, or needs to be, made for claims and will liaise with the Trust's Director of Finance.

9 WORKING GROUPS AND COMMITTEES

The Quality and Safety Committee will monitor compliance with this policy.

10 MONITORING IMPLEMENTATION

COMPLIANCE, REMEDIAL ACTION AND REPORTING

10.1 The Quality and Safety Committee will monitor compliance with this policy.

10.2 The Company Secretary will have overall responsibility for liaison with the NHSLA.

10.3 The Medical Director and Director of Quality and Executive Nurse will:

10.3.1 identify any procedures or aspects of clinical practice requiring remedial action, including systematic review of all cases after closure

10.3.2 agree a clear allocation of responsibility for carrying through any remedial action required and for disseminating any wider lessons, both within the Trust and (where appropriate) more widely

10.4 An ongoing analysis of claims against the Trust will be instituted to identify trends and emerging patterns and to apply the lessons learnt.

NHSLA Criteria	Lead	Monitoring	Frequency	Committee
1.5.4 The organisation has an approved documented process for managing all claims in accordance with NHSLA requirements. As a minimum it must include a description of:				
a) Duties	Company Secretary	Report to Quality and Safety Committee	Annually	Quality and Safety Committee
b) NHSLA schemes relevant to the organisation i.e CNST, LTPS and PES)	See above	See above	See above	See above
c) Action to be taken including timescales	See above	See above	See above	See above
d) communication with relevant stakeholders	See above	See above	See above	See above
e) Process for monitoring compliance with the above	See above	See above	See above	See above

11 TRAINING AND DEVELOPMENT

The Trust is committed to ensuring its workforce is confident, competent and capable. The Training and Development Unit (TDU) produce a yearly training prospectus which describes the courses on offer, to whom they are aimed, how often they need to be updated and how to make a booking. The training prospectus can be accessed via the Intranet and internet.

Attendance Monitoring

If a person is registered to attend a course and does not attend the information is registered with the TDU will notify the person's line manager of the non-attendance. It is the responsibility of the line manager to ensure staff attend appropriate statutory, mandatory and essential training.

12 POLICY VALIDATION

12.1 All policies ratified for use by the Trust contain the following information:

12.2 A **designated owner** with responsibility for ensuring an appropriately skilled professional will lead the development and/or review of the policy in line with timescales set by the Work Group work plan

12.3 A **Working Group**, whose work plan identifies their responsibilities with regard to the development and/or review of the policy, monitoring compliance and signing off the policy within agreed timescales prior to ratification by the Quality and Safety Committee.

13 EQUALITY IMPACT ASSESSMENT

This policy has been impact assessed to ensure that it does not discriminate

EXTERNAL AGENCIES

1 Care Quality Commission – Mental Health Act 1983 (as amended)

The Care Quality Commission requires that information be provided for untoward incidents involving patients who are subject to sections of the Mental Health Act. Relevant reporting documentation is held by Mental Health Act Administrators employed by the Trust.

2 Infection Outbreaks

Incidents of diarrhoea and vomiting and suspected food poisoning should be reported to the Infection Control Team and, in their absence, to one of the County's Consultant Microbiologists, as follows:

- For properties in Bromsgrove and Redditch – Consultant Microbiologist (01527 503030).
- For properties in South Worcestershire & Wyre Forest - Consultant Microbiologist (01905 763333)
- The Infection Control Team, are contactable Monday to Friday, 9.00 am to 5.00 pm on 07798 608171

NB: If it is not possible to inform the Infection Control Team or Consultant Microbiologists the Local Health Protection Unit must be advised (01562 756300).

The Infection Control Team works closely with liaison staff at ward, departmental and community level to develop and maintain the Trust's approach to control of infection.

3 Environmental Health Officers (EHOs)

EHOs will be informed when the Communicable Disease Committee deem it appropriate. Other issues, ie toxic spillages will be communicated by the HSE Microbiological and Scientific Services Department.

4 Health and Safety Executive

The following matters should be reported to the Health and Safety Executive without delay:

- 4.1 If a member of staff sustains a major injury whilst on Trust business, is then off work following the accident for over three days (including non-work days), or sustains a major injury due to a violent incident whilst on Trust business, the *Lead Director for Risk* must be informed in order for a report to be sent to the Health and Safety Executive.
- 4.2 Under RIDDOR 1995 fatalities or major injuries and dangerous occurrences MUST BE reported to the Health and Safety Executive by the quickest means possible (i.e. by telephone, fax or via the HSE website: www.riddor.gov.uk) and followed up where necessary with a written report on Form F2508 within 10 days.
- 4.3 It is the responsibility of the local / senior manager (depending on circumstances) to report incidents to the Health and Safety Executive (HSE), under RIDDOR, as he / she has access to the relevant HR and sickness absence information for the injured party. This may be done via the RIDDOR form in Sentinel or the HSE's e-form

(www.riddor.gov.uk or, alternatively, via the link to the HSE website: www.hse.gov.uk). The local / senior manager must inform the *Risk and Security/Health and Safety Manager*, as soon as possible, after a reportable incident / accident occurs and, if reported via the e-form, must forward a copy of the RIDDOR report. If the *Risk and Security/Health and Safety Manager* is unavailable or the incident occurs outside office hours, the local / senior manager must inform the on call manager, as soon as possible, after the event^{4.4}. For further information please see the Trust's Incident Reporting Policy.

5 Police and Coroner's Office

Staff who come across deaths that are sudden and unexpected, occasioned by violence, including self harm, and which are suspicious and unexplained must report them:

- i) in community setting – to General Practitioner
- ii) in hospitals – to Responsible Medical Officer
- iii) otherwise for further advice contact line manager, or outside normal hours the on-call manager

The Police should be informed (for further advice contact the Chief Executive's Office or Executive Director on call who will obtain legal advice if necessary). The Police will inform the Coroner's Office if the death is a matter for his consideration.

6 Informing Clinical or other Professional Bodies

Matters of serious concern regarding professional performance must be referred to the appropriate professional body. Such referral can be made by the Medical Director and the Director of Service Development and Executive Nurse.

7 Medicines and Healthcare products Regulatory Agency (MHRA)

7.1 The Trust's Medicines Management Group develop guidelines or protocols on how medicines should be used. It reviews prescribing practices and administration of medicines. In addition, the Committee considers the data on newly licensed medicines and assesses whether the medicine holds advantages in terms of efficacy, safety, quality, cost or convenience over products already available. Errors or near misses in the administration of drugs and therapeutics will be referred to this committee, as well as any of the aforementioned committees or bodies according to the circumstances. Please refer to the Incident Reporting Policy.

7.2 The MHRA will be informed of any concern about medicines or medical equipment, utilising the laid down reporting procedure, for which refer to the MHRA Safety Notice (01) January (of each year) - Reporting Adverse Incidents and Disseminating Safety Notices.

8 Failure in equipment other than Medical Devices

Concerns about the performance of equipment other than medical devices should be reported to NHS Supplies. Please contact the Account Manager for the Healthcare Purchasing Commission (01527 512135).

9 Reporting Serious Incidents in NHS Midlands and East

All serious incidents as identified in the NHS Midlands and East policy must be reported by the Quality and Safety Department immediately.