



# POLICY FOR HANDLING OF CLINICAL NEGLIGENCE CLAIMS

**Compiled by:** Claims Paralegal / Patient Safety Manager

**Status:** Approval date: June 2021  
Ratified by: Quality & Safety Committee  
Next Review: June 2024

**Patients first • Personal responsibility • Passion for excellence • Pride in our team**

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 1 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	--------------

## History

Issue	Date Issued	Brief Summary of Change	Ratified by
1	Jun 2003	New policy	
2			
3	Oct 2007	Updated in line with NHSLA Standards	Michaela Morris, Director of Nursing & Operations
4	Oct 2009	General update and review	TEC
5	Jun 2010	General update and review reflecting changes to Trust structure, training and new reporting arrangements to Trust board	TEC
6	Dec 2010	General update & review reflecting changes to Trust structure	
7	Feb 2014	Minor changes	Risk Scrutiny Committee (Chair's Action)
8	Jun 2021	Updated NHSLA to NHS Resolution. Updated link for NHSR Reporting guidelines	Quality & Safety Committee

For more information on the status of this document, please contact:	Buzandi Chibawe, Claims Paralegal
Compiled by	Claims Paralegal/ Patient Safety Manager
Department/Directorate	Quality
Date of issue	June 2021
Review due	June 2024
Ratified by	Quality & Safety Committee
Audience	All Trust staff

## INDEX

- 1 Introduction
- 2 Purpose & Scope
- 3 Clinical Claims Management – General Issues
  - 3.1 NHS Resolution Schemes relevant to the Trust
  - 3.2 Definition of a Claim
  - 3.3 Triggers for Invoking the Claims Procedure
  - 3.4 NHS Resolution Clinical Negligence Scheme for Trusts (CNST)
  - 3.5 Limitation
  - 3.6 Timescales for Exchange of Information
  - 3.7 Confidentiality
  - 3.8 Management of Information
  - 3.9 Being Open and Honest
  - 3.10 Supporting Staff
  - 3.11 Training & Awareness
- 4 Duties within the Organisation
  - 4.1 Trust Board and Executive Responsibilities
  - 4.2 Day to Day Management of Clinical Negligence Claims
    - 4.2.1 Senior Management
    - 4.2.2 Divisional Directors – Lead Consultants
    - 4.2.3 Investigating Manager
- 5 Risks Management – Links with Incident and Complaints Management.
- 6 Root Cause Analysis (RCA)
- 7 Coroner’s Investigations
- 8 Legal Advice
- 9 Media Management
- 10 MP Involvement
- 11 Financial Information
- 12 Governance & Reporting
- 13 Learning from Experience
- 14 Dissemination & Implementation

- 15 Monitoring Compliance
- 16 Review
- 17 Archiving Arrangements
- 18 References & Websites
- 19 Impact Assessment

APPENDIX 1 Timescale for Action – Trust Responsibilities

APPENDIX 2 Clinical negligence claims process flowchart

## POLICY FOR HANDLING OF CLINICAL NEGLIGENCE CLAIMS

**See also:** Incident Reporting and Management Policy (including the investigation of Serious Incidents)  
Complaints, Concerns, Patient Advice & Liaison Service, Compliments and Remedy Policy  
Management of Non-Clinical Claims Policy.  
Being Open Policy.  
Management and reduction of Stress Policy.  
Interpreting Services Policy  
Records Management Policy.  
Education Learning & Development Policy.

Pre-Action Protocol for the Resolution of Clinical Disputes.  
NHS Resolution Clinical Negligence Reporting Guidelines  
The Data Protection Act 2018.  
Access to Health Records Act 1990  
The Freedom of Information Act 2000.

### 1 INTRODUCTION

The Trust is committed to the effective and timely investigation and response to any allegation of clinical negligence. In managing claims, the Trust aims to achieve an equitable outcome for all parties concerned, to take appropriate corrective action, facilitate wider organisational learning and to reduce the risk of future litigation.

### 2 PURPOSE & SCOPE

The purpose of this policy is to detail the structure and framework for the management of clinical negligence claims at Ashford & St Peter's Hospitals NHS Foundation Trust (the Trust). The policy takes account of statutory requirements and guidance and defines the claims process, the roles and responsibilities of staff within the Trust and relationships with claimants and third parties such as National Health Service Resolution (NHSR) and Solicitors.

The policy also addresses the possible link between an adverse verdict at a Coroner's Inquest and a clinical negligence claim and details the actions that will be taken in the event of the Trust instructing Solicitors to represent the organisation at Inquest.

The policy should be read in conjunction with NHS Resolution's Clinical Negligence Reporting Guidelines which may be downloaded from <https://resolution.nhs.uk/resources/claims-reporting-guidelines/>.

### 3 CLINICAL CLAIMS MANAGEMENT – GENERAL ISSUES

#### 3.1 NHSR SCHEMES RELEVANT TO THE TRUST

The Trust is a member of the NHS Resolution (NHSR) Clinical Negligence

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 5 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	--------------

Scheme for Trusts (CNST).

NHSR is a special health authority and part of the NHS. The CNST is administered by NHSR and provide indemnity to members and their employees in respect of clinical claims arising from events which occurred on or after 1 April 1995.

### 3.2 DEFINITION OF A CLAIM

A claim is defined as:

*Allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury. Any clinical incident which carries significant litigation risk for the Trust.*

This includes complaints leading to claims, notification of serious adverse events, incident reports generated by risk management processes (any of which represent a significant litigation risk), and requests for the disclosure of medical records.

Defining an incident as a 'claim' in the absence of a demand for compensation does NOT of itself imply that the NHSR accepts that compensation will ultimately be paid. It simply means that a preliminary analysis should be carried out and the matter may need to be reported to the NHSR.

Where someone wishes to make or discuss a claim, the Trust cannot 'advise' them. It can however, refer him / her to an independent solicitor of his / her own. It should not recommend or name any legal firms as Claimants should be given free reign / choice over their solicitor. However they can be referred to the Law Society's website find a solicitor tool <https://solicitors.lawsociety.org.uk/> or charity organisations such as Action against Medical Accidents and Citizens Advice Bureau.

### 3.3 TRIGGERS FOR INVOKING THE CLAIMS PROCEDURE

The following will act as triggers for reporting to NHSR in accordance with NHSR Reporting Guidelines:

- Reports generated by the Trust's internal risk management processes which indicate a significant litigation risk and the possibility of a large value claim (i.e. damages exceeding £500,000)
- Serious professional misconduct of a staff member affecting a number of patients.
- Any adverse issue which has the potential to involve a number of patients e.g. the failure of a screening service.
- A letter from a complainant, patient or carer requesting compensation (Litigants in Person).
- Notification from the Coroner that the Trust is an Interested Person at an Inquest hearing.
- A letter from a Solicitor:
  - Requesting disclosure of medical records for the purposes of investigating a medical negligence claim.

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 6 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	--------------

- Letter of Claim.
- Making a formal “Part 36 Offer”.
- Court proceedings issued against the Trust.

### 3.4 NHSR CLINICAL NEGLIGENCE SCHEME FOR TRUSTS (CNST)

In the management of clinical negligence claims, the Trust will comply with the Pre-Action Protocol for the Resolution of Clinical Disputes (1998) and the NHSR Clinical Negligence Scheme for Trusts Reporting Guidelines 2017.

### 3.5 LIMITATION

A claimant will usually have a period of three years from the date of incident or date of knowledge of the incident in which to issue a claim for negligence. In the case of a paediatric claim, the three year limitation period will commence on the patient’s eighteenth birthday. Limitation will not normally apply to a person incapable of managing and administering their own affairs. Additionally, the Court has discretion to waive the limitation period in some circumstances.

### 3.6 TIMESCALES FOR EXCHANGE OF INFORMATION

In exchanging information, the Trust will comply with the requirements of the Pre Action Protocol for the Resolution of Clinical Disputes (1998) and the NHSR (CNST) Reporting Guidelines (2017). Section 3 summarises the Trust’s responsibilities and timescales for action.

### 3.7 CONFIDENTIALITY

#### 3.7.1 MANAGEMENT OF INFORMATION

Information, records and disclosure will be managed in accordance with the Trust’s Records Management Policy and relevant guidance and legislation on receipt of the appropriate authority from the patient, the executor of an estate or the Court.

Reports and correspondence which do not have as their sole or dominant purpose actual or prospective litigation are likely to be disclosable. This will include Incident Reports and Investigations, complaint Investigations and statements from clinicians.

The Claims Paralegal is responsible for ensuring that all relevant records and information relating to a claim are obtained and disclosed as appropriate.

The Claims Paralegal is responsible for maintaining claims information via the Trust’s integrated risk management database (Datix). Standard templates for claims documentation are available for use on the Datix system.

#### 3.7.2 BEING OPEN

The Trust recognises that following an Incident, the patient/family may consider pursuing a medical negligence claim against the Trust. At this time, requests for disclosure of information will be managed in accordance with relevant guidance and legislation. (Please see Section 3.7.1 – Management of Information).

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 7 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	--------------

However, documents generated in response to an intimation of a Clinical Negligence claim (i.e. their sole purpose is litigation) will be considered privileged and the Trust will not share these with the claimant or their representative – unless required to do so by the Pre Action Protocol for the Resolution of Clinical Disputes or ordered to do so by the Courts. In the event that a claimant is acting as a “Litigant in Person” the Claims Paralegal will advise the claimant, in writing, of this limitation.

### 3.8 SUPPORTING STAFF

The process of investigation and the procedural issues relating to a claim can be very time consuming for staff involved. In addition, the progress of a claim can be slow and lengthy. In some cases will take years rather than months to conclude. The Trust acknowledges that staff may find the process stressful and recognises the importance of the claims management process being treated with sensitivity and staff being appropriately supported.

The Trust’s “Management and reduction of Stress Policy” details the processes in place to support staff at times of stress.

Trust Managers and Senior Clinical Staff will have a responsibility for ensuring that their staff are appropriately supported and, where necessary, should seek guidance from the Human Resources Department.

In addition, the Claims Paralegal will be available to support staff explaining and discussing the claims management process on an individual basis. This will include keeping involved staff informed of the progress of the claim.

### 3.9 TRAINING & AWARENESS

On request, the Claims and Coroners Paralegal will provide training on the management of Clinical Negligence Claims within the Trust.

An awareness of the Claims Management process and the relationships with the Trusts wider risk management processes will be given to all new staff as part of Trust Induction Programme

## 4 **DUTIES WITHIN THE ORGANISATION**

### 4.1 TRUST BOARD AND EXECUTIVE RESPONSIBILITIES

The Chief Executive has overall responsibility for clinical negligence claims within the Trust. The designated Board members (Chief Nurse & Medical Director) will keep the Chief Executive advised of relevant issues.

The Trust Board will receive an annual clinical claims review which will detail by Division:

- Reported claims (number)
- Settled claims (number, value + code **by** adverse event)

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 8 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	--------------

This report will also detail the Trust's compliance with NHSR reporting Standards. The report will also indicate where a new or settled claim has previously been reported / investigated as an Incident or Complaint and will summarise any changes in practice or learning as a result of a settled claim.

## 4.2 DAY TO DAY MANAGEMENT OF CLINICAL NEGLIGENCE CLAIMS

### 4.2.1 SENIOR MANAGEMENT

Responsibility for the management of clinical claims is delegated to the Patient Safety Manager (Claims & Coroners) who will ensure compliance with the NHSR (CNST) Reporting Guidelines (2017) and the Pre Action Protocol for the Resolution of Clinical Disputes (1998) including Trust timescales for action and will be responsible for the initial investigation of any intimation of a claim.

The Patient Safety Manager (Claims & Coroner) will report directly to the Associate Director of Quality and will be supported by the Claims Paralegal.

The Claims Paralegal will have experience and/or training in clinical negligence and will be the Trust's nominated representative responsible for liaison with all third parties in clinical negligence claim matters. This will include the NHSR, Trust Solicitors and claimants Solicitors.

All staff have a responsibility to assist with the investigation and progress of claims as required and the Claims Paralegal will provide training/ support for both individuals and groups as requested.

Senior Clinicians and Trust Managers are responsible for ensuring that their staff are appropriately supported and provide a positive contribution to the litigation process.

Divisional Directors for the relevant Specialty are responsible for ensuring risk management reviews and implementation of any recommended change in practice arising from a settled claim investigation. Risk management issues should be considered at "local" governance committees and reported at the Trust Governance Committee. Reports will include the detail and monitoring arrangements of action plans as necessary.

### 4.2.2 DIVISIONAL DIRECTORS – LEAD CONSULTANTS

In terms of individual claims, Consultant staff with overall responsibility for the patient's care will have a significant involvement in the clinical claims process. Specific areas of responsibility will include:

- Authorising disclosure of medical records.
- Provision of initial comments on care management and identifying any issues of liability for the Trust.
- Consideration of risk management issues and implementation of any appropriate changes in practice.
- Responding to specific questions raised by the Associate Director of Quality/Trust's Solicitors/NHSR).
- Reviewing and responding to Expert reports.

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 9 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	--------------

- Reviewing and responding to specific allegations of negligence following receipt of a Letter of Claim or when proceedings are issued.
- Provision of witness statements.
- Attendance at case conferences with Counsel and Trial hearings.

#### 4.2.3 INVESTIGATING MANAGER

The Claims Paralegal will be responsible for the administration of all intimations of a clinical negligence claim.

In so doing, the Claims Paralegal will:

- Open a management file.
- Take all relevant documents into safe keeping, if applicable.
- Review the medical records and other relevant documentation such as incident reports and investigations and complaint correspondence.
- Seek authority for disclosure of medical records and disclose as appropriate.
- Report as necessary to the NHSR ensuring compliance with the CNST Reporting Guidelines (2017).

## 5 RISK MANAGEMENT – LINKS WITH INCIDENT AND COMPLAINTS MANAGEMENT

Appropriate risk management action is key to reducing adverse incidents and the resulting claims that may follow.

The Claims Paralegal will liaise with the Quality and Patient Experience Teams, keeping under review the potential for specific incidents and complaints to become a claim.

On receipt of an intimation of a claim, the Claims Paralegal will refer to the Trust's Risk Management Database to establish whether incident and/or complaint documentation has already been created. In the event that a complaint investigation is already progressing, the complaints team will be advised of the change in circumstance and, in the event that proceedings have been issued or served, the complaints investigation will cease following the Trust's letter of response to concerns raised. This reflects statutory guidance on Complaints management. All intimations of a claim will be investigated.

Risk management issues will also be assessed and documented within Advisory Reports by the Trust's Solicitors.

Divisional Directors, lead Consultants and the relevant Trust Manager are responsible for risk management review of individual claims. Appropriate actions arising from claims investigations will be the responsibility of the Clinical Director and/or Trust Manager for the relevant Specialty(s).

Where identified, risk management information will be held on individual cases. Following settlement of a case any changes in practice as a result of the assessment of risk will be reported to the Safety & Quality Committee and the Quality of Care Committee.

In addition, as required, actions taken and changes in practice as a result of individual claims, will be reported to the NHSR.

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 10 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	---------------

## 6 ROOT CAUSE ANALYSIS (RCA)

NHSI (NHS Improvement) promotes the practice of Root Cause Analysis (RCA) to ensure that appropriate investigation methods are applied to find the actual causes of incidents.

RCA is the recommended investigation process for all healthcare organisations to enable them to identify the contributory factors that led to an incident occurring. It is important to establish the root causes of an incident in order to avoid early judgement or attribution.

Incident Report templates and RCA tools can be found on Ashford and St Peter's Hospitals 'TrustNet'.

The principles of RCA will be applied to each claim investigation. The level of application will vary according to the circumstance of the individual claim.

## 7 CORONER'S INVESTIGATIONS

The Patient Safety Manager (Claims & Coroners) will be the Trust's nominated representative in liaising with the Coroner's Office and responsible for ensuring appropriate disclosure of relevant information to the Coroner including medical records, staff statements, incident reports and investigations and complaint investigations.

The Patient Safety Manager (Claims & Coroners) will actively assess the risk of a Coroner's case becoming a claim, reporting, if necessary, to NHR in accordance with the CNST Reporting Guidelines (2017).

The Patient Safety Manager (Claims & Coroners) will keep the Associate Director of Quality informed of the risk associated with a Coroner's investigation. This will include the risk to the Trust's reputation and the risk of a medical negligence claim.

On conclusion of a Coroner's investigation, the outcome will be reported to the Associate Director of Quality, who will report to the Chief Nurse, Medical Director and Chief Executive.

## 8 LEGAL ADVICE

The Board will ensure that, where legal advice is required, but is not obtained under the direct instruction of the NHR (such as support for Coroners cases and investigation of serious incidents and complaints), advice is obtained from Solicitors who have appropriate expertise in clinical negligence claims. This responsibility will be delegated to the Associate Director of Quality who will instruct an NHR panel listed firm. The costs of such instruction will not be recoverable from the NHR.

In all reported clinical negligence cases the Trust will work in collaboration with the NHR. Any legal instruction will be the responsibility of the NHR who will also assume responsibility for the associated costs. (Please see Section 11).

## 9 MEDIA MANAGEMENT

The Associate Director of Quality will advise the Head of Communications of any medical

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 11 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	---------------

negligence claim where there is a considered risk of adverse media publicity.

In the event of media interest in a reported case, the Claims Paralegal will advise NHSR and seek advice regarding the release of press statements.

Where Court Hearings are assessed as being likely to generate media interest, NHSR will agree with the Trust a press release or position to be adopted prior to the event.

## **10 MP INVOLVEMENT**

The Claims Paralegal will advise NHSR of any interest/involvement of a claimant's MP.

## **11 FINANCIAL INFORMATION**

The responsibility for managing and settling clinical negligence claims transferred from the Trust to the NHSR on 1 April 2002. The Trust has no authority to settle any claim. Where a claim is settled without referral to and agreement with NHSR then the Trust will be liable for the payment. For any clinical negligence claims not covered by NHSR (which should be the exception), approval to negotiate settlement shall be given by the Chief Executive and Director of Finance and Information.

The Trust has indemnity via the Clinical Negligence Scheme for Trusts (CNST) administered via NHSR. This scheme provides a 'pay as you go' system. Insurance premiums are issued annually.

Occasionally, having made a complaint, a complainant will request compensation in the form of an 'ex gratia' settlement. Such settlements are not based upon legal liability and, in the event that the Trust makes such a payment, are not reimbursable under the CNST by the NHSR. All requests for compensation associated with clinical care will be assessed by the Associate Director of Quality and, where appropriate, reported to NHSR in accordance with NHSR reporting guidelines. (Please see Complaints, Patient Advice and Liaison Service (PALS), Compliments and Remedy Policy)

Financial responsibility for claims managed via the CNST is retained by the NHSR, therefore, key management decisions concerning admissions made and monetary compensation are subject to authorisation from the NHSR.

Any clinical negligence claim settled by the Trust outside of NHSR arrangements (which should be exception) shall be recorded in the Trust's Losses and Special Payments Register. A summary of this register, which shall be subject to audit, will be presented to the Audit Committee twice in each financial year.

The Department of Health requires a summary of the Trust's Losses and Special Payments Register to be submitted as part of the Trust's annual accounts summarisation schedules. On the basis of this the Department of Health may ask for documentation on a sample of cases.

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 12 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	---------------

## **12 GOVERNANCE & REPORTING**

Claims information will be recorded and retained on the Trust's integrated risk management database – 'DATIX'.

This database will be interrogated to provide quarterly reports on the status of clinical negligence claims to the Divisional Triumvirates.

An annual report summarising claims activity will be submitted to Part II of the Trust Board. This report will include a summary of compliance with NHSR reporting standards.

Additional information will be provided as requested to support the analysis of trends in associated with Incidents and Complaints.

The Claims Paralegal will be responsible for ensuring the accurate recording and updating of claims data on the integrated database and the drafting of Claims related reports.

Analysis of claims data will be both qualitative and quantitative and include details of any trends identified in claims management to inform Divisions, Trust Governance Committees and the Trust Board.

Policy documentation in relation to clinical negligence claims will be considered and ratified by the Trust Executive Committee.

## **13 LEARNING FROM EXPERIENCE**

When a claim is received, the Claims Paralegal will make an initial assessment of the claim with the Patient Safety Manager (Claims & Coroners) and consider whether there are risk management issues or any lessons that can be learned from the claim at this early stage.

As the claim progresses, and particularly after receiving an independent medical report, risk management issues may be highlighted which require further discussion with the Associate Director of Quality, relevant Divisional Director and/or healthcare professional/s.

In the event that an organisation wide risk becomes apparent, this will be discussed with the Medical Director and Chief Nurse and disseminated through the organisation.

## **14 DISSEMINATION & IMPLEMENTATION**

This policy will be made available on the Trust Intranet.

## **15 MONITORING COMPLIANCE**

The Associate Director of Quality will monitor the Trust's compliance with this policy.

The achievement of key timescales (Appendix 1) will be monitored on an on-going basis recording information on individual claims files, spreadsheets held within the Claims Department and on the

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 13 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	---------------

Trust's integrated Risk Management database.

Gaps in compliance will be reviewed by the Associate Director of Quality and discussed, as necessary, at the Department's quarterly performance meeting. The Claims Paralegal and Patient Safety Manager (Claims & Coroners) will be responsible for taking action as required.

At the end of each financial year, the Associate Director of Quality will audit and report on compliance with the following key timescales (see Appendix 1) in the Board annual review:

- Disclosure of Records.
- Reporting of Letters of Claim.
- Reporting of Part 36 Offers.
- Reporting of Legal Proceedings.

## 16 REVIEW

This policy will be reviewed if Statutory Requirements / Best Practice Guidelines change or no longer than 3 years after the previous review.

## 17 ARCHIVING ARRANGEMENTS

This policy will be archived in hard copy by the Quality Department and any request for retrieval should be made to the Quality Department.

## 18 REFERENCES & WEBSITES

Access to Health Records Act 1990.

Data Protection Act 1998.

Freedom of Information Act 2000.

Statutory Instrument (2009) The Local Authority Social Services and National Health Service Complaints (England) Regulations London HM Statutory Office.

Department of Constitutional Affairs (1998) Pre-Action Protocol for the Resolution of Clinical Disputes (Civil Procedure Rules). The Stationery Office. Available from [www.dca.gov.uk](http://www.dca.gov.uk).

NHS Resolution CNST Reporting guidelines (2017)

NHS Resolution – [www.resolution.nhs.uk](http://www.resolution.nhs.uk)

Department of Justice – [www.dca.gov.uk](http://www.dca.gov.uk)

## 19 EQUALITY IMPACT ASSESSMENT SUMMARY

**Name:** Patient Safety Manager (Claims & Coroners)

**Policy/Service:** Policy for Handling of Clinical Claims

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 14 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	---------------

## Background

- Description of the aims of the policy
- Context in which the policy operates
- Who was involved in the Equality Impact Assessment

The purpose of this policy is to detail the structure and framework for the management of clinical negligence claims at Ashford & St Peter's Hospitals NHS Foundation Trust (the Trust). The policy takes account of statutory requirements and guidance and defines the claims process, the roles and responsibilities of staff within the Trust and relationships with claimant and third parties such as the NHS Resolution (NHSR) and Solicitors.

The policy also addresses the possible link between an adverse verdict at a Coroner's Inquest and a medical negligence claim and details the actions that will be taken in the event of the Trust instructing Solicitors to represent the organisation at Inquest.

The policy should be read in conjunction with the NHS Resolution Clinical Negligence Reporting Guidelines which may be downloaded from [www.resolution.nhs.uk](http://www.resolution.nhs.uk).

## Methodology

- A brief account of how the likely effects of the policy was assessed (to include race and ethnic origin, disability, gender, culture, religion or belief, sexual orientation, age)
- The data sources and any other information used
- The consultation that was carried out (who, why and how?)

The policy equally affects any individual who wishes to bring a clinical negligence claim against the Trust and does not discriminate between individuals.

The policy sets out the Trust's process for managing clinical negligence claims in accordance with Statutory Regulation and National Guidelines.

## Key Findings

Describe the results of the assessment

Identify if there is adverse or a potentially adverse impacts for any equalities groups

No adverse or potentially adverse impacts have been assessed for any equalities groups.

## Conclusion

- Provide a summary of the overall conclusions

This is an internal policy that describes the Trust’s approach to the management of clinical negligence claims in accordance with Statutory Regulations and Guidelines.

**Recommendations**

- State recommended changes to the proposed policy as a result of the impact assessment
- Where it has not been possible to amend the policy, provide the detail of any actions that have been identified
- Describe the plans for reviewing the assessment

No changes are recommended.

**Guidance on Equalities Groups**

<b>Race and Ethnic origin</b> (includes gypsies and travellers) (consider communication, access to information on services and employment, and ease of access to services and employment)	<b>Religion or belief</b> (include dress, individual care needs, family relationships, dietary requirements and spiritual needs for consideration)
<b>Disability</b> (consider communication issues, access to employment and services, whether individual care needs are being met and whether the policy promotes the involvement of disabled people)	<b>Sexual orientation including lesbian, gay and bisexual people</b> (consider whether the policy/service promotes a culture of openness and takes account of individual needs)
<b>Gender</b> (consider care needs and employment issues, identify and remove or justify terms which are gender specific)	<b>Age</b> (consider any barriers to accessing services or employment, identify and remove or justify terms which could be ageist, for example, using titles of senior or junior)
<b>Culture</b> (consider dietary requirements, family relationships and individual care needs)	<b>Social class</b> (consider ability to access services and information, for example, is information provided in plain English?)

## Appendix 1

# TIMESCALES FOR ACTION – TRUST RESPONSIBILITIES

### Disclosure of Records

- Copy records provided within 40 days of receipt of the request.

### Report Claims with a Significant litigation risk to the NHR

- This will include
  - a) Incidents reported (e.g. a major obstetric mishap), graded red/serious and investigated under the healthcare governance arrangements. Those revealing a possible breach of duty leading to a potential large value claim (i.e. damages of over £250,000) must be reported as soon as possible, usually before a claim is made.
  - b) Claims arising from a complaints investigation where the response on the facts, indicated that an admission of liability has been implied.
  - c) Requests for disclosure of records where the preliminary analysis indicated the possibility of a claim with a significant litigation risk, regardless of value.
  - d) Letters of Claim as the first indication of any action.

### Letters of Claim

- Letters of Claim reported to the NHR / Trust Solicitors within 24 hours of receipt.
- Acknowledge receipt of letter within 14 days.

### Part 36 Offers

- On receipt – immediate notification to NHR / Trust Solicitors via NHR Extranet/email.
- Acknowledge receipt of letter within 7 days.

### Legal Proceedings

- On receipt – immediately notify NHR / Trust Solicitors via NHR Extranet/email.
- Acknowledge receipt of papers within 7 days.
- In the event that Trust Solicitors are instructed, notification will be to the Trust Solicitors.

Volume 3 Risk management	Section 2 Risk	First Ratified June 2003	Next Review June 2024	Issue 8	Page 17 of 18
--------------------------------	-------------------	-----------------------------	--------------------------	---------	---------------

**Appendix 2**

**Clinical Negligence Claims Process Flow Chart**

