Cumbria Partnership NHS
NHS Foundation Trust

CLAIMS POLICY AND MANAGEMENT PROCEDURE

Document Summary

The aim of this policy and procedural document is to provide a clear framework that ought to be adopted in managing the handling of clinical negligence and non-clinical claims, such as public and employers' liability claims, against Cumbria Partnership NHS Foundation Trust ("the Trust"). This policy and procedure is based on guidelines provided by the NHS Litigation Authority ("NHSLA"), Civil Procedure Rules 1999 ("CPR") and other relevant legislation. This policy is applicable to all Trust staff, to include staff that the Trust would be considered vicariously liable for, in that the Trust has sufficient control over.

POLICY NUMBER	**POL/002/017**
DATE RATIFIED	August 2016
DATE IMPLEMENTED	July 2016
NEXT REVIEW DATE	July 2019
ACCOUNTABLE DIRECTOR	Director of Quality & Nursing
POLICY AUTHOR	Legal Services Officer

Important Note:
The Intranet version of this document is the only version that is maintained.

Any printed copies should therefore be viewed as "uncontrolled" and, as such, may not necessarily contain the latest updates and amendments.

Contents

1 SCOPE

This policy applies to all Trust services and to all full-time and part-time Trust-employed staff, including staff working in integrated teams, clinical staff, non-clinical staff, those on secondment, bank, agency, locums, patients and visitors.

2 INTRODUCTION

It is important that claims and potential claims are identified and reported. This allows the Trust and the NHSLA to consider if any pro-active steps (e.g. an early admission, offer or an apology – See Annex C) could be taken so as to minimise associated claims, and/or will allow the Trust and the NHSLA to commence appropriate investigations.

Claims have an impact on patients, on NHS services and on taxpayers. It is important that following investigations, if a claim is established, that claimants are compensated fairly and speedily. It is equally as important that the Trust challenges claims which do not evidence negligent care.

The Trust can learn about safety and best practice from claims against the NHS. The Trust should work to improve the practice of health care professionals, which can directly lead to improvements in patient and staff safety and share learning about risks and standards.

3 STATEMENT OF INTENT

The aim of this policy is to ensure that all associated individuals and services aforementioned in the Scope, fully co-operate with the Trust's Legal Services Department in the management of claims within the prescribed timescales, to include investigating claims, learning from claims and supporting staff.

The policy will also provide guidance on best practice and process for compliance.

In fully co-operating with this document, staff shall do so in a manner consistent with the Trust's Being Open and Duty of Candour Policy POL/001/040, Handling of Complaints, Concerns, Comments & Compliments POL/002/002, the Inquest Policy and the Incident and Serious Incidents that Require Investigation (SIRI) Policy.

It is important to note that some information within this document is a direct extraction from NHSLA guidelines, procedural rules and legislation. 'Defendant' is reference to the Trust.

4 DEFINITIONS

Claim – allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury or any clinical incident which carries significant litigation risk for the Trust. This includes complaints leading to claims, notification

of any serious and untoward incidents, incident reports generated by the Trust's risk management processes which represent a significant litigation risk and requests for the disclosure of medical records where an allegation of negligence giving rise to a personal injury has been intimated.

Clinical Negligence – a breach of duty of care by member of the health care professions employed by the NHS bodies in the course of employment, and which are admitted as negligent by the employer or are determined through the legal process. NHS bodies are liable at law for the negligent acts and omissions of their staff in the course of their NHS employment.

Employer's Liability – the Trust is under a common law duty and a statutory duty to take reasonable care to provide competent staff, safe plant and equipment, safe premises and safe working systems. The Trust may be liable to pay compensation to any employee for any injury or loss suffered as a result of a breach of their responsibilities.

Joint Liability – parties who are jointly liable share a single liability and each party can be held liable for the whole of it.

Limitation Period – the period within which a person who has a right to claim against another person must start court proceedings to establish that right. The expiry of the period may be a defence to the claim.

Pre-Action Protocol – statements of best practice about pre-action conduct which have been approved by the Head of Civil Justice and are listed in Practice Direction (Pre-Action Conduct).

5 DUTIES

5.1 Chief Executive

The Chief Executive has overall accountability for the Trust's management of claims.

5.2 Director of Quality and Nursing

The Director of Quality and Nursing is the nominated Director who is responsible for ensuring that there are robust systems and processes in place to manage claims within the Trust. The Director will ensure that the responsibility of managing claims within the Trust is delegated to an appropriate lead. The Director is responsible for ensuring the Trust Board is kept informed of claims made against the Trust, the trends identified, and the risk management of those trends to ensure lessons are learned.

The Director of Quality and Nursing also has the following responsibilities:

- Line management responsibility for Legal Services who manage the claims process/procedure.
- Provide professional advice and contribute to the decision making processes on request of Legal Services, where there is identified failings in any respective claim arising out of an incident.

5.3 Director of Quality and Nursing and Medical Director

The Medical Director and Director of Quality and Nursing are responsible for ensuring that their respective professional groups are compliant with this policy and the claim process. This includes a responsibility to ensure professional practice obligations are maintained, learning is shared and any necessary changes implemented as result of a claim.

5.4 Associate Directors of Nursing

Associate Directors of Nursing have executive responsibility for overseeing the SIRI process. Other responsibilities also include:

- Ensuring that there are appropriate links to the Trusts individual Care Group governance arrangements, to enable feedback, learning and monitor the activity of claims.
- Advising Legal Services to identify risks to and mitigate against any claims.

5.5 Care Group Quality and Safety Leads

The Care Group Quality and Safety Leads will support the Associate Directors of Nursing, Clinical Directors and Network Managers in providing feedback, learning and monitoring themes within claims through Governance to the respective Care Groups, to ensure organisational learning. They will also be responsible for supporting the quality assurance of all SIRIs prior to sign off and submission as part of disclosure.

5.6 Clinical Directors and Network Managers

Clinical Directors and Network Managers will have a significant involvement with the claims process for clinical claims. Specific areas of responsibility can encompass:

- Provision of initial information concerning any potential claim.
- Identification of any issues of liability for the Trust.
- Recommendations for the proposed management of a claim.
- Identification of risk management issues.
- Identification and implementation of any appropriate changes in practice.

- Responding to specific questions raised.
- Review and respond to the Legal Services Department on any expert reports.
- Review and respond to the Legal Services Department on any specific allegations of negligence when proceedings issued.
- Provision of witness statements.
- Attendance at case conferences with counsel and Trial hearings when appropriate.

5.7 Head of Engagement and Communication

The Head of Engagement and Communications will, in liaison with appropriate Care Group management, facilitate and coordinate any communications in respect of Claims with the media in accordance with the Trust's Media Relations Protocol.

5.8 Lead Investigating Officer (IO)

In the event of a SIRI in respect of a potential claim or open claim, the Lead IO shall meet their responsibilities in line with the Incident and Serious Incidents that Require Investigation (SIRI) Policy.

5.9 Head of Information Governance

The Head of Information Governance will provide specialist advice and support in relation to information governance as appropriate in respect of any claim.

5.10 Caldicott Guardian

The Caldicott Guardian will provide specialist advice and support in relation to the protection and use of patient identifiable information as appropriate, in respect of any claim.

5.11 Head of Legal Services and the Mental Health Legislation Unit

The Head of Legal Services and the Mental Health Legislation Unit is responsible for the strategic and operational management of the legislation and legal services provision across the local health and social care economy. This includes the management of a range of administrative and professional staff teams providing integrated functional services across inpatient and community services. The specific responsibilities in relation to inquests include:-

- The provision of an appropriate advisory service across the Trust, contributing to an effective quality, safety, and governance strategy and ensuring governance and risk management responsibilities in relation to all legal aspects are appropriately discharged.

- To coordinate and advise on legal initiatives in line with effective risk management practice and actively support and implement a holistic legislative service for the Trust.
- The effective delivery of the service provision in relation to core activities associated with claims.
- Manage potentially challenging claims or complaints concerning poor practice and negligence with tact, diplomacy and discretion where families and carers are in contact with the Trust.
- Ensuring staff are supported to liaise with professional bodies and are supported at work where a complaint is raised.
- To ensure that the Legal Services Officer is managing litigation claims (clinical negligence, employers' liability, public liability and occupiers' liability) appropriately.
- Work with the NHSLA in the instruction of defence solicitors, barristers and independent experts as necessary to ensure the effective investigation, assessment and defence of claims within the parameters required by the NHSLA.
- Work with colleagues in the quality, safety and governance teams and across clinical and corporate services to proactively identify potential litigation matters and risks or issues which need to be addressed so that action to mitigate against potential costs or prevent future harm or damage can be taken.
- To report on risk, legal and complaint processes, to align investigation and appropriate communication between departments and outside of the organisation.
- Preparing reports and other submissions required for relevant clinical and non-clinical claims, and for the NHSLA if required.

5.12 Legal Services Officer

The Legal Services Officer has a delegated operational responsibility for day-to-day management of litigation claims (clinical negligence, employers' liability, public liability and occupiers' liability). It is the responsibility of the Legal Services Officer, with the Head of Legal Services and the Mental Health Legislation Unit's guidance, to manage such claims ethically and cost effectively on behalf of the Trust and in accordance with national guidance and the standards required by the NHSLA and the Trust's policies and procedures. Including planning and managing each case effectively, whilst ensuring relevant Directors, medical, nursing and professional staff are kept informed of the progress and the outcome of each case. Other duties include:

- Support the Head of Legal Services and the Mental Health Legislation Unit in the management and coordination of the activities of the Legal Services team.
- Receiving, acknowledging and assessing all new claims that may arise against the Trust for any of the schemes set out in 6.

- Report claims or potential claims to the NHSLA in accordance with its reporting procedures.
- Be responsible for maintaining a log of all new Claims and Inquests received.
- Identifying and arranging for the preservation of relevant records and evidence.
- Establishing and maintaining contact and giving advice and support to relevant current and former staff, as necessary especially for any requirement for witness statements, court appearances etc.
- Referring to and liaising with the NHSLA as appropriate.
- Analysing, in consideration of staff views, and in conjunction with the NHSLA and its claims assessors where appropriate, whether claims should continue to be defended or settled.
- Systematically reviewing case files to ensure that claims are progressed and brought to a conclusion as soon as possible.
- Ensuring that information emerging during claims investigations and the outcome is shared with staff directly involved in the case for risk management and organisational learning.
- To refer high profile and complex claims for second opinion to the Head of Legal Services and the Mental Health Legislation Unit
- Identifying appropriate escalation regarding non-compliance, risk and areas of concerns relating to claims.
- Providing professional and specialist legal advice and support to staff, patients and visitors where appropriate.
- Attendance at Court to provide support to staff attending.
- Line manager responsibility, supervision and support for the Legal Services Administrators.
- Maintaining databases for all claims files.
- Overall responsibility for retention, archiving and destruction of claims files and records.
- Facilitating the sharing of information.

5.13 Legal Services Administrators

- Any delegated authority from the Legal Services Officer.
- Receiving and acknowledging claims in the Legal Services Officer's absence.

5.14 Line Managers and Team Leaders

- Assist Clinical Directors and Network Managers with their role in providing information, identifying issues and risks, responding to questions raised and providing views on experts' reports and allegations of negligence.
- Provide appropriate managerial support to their staff members throughout the claims process to provide a positive contribution.
- Attendance at Court when required.
- Provide protected time to witnesses from clinical practice in order to prepare witness statements, gather evidence and attend at Court.
- Provide assistance in drafting witness statements.
- Clarify any process, policy or protocols.
- Act as a management point of contact for the various teams involved within the claims process.
- Offer a supportive debrief following a claim, to give staff an opportunity to discuss their experience, and to implement any immediate actions.

5.15 All Staff

- All staff must comply with any legal requirement, Trust policy and any request by Legal Services regarding a claim, to include assisting with the investigation, supplying of information and progressing of claims as required.
- Prioritise requests by Legal Services and meet any deadlines prescribed by Legal Services within the time stipulated.
- Where staff are unable to meet deadlines prescribed by the NHSLA, Courts or Legal Services, to notify Legal Services and their Line Manager as soon as possible with justifications.
- Attend at Court where required.
- Endeavour to attend any witness preparation meetings or teleconferences.
- Provide availability to attend at Court within a specific time period promptly to Legal Services on request.
- Staff should ensure that they do not speak independently on any media enquiry, but direct enquiries to the Engagement & Communications Service.

6 NHSLA

6.1 Background

The NHS Litigation Authority handles negligence claims on behalf of NHS organisations and independent sector providers of NHS care in England who are members of the NHSLA's schemes. The NHSLA was established in 1995 as a Special Health Authority and is a not-for-profit arm's length body of the Department of Health. The NHSLA Indemnifies providers of NHS care in England:

- NHS and NHS Foundation Trusts.
- CCGs (since 1 April 2013).
- Independent sector providers of NHS care (since 1 April 2013).

6.2 Indemnity Schemes

The indemnity schemes are:

Clinical Negligence Scheme for Trusts (CNST) - for clinical claims brought by patients receiving NHS care arising from incidents since 1995. CNST cover is unlimited and the NHSLA funds the total cost of claims. There is no excess for CNST claims. When a claim is made against a member of CNST, the NHS body remains the legal defendant. However, the NHSLA takes over full responsibility for handling the claim and meeting the associated costs.

Risk Pooling Schemes for Trusts (**RPST)** - The Risk Pooling Schemes for Trusts is the collective name for two separate schemes covering non-clinical risks, the **Liabilities to Third Parties Scheme (LTPS)** and the **Property Expenses Scheme (PES).** Cover is unlimited in value, however some areas of cover are subject to an excess (PES £3k; LTPS £10k) for which the Trust is responsible. The NHSLA handles claims below the excess for members at no cost.

Property Expenses Scheme (PES) - for non-clinical claims including 'first party' losses for material damage to buildings and contents from a variety of causes, including fire, theft and water damage, where the incident occurred on or after 1 April 1999.

Liabilities to Third Parties Scheme (LTPS) - LTPS typically covers employers' and public liability claims from NHS staff, patients and members of the public. These range from straightforward slips and trips to serious workplace manual handling, bullying and stress claims. LTPS covers claims arising from breaches of the Human Rights Act, the Data Protection Act and the Defective Premises Act, as well as defamation, unlawful detention and professional negligence claims. LTPS also extends to cover the personal liabilities of the members of NHS boards, including non-executive directors. Personal injury cover is unlimited in value and there is no limit on the number of claims members may make in any membership year.

7 TRUST MANAGEMENT PROCEDURE AND HANDLING OF CLAIMS

7.1 Identifying and reporting claims to the NHSLA

7.1.1 It is important that the Trust identifies and, where appropriate, report potential claims to the NHSLA as early as possible. The following table sets out the triggers for when a claim should be reported to the NHSLA and the applicable timescales (non-clinical claims received via the Portal do not need to be reported to the NHSLA, save for the two important exceptions detailed below):

No	Situation	Action Required	Timescale
1	**Serious incident** where investigations suggest there have been **failings in the care provided;** **and** There is the possibility of a **large-value claim** (i.e. damages >£500,000)	Report to the NHSLA irrespective of whether or a claim has been notified or a disclosure request received	As soon as possible but no later than 3 months from when you become aware of the matter
2	**Disclosure request (or some other indication that a claim is being considered – e.g. Limitation extension request) received**; **and** Internal investigation (e.g. complaint review or incident investigation) reveals **possibility of a claim with a significant litigation risk regardless of value**.	Report to the NHSLA	As soon as possible but no later than 1 month from receipt of the disclosure request
3	**Letter of Claim** served; **and/or** **Part 36 offer** received; **and/or** **Proceedings** received.	Report to the NHSLA using Claim Report Form	Within 24 hours of receipt with completed documentation to follow within 2 weeks
4	**Group Action – i.e. any adverse issue which has the potential to involve a number of patients (e.g. failure of a screening service)**	Report to the NHSLA irrespective of whether or not claim(s) have been notified	As soon as possible but no later than 1 month from when you become aware of the matter
5	**Serial offender claims – i.e. claims arising from the alleged negligence and/or serious professional misconduct of a staff member affecting a number**	Report to the NHSLA irrespective of whether or not claim(s) have been notified	As soon as possible

	of patients		
6	**PORTAL ONLY: Defendant only – Claim Notification Form received;** **and** **The covering letter confirms that the NHSLA have not been made aware of the claim via the Portal**	Report to the NHSLA	Within 24 hours of receipt
7	**PORTAL ONLY: Defendant only – Claim Notification Form received from the Claimant solicitor;** **and** **No NHSLA contact received within 3 working days**	Contact the NHSLA to discuss whether or not to report the claim to the NHSLA	No more than 3 working days after receipt of the notification form
8	**Notification of inquest received;** **and** **Civil claim is or is likely to be pursued based on the subject matter of the inquest;** **and** **External representation at inquest is justified;** **and** **You wish to apply to the NHSLA for inquest funding.**	Report to the NHSLA using relevant scheme Report Form + a completed Inquest Funding Request form	No less than 1 month from the inquest hearing date

Under a new regime (as of 1 August 2013), all employers' and public liability claims up to £25,000 are to be reported direct to the NHSLA via a portal. The NHSLA must then confirm whether liability is accepted within 30 working days for employers' liability claims and 40 days for public liability claims.

7.2 Timescales for responding to a claim

The Claims Policy and Management Procedure document will operate in accordance with the Civil Procedure Rules 1999 and NHSLA Reporting Guidelines in 7.1.

7.3 Dealing with a Request for Records

All requests for disclosure of records under the Data Protection Act 1998 and/or Access to Health Records Act 1990, must be sent to the Information Rights Team and be managed in line with the Procedure for Processing Subject Access Requests POL/002/018/001.

The Information Rights Team must notify the Legal Services Department if a request has been submitted in line with the "Pre-Action Protocol", or for when proceedings are contemplated/are being investigated.

Under 3 of the Pre-Action Protocol for the Resolution of Clinical Disputes, any request for records by the claimant should:

(a) Provide sufficient information to alert the defendant where an adverse outcome has been serious or has had serious consequences or may constitute a notifiable safety incident;

(b) Be as specific as possible about the records which are required for an initial investigation of the claim (including, for example, a continuous copy of the CTG trace in birth injury cases); and

(c) Include a request for any relevant guidelines, analyses, protocols or policies and any documents created in relation to an adverse incident, notifiable safety incident or complaint.

Requests for copies of the claimant's clinical records should be made using the Law Society and Department of Health approved standard forms, adapted as necessary.

The copy records should be provided within 40 days of the request and for a cost not exceeding the charges permissible under the Access to Health Records Act 1990 and/or the Data Protection Act 1998. Payment may be required in advance by the healthcare provider.

The claimant may also make a request under the Freedom of Information Act 2000.

At the earliest opportunity, legible copies of the claimant's medical and other records should be placed in an indexed and paginated bundle by the claimant. This bundle should be kept up to date.

In the rare circumstances that the defendant is in difficulty in complying with the request within 40 days, the problem should be explained quickly and details given of what is being done to resolve it.

If the defendant fails to provide the health records or an explanation for any delay within 40 days, the claimant or their adviser can then apply to the court under rule 31.16 of the CPR for an order for pre-action disclosure. The court has the power to impose costs sanctions for unreasonable delay in providing records.

If either the claimant or the defendant considers additional health records are required from a third party, in the first instance these should be requested by or through the claimant. Third party healthcare providers are expected to co-operate. Rule 31.17 of the CPR sets out the procedure for applying to the court for pre-action disclosure by third parties.

7.4 Undertaking a Preliminary Analysis

Any staff who identify or consider that there is a significant risk of litigation to the Trust, should notify the Legal Services Department, who will conduct a preliminary analysis of the case. This is likely to be on a case-by-case basis in the course of a SIRI investigation, complaint or request for records (please refer to 7.3) (not exhaustive). The purpose of conducting a preliminary analysis is to ascertain whether the risk should be reported to the NHSLA as per 7.1.1.

7.5 Pre-Action Protocols CPR

The Pre-Action Protocols under the CPR explain the conduct and set out the steps the court would normally expect parties to take before commencing proceedings, for particular types of civil claims. There are currently 13 Pre-Action Protocols under the CPR in force:

Protocol
Personal Injury
Resolution of Clinical Disputes
Construction and Engineering
Defamation
Professional Negligence
Judicial Review
Disease and Illness
Housing Disrepair
Possession Claims by Social Landlords
Possession Claims for Mortgage Arrears
Dilapidation of Commercial Property
Low Value Personal Injury Road Traffic Accident Claims
Low Value Personal Injury Employers' and Public Liability Claims

Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to:

a) Understand each other's position;

b) Make decisions about how to proceed;

c) Try to settle the issues without proceedings;

d) Consider a form of alternative dispute resolution (ADR) to assist with settlement;

e) Support the efficient management of those proceedings; and

f) Reduce the costs of resolving the dispute.

Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the above objectives.
The Pre-Action Protocols and Practice Directions must not be as a tactical device to secure an unfair advantage over another party. Only reasonable and proportionate steps should be taken by the parties to identify, narrow and resolve the legal, factual or expert issues. The costs incurred in complying with the Pre-Action Protocols and Practice Directions should be proportionate.

7.6 Pre-Action Protocol for the Resolution of Clinical Disputes

This Protocol is intended to apply to all claims against hospitals, GPs, dentists and other healthcare providers (both NHS and private) which involve an injury that is alleged to be the result of clinical negligence. This Protocol is intended to be sufficiently broad-based and flexible to apply to all sectors of healthcare, both public and private. It also recognises that a claimant and a defendant, as patient and healthcare provider, may have an ongoing relationship. It is important that each party to a clinical dispute has sufficient information and understanding of the other's perspective and case to be able to investigate a claim efficiently and, where appropriate, to resolve it. This Protocol encourages a cards-on-the-table approach when something has gone wrong with a claimant's treatment or the claimant is dissatisfied with that treatment and/or the outcome. This Protocol is now regarded by the courts as setting the standard of normal reasonable pre-action conduct for the resolution of clinical disputes.

7.7 Letter of Notification under Pre-Action Protocol for the Resolution of Clinical Disputes

Following receipt and analysis of the records and, if appropriate, receipt of an initial supportive expert opinion, the claimant may wish to send a Letter of Notification to the defendant as soon as practicable.

The Letter of Notification should advise the defendant that this is a claim where a Letter of Claim is likely to be sent because a case as to breach of duty and/or causation has been identified. A copy of the Letter of Notification should also be sent to the NHSLA or, where known, other relevant medical defence organisation or indemnity provider.

On receipt of a Letter of Notification a defendant should—

(a) Acknowledge the letter within 14 days of receipt;

(b) Identify who will be dealing with the matter and to whom any letter of claim should be sent;

(c) Consider whether to commence investigations and/or to obtain factual and expert evidence;

(d) Consider whether any information could be passed to the claimant which might narrow the issues in dispute or lead to an early resolution of the claim; and

(e) Forward a copy of the letter of notification to the NHSLA or other relevant medical defence organisation/indemnity provider.

7.8 Letter of Claim under Pre-Action Protocol for the Resolution of Clinical Disputes

If the claimant decides that there are grounds for a claim, a letter of claim should be sent to the defendant as soon as practicable. Any letter of claim sent to the Trust should be copied to the NHSLA.

This letter should contain—

(a) A clear summary of the facts on which the claim is based, including the alleged adverse outcome, and the main allegations of negligence;

(b) A description of the claimant's injuries, and present condition and prognosis;

(c) An outline of the financial loss incurred by the claimant, with an indication of the heads of damage to be claimed and the scale of the loss, unless this is impracticable;

(d) Confirmation of the method of funding and whether any funding arrangement was entered into before or after april 2013; and

(e) The discipline of any expert from whom evidence has already been obtained.

The Letter of Claim should refer to any relevant documents, including health records, and if possible enclose copies of any of those which will not already be in the potential defendant's possession, e.g. any relevant general practitioner records if the claimant's claim is against a hospital.

Sufficient information must be given to enable the defendant to focus investigations and to put an initial valuation on the claim.

Letters of Claim are not intended to have the same formal status as Particulars of Claim, nor should any sanctions necessarily apply if the Letter of Claim and any subsequent Particulars of Claim in the proceedings differ.

Proceedings should not be issued until after four months from the letter of claim.

In certain instances it may not be possible for the claimant to serve a Letter of Claim more than four months before the expiry of the limitation period. If, for any reason, proceedings are started before the parties have complied, they should seek to agree to apply to the court for an order to stay the proceedings whilst the parties take steps to comply.

The claimant may want to make an offer to settle the claim at this early stage by putting forward an offer in respect of liability and/or an amount of compensation in accordance with the legal and procedural requirements of CPR Part 36 (possibly including any costs incurred to date). If an offer to settle is made, generally this should be supported by a medical report which deals with the injuries, condition and prognosis, and by a schedule of loss and supporting documentation. The level of detail necessary will depend on the value of the claim. Medical reports may not be necessary where there is no significant continuing injury and a detailed schedule may not be necessary in a low value case.

7.9 Pre-Action Protocol for Personal Injury Claims

This Protocol is primarily designed for personal injury claims which are likely to be allocated to the fast track and to the entirety of those claims: not only to the personal injury element of a claim which also includes, for instance, property damage. This Protocol sets out conduct that the court would normally expect prospective parties to follow prior to the commencement of proceedings. It establishes a reasonable process and timetable for the exchange of information relevant to a dispute, sets standards for the content and quality of letters of claim, and in particular, the conduct of pre-action negotiations.

7.10 Letter of Notification under Pre-Action Protocol for Personal Injury Claims

The claimant or his legal representative may wish to notify a defendant and/or the insurer as soon as they know a claim is likely to be made, but before they are able to send a detailed

Letter of Claim, particularly, for instance, when the defendant has no or limited knowledge of the incident giving rise to the claim, or where the claimant is incurring significant expenditure as a result of the accident which he hopes the defendant might pay for, in whole or in part.

The Letter of Notification should advise the defendant and/or the insurer of any relevant information that is available to assist with determining issues of liability/suitability of the claim for an interim payment and/or early rehabilitation.

If the claimant or his legal representative gives notification before sending a Letter of Claim, it will not start the timetable for the Letter of Response. However the Letter of Notification should be acknowledged within 14 days of receipt.

7.11 Letter of Claim under Pre-Action Protocol for Personal Injury Claims

The claimant should send to the proposed defendant two copies of the Letter of Claim. One copy of the letter is for the defendant, the second for passing on to the insurers (NHSLA).

The level of detail within the Letter of Claim will need to be varied to suit the particular circumstances. In all cases there should be sufficient information for the defendant to assess liability and to enable the defendant to estimate the likely size and heads of the claim without necessarily addressing quantum in detail.

The letter should contain a clear summary of the facts on which the claim is based together with an indication of the nature of any injuries suffered, and the way in which these impact on the claimant's day to day functioning and prognosis. Any financial loss incurred by the claimant should be outlined with an indication of the heads of damage to be claimed and the amount of that loss, unless this is impracticable.

Details of the claimant's National Insurance number and date of birth should be supplied to the defendant's insurer once the defendant has responded to the Letter of Claim and confirmed the identity of the insurer. This information should not be supplied in the Letter of Claim.

Where a claim no longer continues under either low value protocol, the CNF completed by the claimant under those protocols can be used as the Letter of Claim under this Protocol unless the defendant has notified the claimant that there is inadequate information in the CNF.

Once the claimant has sent the Letter of Claim no further investigation on liability should normally be carried out within the Protocol period until a response is received from the defendant indicating whether liability is disputed.

7.12 Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims

This Protocol describes the behaviour the court expects of the parties prior to the start of proceedings where a claimant claims damages valued at no more than £25,000 in an employers' liability claim or in a public liability claim..

7.13 Completion of the Claim Notification Form within Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims

The claimant must complete and send—

(a) the CNF to the defendant's insurer, if known; and

(b) the Defendant Only Claim Notification Form ("Defendant Only CNF") to the defendant

7.14 The Duties of Disclosure and Inspection of Documents

Once litigation has been commenced (after Court proceedings have been issued and the pleadings stage has been completed), the Trust is under a duty to provide discovery of all documents relevant to the claim. The obligation is a continuing one, so that if, for example, additional records turn up during the life of a claim which were for whatever reason unavailable at the outset, they should be disclosed to the claimant, subject to any objection taken on the grounds of relevance and/or privilege. Part 31 - Disclosure and Inspection of Documents and Practice Direction 31A – Disclosure and Inspection of the CPR sets out rules about the disclosure and inspection of documents.

The Legal Services Department is responsible for searching and obtaining all records and equipment and protecting documents from being destroyed, that would be relevant to the claim. This responsibility can be delegated on a task-by-task basis.

7.15 Identifying the Responsible Trust

The Legal Services Department must use the information contained within the notification of claim to ascertain whether the staff member or patient was a staff member or patient at the relevant time. Staff should always be alert to the possibility that the Trust may not be responsible for the claim. For example, if a visitor was involved in a slip/trip/fall incident which occurred on a non-Trust site, but was visiting a Ward/Unit managed by the Trust, it would be important to establish who was responsible for managing that specific area in which the incident occurred.

7.16 Entering the Claim onto the Claims Database

As soon as notification of a claim has been received, the Legal Services Department will enter information on to the Trust database (Ulysses) within 7 days.

7.17 Investigating the Claim

Following receipt of the notification of claim and preliminary analysis, if the Legal Services Department considers that further in depth investigation is required, the following process must be adopted:

Stage	Action
1	Legal Services report claim to NHSLA via NHSLA Wizard (refer to 7.1.1.)
2	Input new claim onto Ulysses system within 7 days
3	Acknowledge letter of claim to the claimant or claimant's representative within 14 days
4	Conduct search of the Trust's Ulysses system to obtain details of any subject access requests, inquests, incidents, risks, safeguarding and/or complaints linked to the allegations/incident
5	Conduct search, obtain and be familiar with the relevant records (health or personnel for example), incident reports, risk assessments, SIRI reports, post incident reviews etc., relevant policies and protocols in operation at the time of the alleged incident, any other relevant information e.g. ward staffing levels, bed occupancy, numbers of staff on duty
7	Advise appropriate Corporate Service, Associate Director of Nursing, Clinical Director, Network Manager, Team Lead and Head of Mental Health Legislation Unit of new claim, attaching the Letter of Claim (or equivalent) and any relevant documents to be able to consider the claim
8	Obtain comments from the relevant Corporate Service, Associate Director of Nursing, Clinical Director, Network Manager, Team Lead and the staff (if junior staff via management) involved as to the treatment provided (if clinical claim), their involvement (if any), a preliminary response to the allegations raised, whether they consider any of the treatment feel below the acceptable standard of care, details of any staff involved in the claimant's care. Every effort should be made to track down all key staff in respect of each case, however, if it is unclear which staff were responsible for the care of the Claimant at the time of the alleged negligence or if the relevant staff have left the Trust, Legal Services will contact the relevant Clinical Lead for their comments. Where a claim is complex and/or seems to have some merit and especially where the preliminary opinion of the lead clinician is equivocal or fails adequately to deal with relevant issues (e.g. causation), it may be useful to seek a view from another consultant/lead professional within the Trust. This person should be someone who

	is not directly involved in the case that has sufficient clinical experience to offer an "expert" assessment of its strengths and weaknesses. The NHSLA/panel solicitors will provide detailed instructions as to what the "expert" is required to consider.
9	Complete NHSLA Claim Report on receipt of documentation obtained. Refer to Annexes A and B.
10	Forward any relevant documentation discovered during life of claim to NHSLA with liability decision within the prescribed timescales. Refer to 7.1. as regards timescales for employers' and public liability claim – failure to provide a liability decision within the prescribed timescales will result in the claim 'falling out of the portal' and has cost consequences
11	Thoughts on liability are to be authorised by the relevant Corporate Service, Associate Director of Nursing, Clinical Director, Network Manager and Head of Mental Health Legislation Unit and Legal Services.
12	On receipt of disclosure of documents and comments on liability are provided from the Trust, the NHSLA will be in a position to provide their preliminary thoughts on liability and will advise on the proposed course of action. This should then be referred back to relevant staff to consider the following options: • Make an admission of liability and invite the claimant to provide further details of his/her alleged injuries and any financial losses, with proof of the amounts where appropriate. • Offer to settle with NO admission of liability. • Deny liability and provide the claimant/claimant's solicitor with a copy of a report obtained from the appropriate consultant/lead professional setting out the pertinent clinical facts of the alleged incident and his/her reasoned opinion as to why there is no evidence of negligence. Invite them to drop the claim. Note: This is only appropriate where there are good grounds for believing that the claim is misconceived and/or without merit. An optimistic preliminary report from the relevant consultant will not always justify such a step and care must be exercised to see that all aspects of the claim have been reviewed thoroughly first. • Seek an early opinion from an independent expert outside the Trust. Note: The NHSLA/panel solicitors will instruct independent experts. • Take no further action pending further communication from the claimant/claimant's solicitor.
13	The NHSLA will advise of outcome and breakdown of cost.

7.18 Limitation

Limitation periods impose time limits within which a party must bring a claim, or give notice of a claim to the other party. Limitation periods are imposed by statute, primarily the Limitation Act 1980.

For an **adult with capacity**, limitation expires 3 years from the date of the alleged negligence or 3 years from the date of knowledge of significant injury as a result of the Trust's acts or omissions. For **adults or children that lack capacity**, there is no time limit. If the patient is a **child**, the three year period begins on their eighteenth birthday. For **deceased patients**, the time limit for a claim to be brought on behalf of the deceased's estate is 3 years from the date of death if the patient has capacity, or 6 years from the date of death if the deceased lacked capacity at time of death.

7.19 Non Compliance

7.19.1 Where there are indications that an employee is not performing to the required standards of the job, or that they are not complying with the claim process, the employee will be managed in accordance with the Trust's Capability Policy (POL/004/017) or Disciplinary Policy (POL/004/001) respectively.

8 Training

8.1 Ad hoc training and support for existing employees can be provided by Legal Services.

9 Monitoring compliance with this policy

The table below outlines the Trusts' monitoring arrangements for this policy/document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual responsible for the monitoring	Frequency of the monitoring activity	Group / committee which will receive the findings / monitoring report	Group / committee / individual responsible for ensuring that the actions are completed
Claims are	Review of	Legal	Annual	Audit	Audit

managed in accordance with the NHSLA schemes relevant to the Trust i.e. CNST, LTPS & PES and this policy including: • Action to be taken including timescales • How the organisation communicates with relevant stakeholders such as staff, claimants, NHSLA, solicitors, HM Coroner etc.	20% of all claims files covering all types of claims for assurance of compliance	Services Officer		Committee	Committee

10 References/Bibliography

- Civil Procedure Rules 1999
- Data Protection Act 1998
- Access to Health Records Act 1990
- Limitation Act 1980
- Clinical Negligence Scheme For Trusts April 2001 (Revised 1 May 2014 following the coming into force of The National Health Service (Clinical Negligence Scheme) (Amendment) Regulations 2014)
- Clinical Negligence Litigation, A Very Brief Guide For Clinicians

- Liabilities To Third Parties Scheme (Revised following the coming into force of The National Health Service (Liabilities to Third Parties Scheme) (Amendment) Regulations 2014)
- NHS Indemnity Arrangements for Clinical Negligence Claims in the NHS
- Property Expenses Scheme (Revised following the coming into force of The National Health Service (Property Expenses Scheme) (Amendment) Regulations 2014)
- Reporting claims to the NHSLA
- Saying Sorry, NHSLA Leaflet
- Claims Management Policy RM23, Gateshead Health NHS Foundation Trust
- Pre Action Protocol for the Resolution of Clinical Disputes
- Pre Action Protocol for Low Value Personal Injury (Employers liability and Public liability) Claims
- Pre Action Protocol for Personal Injury Claims
- NHS Litigation Authority Factsheet 1: basic information
- The NHS Litigation Authority Factsheet 3: information on claims 2014-15
- Northumbria Healthcare NHS Foundation Trust RMP14 Complaints Policy and Procedure for raising Concerns
- Claims Management Policy SH NCP 14 Southern Health NHS Foundation Trust
- Pinsent Masons, Advice Note on Limitation Pinsent Masons LLP 2012

11 Related Trust Policy/Procedures

- Annual Leave Policy (POL/004/015)
- Being Open and Duty of Candour Policy (POL/001/040)
- Capability Policy (POL/004/017)
- Claims Management Policy (CO/POL/002/017)
- Claims Management Procedure (CO/POL/002/017/001)
- Confidentiality Policy (CO/POL/002/038)
- Data Protection Act Policy (POL/002/018)
- Dealing With Complaints and Comments (POL/002/002)
- Disciplinary Policy (POL/004/001)
- Health Records Management Policy (CO/POL/002/008)
- Incident and Serious Incidents that Require Investigation (SIRI) Policy

- Information Risk Policy (POL/002/067)
- Information Sharing (Disclosure) Policy (CO/POL/002/065)
- Inquest Policy (DRAFT)
- Management Supervision Policy (HR/POL/004/010)
- Raising Concerns Policy (POL/004/007)
- Secondment Policy (POL/004/032)
- Sickness Absence Policy (Pol/004/005)
- Special Leave Policy (Pol/004/016)
- Standard Operating Procedure on Managing Health Records when Moving Offices (POL/002/008/009)
- Standard Operating Procedure on Missing and Unavailable Records (POL/002/008/007)
- Standard Operating Procedure on the Retrieval and Tracking of Health Records (POL/002/008/006)
- Standard Operating Procedure on the Transportation of Health Records (POL/002/008/008)
- Standard Operating Procedures on the Retention and Archiving of Health Records (POL/002/008/010)
- Time Off In Lieu (Toil) Policy (POL/004/036)

12 Document Control Sheet

Use the approved table below to record this information in an additional document as a checklist. This is not to be included in the policy/procedural document.

A.	Details	Yes/No/ Unsure	Comments
	A. Initial Screening by Policy Reviewer		
1	**Document Control**		
	Is the title clear and unambiguous?		
	Are the policy author/contact details correct?		
	Has the review date been identified?		
	Has the document been equality impact assessed?		

	Does the policy footer contain the policy title and the policy number (under the heading “our ref”), and page ‘x’ of ‘x’?		
	Is the version number of this document identified (in footer of policy)?		
	Is there a statement of changes made to this version (see section B of document control checklist)?		
	What is the purpose of this policy?		
2	**Format/Style/Content**		
	Is the document written using the agreed format/template?		
	Does the document use the agreed style (see section 3 of Document Development Resource Pack)?		
	Is there a table of contents page with numbers, including all subsections and appendices within the policy?		
	Does the document include a Summary?		
	Does the document include a Scope?		
	Does the document include an Introduction?		
	Does the document include a Statement of Intent?		
	Does the document include a list of all the definitions used within the policy?		
	Does the document contain a list of key duties?		
	Does the document include the detail of the policy?		
	Does the document include the implementation of training requirements?		
	Does the process for monitoring compliance include the aspect of compliance or effectiveness being monitored, the monitoring method, the individual responsible for the monitoring, the frequency of the monitoring activity the group/committee/individual who will receive the		

	findings and the group/committee/individual responsible for ensuring that the actions are completed?		
	Is the content of the policy clear and unambiguous throughout?		
3	**Evidence Base**		
	Are key references cited?		
	Are related standards cited?		
	Have you consulted with key stakeholders (aligned with those listed in the duties section).		
	Has the policy been approved by all relevant subcommittees? (please list the subcommittees that is has been through in the "comments" section (right).		
4	**NHSLA Standards**		
	If the policy relates to an NHSLA standard, has the registration and governance administrator approved the policy to ensure it meets the requirements of the standard?		

Appendix A

CLINICAL CLAIM REPORT FORM (CNST)

CLINICAL CLAIM REPORT FORM	NHS Litigation Authority
COMPLETED FORM TO BE SENT TO THE NHS LITIGATION AUTHORITY (ALONG WITH ALL RELEVANT SUPPORTING DOCUMENTATION) VIA THE CLAIMS REPORTING WIZARD	Please complete **electronically**

1. MEMBER DETAILS	
NHS LA Member Number:	
Member Name :	
Member reference number:	
Applicable scenario why claim is being reported to us (with reference to the numbering set out in	

the 'When should a claim be reported to the NHS LA' section of the Reporting Guidelines [1 – 8] – e.g. 1 – Serious incident, investigations suggest failings and likely large value claim	
Notification date (i.e. the date you were first made aware of the likelihood that a claim was or was likely to be pursued – e.g. receipt of request for records) - e.g. 01.04.14 – C solicitor requested records disclosure	

2. CLAIM CONTACT(S) INFORMATION	
Injured party:	
Address:	
National Insurance number (if known)	
Occupation (if known):	

Marital status and/or dependents (if known):	
Injured party's date of birth and date of death	
Claimant(s) details and relationship to the injured party (if applicable)	
Are you aware of any other parties that may have involvement in this matter – e.g. the Claimant's GP or another NHS organisation If so, please provide the contact details for each party and confirm whether or not you have already been in touch with them.	

3. <u>INCIDENT DETAILS</u>	
Site of incident (e.g. xx Hospital)	
Incident date (noting that the earliest date should be provided where there are likely to be multiple allegations made):	

Description of incident (brief description of key facts related to the incident): e.g. Alleged failure to diagnose/treat wrist fracture during A&E attendance resulting in ongoing impairment of function	

4. <u>INTERNAL INVESTIGATIONS TO DATE</u>	
Has an incident investigation been commenced/concluded [Y/N]?	
Did this involve an incident that was reported as a Never Event [Y/N]? If Yes, please confirm the Never Event involved with reference to the current Never Event list.	
Has this matter been investigated as a complaint [Y/N]?	

What, if any, changes/improvements have been made to your practices as a result of this incident?	
What, if anything, has happened to the staff involved in this incident – e.g. re-trained, disciplinary action?	
Given the information that you have received to date, do you consider there to be a LOW, MEDIUM or HIGH risk that a valid claim will be established.	
Given the information that you have received to date, do you think that this claim will be LOW (up to £50,000), MED (£50 - £500k) or HIGH (£500k plus) in value	

5. <u>ANY ADDITIONAL INFORMATION OF RELEVANCE THAT WE SHOULD BE AWARE OF (e.g. details of any Limitation extension agreement with the Claimant's representative or does this involve treatment provided under a Waiting List Initiative)</u>

6. <u>DECLARATION</u>
Name: …… Position of Signatory: ……
Signature: …….. Date: ……

PLEASE ALSO SEND US A COMPLETED:

1. **Clinical Claim Useful Documents Guide**
2. **Clinical Witness Details Form (if appropriate)**

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April 2014

Appendix B

CLAIM REPORT FORM (LTPS)

LTPS CLAIM REPORT FORM	NHS Litigation Authority
COMPLETED FORM TO BE SENT TO THE NHS LITIGATION AUTHORITY (ALONG WITH ALL RELEVANT SUPPORTING DOCUMENTATION) FOR ALL NEW CLAIMS	Please complete **electronically**

1. MEMBER DETAILS	
NHS LA Member Number:	
Member Name:	
Member reference number:	
Applicable scenario why claim is being reported to us (with reference to the numbering set out in the 'When should a claim be reported' to the NHS LA section of the Reporting Guidelines [1 – 8]	
Notification date (i.e. the date you were first made aware of the likelihood that a claim was or was likely to be pursued – e.g. receipt of request for records)	

2. CLAIM CONTACT(S) INFORMATION	
Name of Injured Party:	
Address:	
National Insurance number (important):	

Email address:	
Mobile Number:	
Occupation:	
Marital Status:	
Injured Party Date of Birth and, if relevant, date of death	DOB: DOD:
Injured Party Status (please tick) Employee ☐ Visitor ☐ Patient ☐ Contractor ☐ Other (please specify) ☐	
Brief Description of Injury:	
Are you aware of any other parties that may have involvement in this matter – for example a Claimant advancing the claim on behalf of the Injured Party or a co-defendant? If so, please provide the contact details for each party (and their representative) and confirm whether or not you have already been in touch with them.	

3. <u>INCIDENT DETAILS</u>
Date and time: (please provide the earliest date where multiple allegations are being made):
Location (including Site of incident – e.g. *St James' Hospital*).
Please state what happened:
Did the incident happen in a PFI developed area [Y/N]?

Incident reported? How and by whom (please provide full details)
Who was incident reported to?
Were there any witnesses to the incident [Y/N]? If Yes, please complete an LTPS Witness Details Form (https://extranet.nhsla.com/Dashboard/Policies%20%20Procedures/Reporting%20Guidelines/Key%20Documents/LTPS%20Witness%20Details%20Form.docx) and, where possible, an LTPS Witness Statement template for each witness.
Digital images taken of accident locus [Y/N]. If yes, please attach them.
Is there any CCTV footage? If yes, please ensure a copy is retained and preserved by Trust or sub-contractor who manages the CCTV system.

4. INVESTIGATIONS TO DATE	
Was the incident reported to the HSE [Y/N]?	
Has an incident investigation been commenced/concluded [Y/N]?	
What, if any, changes/improvements have been made to your practices as a result of this incident?	
Did this involve an incident that was reported as a Never Event [Y/N]? If Yes, please confirm the Never Event involved with reference to the current Never Event (see https://www.england.nhs.uk/wp-content/uploads/2015/03/never-evnts-list-15-16.pdf)	
Has this matter been investigated as a complaint [Y/N]?	
Given the information that you have received to date, do you consider there to be a LOW, MEDIUM or HIGH risk that a valid claim will be established.	

5. CLAIM VALIDATION CHECKLIST (CVC) – STAFF & PUBLIC LIABILITY CLAIMS

NHS LA uses fraud risk indicator questions to assess risk of fraud being present within a non-clinical claim and to decide how to manage the claim. ***A positive response to any of the fraud indicator questions below does not mean that the claim is fraudulent. We strongly caution against any presumption of dishonesty being made.***

CVC questions are rated Red (strong concern) or Amber (medium concern):

RED RISK	**HIGH RISK OF FRAUD i.e. a strong concern identified.** **Refer this Claim to NHS LA's RPS Team 3 immediately**
AMBER RISK	**MEDIUM RISK OF FRAUD i.e. a moderate concern identified.** Proceed With Caution - Claim May Require Investigation.

Please confirm whether any of the indicators apply to this incident using box 6 to explain why:

NO	FRAUD RISK INDICATOR QUESTION	YES	RATING
1.	Evidence of previous dishonest behaviour by Claimant? Local Counter Fraud Specialist (LCFS) investigation for dishonesty offences? Credible evidence identifying criminal convictions for dishonesty offences?		**RED**
2.	CCTV footage & or witness evidence available that disputes that the accident happened at all or in a completely different way to the alleged version?		**RED**
3.	Informant tip off received that disputes that the accident happened at all or in a completely different way than alleged or that claimant is exaggerating their claim?		**RED**
4.	Claimant had multiple accidents at same location in similar circumstances?		**RED**
5.	Have the same locus photographs been used multiple times for different claims?		**RED**

6.	Evidence that independent witness linked to Claimant despite statements to the contrary?		**RED**
7.	Substantial claims history (evident from previous claims brought against the trust by same claimant)		**RED**
8.	Evidence of similar accident circumstances within claims history?		**AMBER**
9.	Was incident not reported or reported late *[i.e. 7 days or more days post incident]?*		**AMBER**
10.	Claimant sought legal advice before seeking medical advice?		**AMBER**
11.	Agency worker?		**AMBER**
12.	Redundancy situation, disciplinary problems or financial motivation i.e. money problems identified?		**AMBER**
13.	Claimant inconsistent and or vague with how the incident is alleged to have occurred?		**AMBER**
14.	No witnesses to incident or witnesses are linked i.e. not independent?		**AMBER**
15.	Accident occurred late at night/early morning or in first few days of employment?		**AMBER**
16.	Injury inconsistent with accident circumstances?		**AMBER**
17.	No objective signs of injury? Lack of contemporaneous medical notes (GP, Occupational Health, Hospital, A & E)?		**AMBER**
	1 OR MORE RED INDICATORS IDENTIFIED [Y/N]		
	3 OR MORE AMBER INDICATORS INDENTIFIED [Y/N]		

6. PRE-ACTION DOCUMENT DISCLOSURE – This must be completed and returned

DOCUMENT	LOCATION OF ORIGINAL OR DOES NOT EXIST? (STATE WHICH)	COPY ATTACHED?	COPY RETAINED?
Pre -claim correspondence – e.g. request for medical records disclosure form or correspondence on Limitation			
Accident/First Aid Report			
Witness Statements			
Relevant photographs and/or CCTV footage			
RIDDOR			
HSE Documents			
Risk Assessments			
Health & Safety Minutes			
Details of Similar Incidents			
Repair/Inspection/Maintenance Records			
Complaints documents			
Other Relevant Documents			
FOR EMPLOYEES:			
Training records			

Job Description			

7. ANY ADDITIONAL INFORMATION OF RELEVANCE THAT WE SHOULD BE AWARE OF

8. DECLARATION

Name: ……	Signature: ……..
Contact Tel No:……..	
Position of Signatory: ……	Date: ……..

PLEASE ALSO SEND US A COMPLETED:

3. **LTPS Witness Details Form (if appropriate)**
4. **LTPS Witness Statement template (if appropriate) https://extranet.nhsla.com/Dashboard/Policies%20%20Procedures/Reporting%20Guidelines/Key%20Documents/LTPS%20Witness%20Details%20Form.docx**

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March 2016

Appendix C

CLAIM REPORT FORM (PES)

PES CLAIM REPORT FORM	NHS Litigation Authority

Please return to:

NHS Litigation Authority 2nd Floor 151 Buckingham Palace Road London SW1W 9SZ	Please complete fully in **BLOCK CAPITALS**

1. MEMBER DETAILS	
Membership Number:	
Name and Address:	
Telephone Number:	
Fax Number:	
Contact name:	
Contact details (including email):	

2. INCIDENT DETAILS	
Date:	
Location address:	
Brief Circumstances:	

Remedial action taken:	

3. <u>WITNESS DETAILS (continue on separate sheet, if necessary)</u>	
Name:	
Grade:	
Department:	
Address (if not staff):	
Name:	
Grade:	
Department:	
Address (if not staff):	

4. <u>DETAILS OF LOSS</u>		
Description of Property damages/stolen	***Owner of Property (i.e. employee, patient or visitor)***	***Estimated repair costs (or value, if destroyed)***

5. ANY ADDITIONAL INFORMATION

6. DECLARATION	
Name: ……	Signature: ……..
Position of Signatory: ……	Date: ……...

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May 2013

Appendix D

Saying Sorry

Further information can be found in the Trust Policy and Procedure for Being Open and Duty of Candour POL/001/040

https://www.cumbriapartnership.nhs.uk/assets/uploads/policy-documents/Duty_of_Candour_POL-001-040_reviewed_April16docx.pdf

How should this happen?

Verbal apologies are essential because they allow face-to-face contact between the patient, their family and carers and the healthcare team. This should be given as soon as staff are aware an incident has occurred. A written apology, which clearly states the healthcare organisation is sorry for the suffering and distress resulting from the incident, must also be given.

Who should say sorry?

Information about a patient safety incident must be given to patients and their families in a truthful and open manner by an appropriately nominated person. Staff may be unclear about who should talk to patients when things go wrong and what they should say; there is the fear that they might upset the patient, say the wrong things, make the situation worse and admit liability. Having a local policy that sets out the process of communication with patients and raising awareness about this will provide staff with the confidence to communicate effectively. The local policy should state who is the most appropriate member of staff to give both verbal and written apologies to patients and their families; the decision should consider seniority, relationship to the patient, experience and expertise. Most healthcare provision is through multidisciplinary teams so any local policy on openness should apply to all staff that have key roles in the patient's care.

What if there is a formal complaint or claim?

Poor communication may make it more likely that the patient will pursue a complaint or claim. It is important not to delay giving a meaningful apology for any reason, including where there is a formal complaint or claim. It is also essential that any information given is based solely on the facts known at the time. Healthcare professionals should explain that new information may emerge as an investigation is undertaken, and that patients, their families and carers will be kept up-to-date with the progress of an investigation.

Is an apology the same as an admission of liability?

Saying sorry is not an admission of legal liability; it is the right thing to do. The NHS LA is not an insurer and we will never withhold cover for a claim because an apology or explanation has been given. The NHS LA claims teams are always happy to provide support and advice where there is a potential claim.

What about the staff involved?

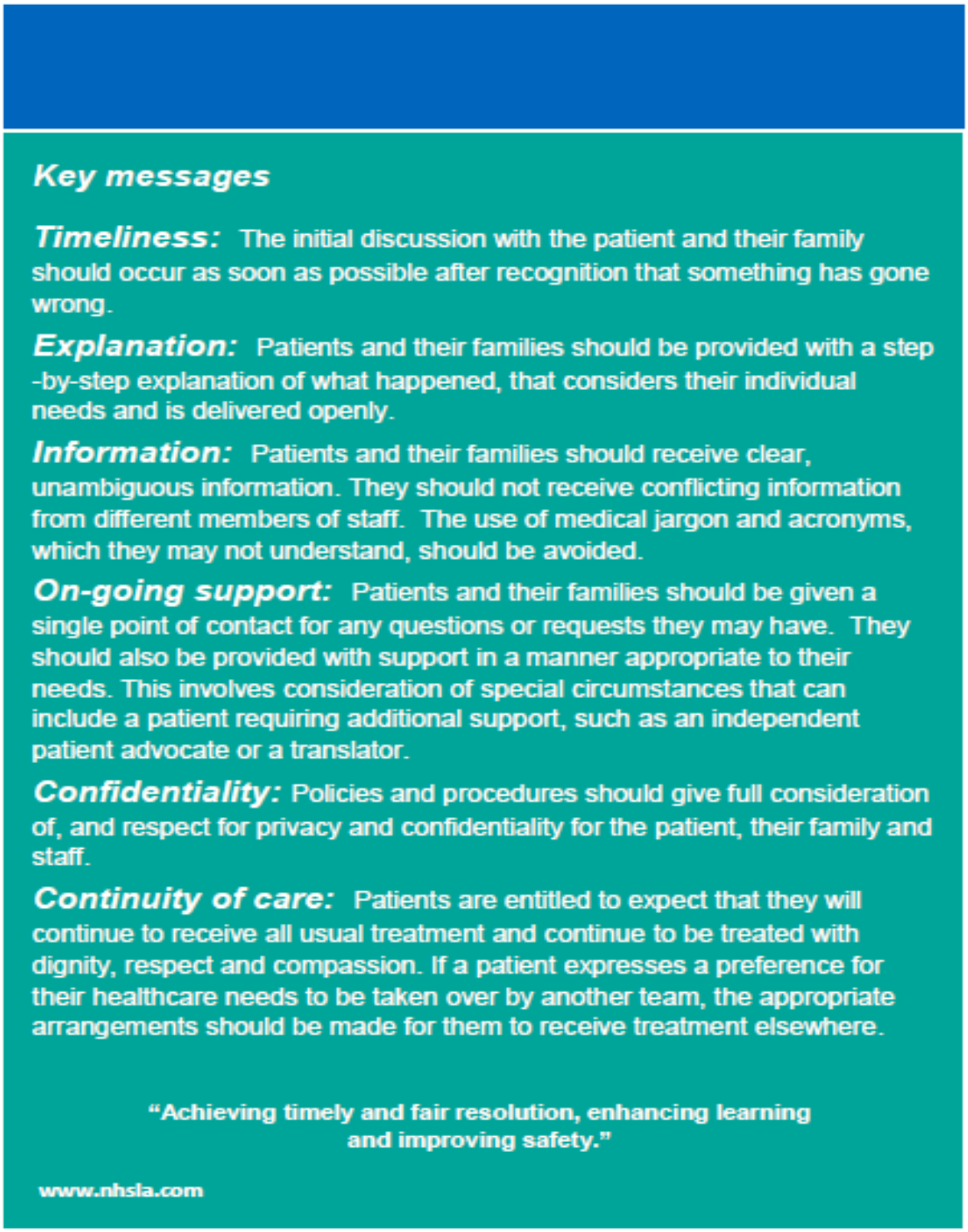
Healthcare organisations must create an environment in which all staff, whether directly employed or independent contractors of NHS care, are encouraged to report patient safety incidents. Staff should feel supported throughout the investigation process because they too may have been traumatised by being involved. Sometimes patients can suffer significant harm. In these circumstances, the member(s) of staff involved may find it hard to participate in the discussion with the patient and their family. Every case needs to be considered individually, balancing the needs of the patient and their family with those of the healthcare professional concerned. In cases where the healthcare professional responsible wishes to attend the discussion to apologise personally, they should feel supported by their colleagues throughout the meeting. In cases where the patient and their family express a preference for the healthcare professional not to be present, it is advised that a personal written apology is handed to the patient, their family and carers during the initial Being Open discussion.

For more information

Being Open Guidance (National Patient Safety Agency)
www.nrls.npsa.nhs.uk

Reports and Consultations on complaint handling (Parliamentary and Health Service Ombudsman)
www.ombudsman.org.uk

Review of the NHS Hospitals Complaints System Putting Patients Back in the Picture (Clwyd and Hart)
www.gov.uk


Key messages
Timeliness: The initial discussion with the patient and their family should occur as soon as possible after recognition that something has gone wrong.
Explanation: Patients and their families should be provided with a step -by-step explanation of what happened, that considers their individual needs and is delivered openly.
Information: Patients and their families should receive clear, unambiguous information. They should not receive conflicting information from different members of staff. The use of medical jargon and acronyms, which they may not understand, should be avoided.
On-going support: Patients and their families should be given a single point of contact for any questions or requests they may have. They should also be provided with support in a manner appropriate to their needs. This involves consideration of special circumstances that can include a patient requiring additional support, such as an independent patient advocate or a translator.
Confidentiality: Policies and procedures should give full consideration of, and respect for privacy and confidentiality for the patient, their family and staff.
Continuity of care: Patients are entitled to expect that they will continue to receive all usual treatment and continue to be treated with dignity, respect and compassion. If a patient expresses a preference for their healthcare needs to be taken over by another team, the appropriate arrangements should be made for them to receive treatment elsewhere.
"Achieving timely and fair resolution, enhancing learning and improving safety."
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Appendix D

Flowchart under the Pre-Action Protocol for the Resolution of Clinical Disputes

Please see below an illustrative flowchart which shows each of the stages that the parties are expected to take before the commencement of proceedings.