

Claims Handling Policy and Procedure for Clinical Negligence; Liabilities to Third Parties; and Property Expenses Scheme Claims

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CONTENTS

Equality Statement

1.	Introduction	Page 3
2.	Background	Page 4
3.	Purpose	Page 5
4.	Being Open	Page 6
5.	Roles and Responsibilities	Page 6
6.	Procedure for Handling Claims	Page 9-16

APPENDIX 1 - Definitions of a claim and the NHSLA Schemes relevant to the organisation

APPENDIX 2 - Claims Process Flowchart

APPENDIX 3 References

EQUALITY STATEMENT

This policy applies to all NHS Leeds West Clinical Commissioning Group employees irrespective of age, race, colour, religion, disability, nationality, ethnic origin, gender, sexual orientation or marital status, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.

All employees will be treated in a fair and equitable manner and reasonable adjustments will be made where appropriate, e.g. interpreter or signing provision, access arrangements, induction loop, etc.

The NHS Leeds West Clinical Commissioning Group will ensure that this policy is monitored and evaluated by the Assurance Committee.

1. INTRODUCTION

The NHS Leeds West Clinical Commissioning Group is committed to the effective and timely investigation of, and response to, any claim that includes allegations regarding clinical negligence, liability to third parties or personal injury. The organisation will follow the requirements of, and respond to the recommendations made by, the National Health Service Litigation Authority (NHSLA) in the management of all claims. It is important that patients, staff and visitors who have valid claims against the NHS Leeds West Clinical Commissioning Group have access to a range of remedies, including an explanation, an apology, remedial treatment and, where justified, monetary compensation. The NHS Leeds West Clinical Commissioning Group is also committed to monitoring claims and collecting information to help facilitate wider organisational learning as a tool of risk management.

The NHS Leeds West Clinical Commissioning Group aims to manage claims in a systematic and co-ordinated way to achieve:-

- Openness and timeliness in the investigation of concerns raised by individuals who feel they have been harmed by the acts or omissions of the NHS Leeds West Clinical Commissioning Group or its staff;
- Prompt processing of claims to remove uncertainty for all involved, particularly the claimant, to settle quickly those claims that have merit, and to discourage the prolonged pursuit of unmeritorious claims and the prolonged defence of meritorious claims;

- Minimisation of costs associated with the investigation of claims and any subsequent litigation;
- Resolution of as many disputes as possible before the issue of Court Proceedings;
- Where a resolution is not achievable, to lay the ground to enable litigation to proceed on a reasonable timetable, at a reasonable and proportionate cost, and to limit the matters in contention;
- Learn from claims and minimise recurrence;
- Reduce premiums to a minimum through proactive risk management and health and safety practices.

2. BACKGROUND

The principal role of the National Health Service Litigation Authority (NHSLA) is to administer schemes set up under Section 21 of the National Health Service and Community Care Act 1990. This enables the Secretary of State to set up one or more schemes to help NHS bodies pool the costs of any “*loss of or damage to property and liabilities to third parties for loss, damage or injury arising out of the carrying out of [their] functions*”.

There are currently five schemes operating, plus other tasks:

1. A scheme covering liabilities for alleged clinical negligence where the original incident occurred on or after 1 April 1995 (the “Clinical Negligence Scheme for Trusts” or CNST);
2. A scheme covering liabilities for clinical negligence incidents which occurred before that date (the “Existing Liabilities Scheme” or ELS);
3. A scheme covering the outstanding liabilities for clinical negligence in respect of the former Regional Health Authorities;
4. A scheme relating to any liability to any third party where the original incident occurred on or after 1 April 1999 (the Liability to Third Party Scheme or LTPS);
5. A scheme relating to any expenses incurred from any loss or damage to property where the original loss occurred on or after 1 April 1999 (the Property Expenses Scheme or PES).

Policy Direction

The NHS Leeds West Clinical Commissioning Group sets out to have robust risk and claims management processes in place, to support the NHSLA to administer the schemes for us as and when needed. In having good risk management processes and robust local claims management processes, the NHS Leeds West Clinical Commissioning Group helps to not only maximise resources available for patient care but, more importantly, minimise the suffering and resulting costs for all parties associated with adverse incidents related to clinical negligence, third party liabilities and property expenses claims.

3. PURPOSE

The purpose of this document is to set out the NHS Leeds West Clinical Commissioning Group policy and guidance with regard to the management of Clinical Negligence Scheme for Trusts (CNST), Liabilities to Third Parties Scheme (LTPS) and Property Expenses Scheme (PES) claims to ensure that:-

- The processes for claims handling are integrated into the overall governance framework within NHS Leeds West Clinical Commissioning Group;
- Reliable and complete information is gathered at the start of any claim;
- Individual claims are risk assessed and categorised in terms of severity and likelihood and the risk score will determine the level of investigation to be undertaken;
- Risk issues are identified and addressed promptly;
- Staff who are involved in the investigation of claims are supported through the process and kept up-to-date with developments;
- The interface between complaints, incidents and claims is such that individuals are not compelled into commencing unnecessary litigation;
- The offer of non-pecuniary solutions to patients is made where appropriate, which could include a meeting with relevant clinicians and/or the fast-tracking of treatment;
- The patient/healthcare provider relationship is maintained/restored as far as it is reasonably possible to do so;
- The NHS Leeds West Clinical Commissioning Group learns from claims and minimises recurrence.

4. BEING OPEN

In respect of the “Being Open” (NPSA) principles below, where a member of staff or public is harmed as a result of a mistake or error in their care, the Leeds West CCG believe that they, their family or those who care for them, should receive an apology, be kept fully informed as to what has happened, have their questions answered and know what is being done in response. This policy endorses the Leeds West CCG commitment to our patients and staff to follow these principles:

- apologise for the harm and/or mistake;
- explain, openly and honestly, what has happened;
- describe what will be done in response to the event to ensure the risk of recurrence is minimized;
- offer support and counseling services that might be able to help;
- provide the name of a person to speak to; and
- give updates on the results of any investigation.

5. ROLES AND RESPONSIBILITIES

Roles and Responsibilities within NHS Leeds West Clinical Commissioning Group

The Chief Accountable Officer has overall responsibility for Claims Management. Prime responsibility and accountability for Claims Management must remain part of NHS Leeds West Clinical Commissioning Group management structure with Executive Directors, Managers and other senior professional staff responsible for the maintenance of standards in their areas.

NHS Leeds West Clinical Commissioning Group Governing Body will:

- Ensure that the organisation is managing its affairs efficiently and effectively through the implementation of internal controls to manage risk;
- Receive reports of claims every six months at a private Governing Body meeting;
- Promote a climate of openness in accordance with the ‘Being Open’ approach advocated by the NPSA. (See the NHS Leeds West Clinical Commissioning Group Being Open Statement contain within the Incident Management Policy and Procedures).

Designated Governing Body Member

The Executive Director with responsibility for Governance is the Director responsible for compliance with the Claims Handling Policy, and is responsible for ensuring the Governing Body is informed, and assured, that the claims management system within NHS Leeds West Clinical Commissioning Group is effective.

Head of Governance (city-wide)

The Head of Governance is responsible for developing the risk management strategy, including procedures for managing clinical negligence and personal injury claims, and will inform the Governing Body of significant issues and major developments related to the management of claims.

Committee with over-arching responsibility for claims management

The Assurance Committee and Governing Body will be provided with claims information on a six monthly basis. The Assurance Committee will ensure that the system for claims reporting, and learning the lessons, is regularly reviewed and implemented in line with national policy and NHS Leeds West Clinical Commissioning Group requirements.

Governance Team

The Governance Team will administer the Claims reporting process and provide advice and guidance to staff regarding Claims Handling Policy and the reporting procedure. The Governance Team is responsible for co-ordinating the investigation of claims, which includes:

- Responsibility for the conduct and control of all claims in accordance with the Claims Handling policy and for the management of claims and NHSLA reporting guidelines;
- Responsibility for producing a preliminary analysis, in consultation with the lead clinician responsible for the allegations made in the context of the claim, within 40 days following a pre-action disclosure request as stated in NHSLA Clinical Reporting Guidelines;
- Responsibility for liaising with NHS Leeds West Clinical Commissioning Group staff, neighbouring acute and other trusts, NHSLA, legal advisors, claimant and defence solicitors, Coroners, Police Services and any other relevant person/agency, as appropriate;

- Request the Signing of Statements of Truth/Defence documents by the Executive Director of Governance of NHS Leeds West Clinical Commissioning Group and liaising with the NHSLA and relevant staff at appropriate stages of claims;
- Keeping relevant staff informed of developments with regard to individual claims;
- Ensuring six monthly reports are submitted to the Assurance Committee and the Governing Body;
- Maintaining a record of claims on a database;
- Advising on the preservation of records relating to individual claims;
- Liaising with the Head of Communications, as necessary, where there is the possibility of publicity occurring;
- Identifying risk management issues, ensuring that these are reported to the relevant Directors for action and recording on the risk register, as appropriate, and that lessons are learnt for service improvement and that these are reported to the relevant groups for action.

Role of Managers

Wherever possible those involved in the claims investigation should be encouraged to provide critical comments and factual statements to aid the claims investigation process. The Clinical Lead can be asked to provide an objective overview or advice. If external opinion is necessary, the NHSLA/Defence Solicitor would routinely instruct such independent experts.

Clinicians/Specialist Advisors

Arrangements will be made to ensure that adequate advice can be obtained at all times, e.g. via NHSLA or NHS Leeds West Clinical Commissioning Group solicitors, particularly when deciding when to involve clinical staff or specialist advisors.

All Staff

All staff are responsible for referring immediately all claims and potential claims to the Governance Team who must be informed about all claims correspondence within at least 24 hours. No contact may be made with claimant's solicitors, NHS Leeds West Clinical Commissioning Group solicitors/legal advisors without prior agreement. Staff will participate fully in the management of claims, providing relevant records, incident reports,

complaint files, together with supporting documentation and complying with all notified deadlines.

Staff should be aware that reports which do not have as their sole or dominant purpose for prospective or actual litigation are likely to be discloseable. This means that their content must be factual and avoid personal opinion and supposition as far as practically possible.

The interpretation of such reports may amount to an admission of liability but this should not inhibit staff from dealing properly and effectively with any remedial action that may be indicated.

7. PROCEDURE FOR CLAIMS MANAGEMENT

Procedure for Handling Claims

Local Financial Penalty

Any employee receiving paperwork or correspondence relating to a claim must contact the **Governance Team based at WIRA House** for advice and support. Any financial Court penalties incurred by managers holding onto claim information, and thereby slowing the process, will be chargeable to the service holding onto the documentation.

Who May Make a Claim?

A claim may be brought by an individual or his/her estate, in respect of anyone who has suffered any loss arising out of the acts or omissions of NHS Leeds West Clinical Commissioning Group. Where the claim is on behalf of an individual without capacity, the claim could be brought on his/her behalf by someone with the legal status of representative.

In the case of a deceased claimant (patient, employee, member of the public), a claim might be brought by the executors or anyone with any interest in the estate of the deceased.

The NHS Leeds West Clinical Commissioning Group could also bring a claim in its own right under the provision of the Property Expense Scheme.

Triggers for invoking the Claims Procedure

Routinely for clinical negligence claims the initial trigger will be a Pre Action disclosure request from the claimant's solicitors, or occasionally a request from a Litigant in person. This may or may not follow on from a previous complaint/incident investigation, Root Cause Analysis, or Coroner's Inquest. Such requests are reported to the NHSLA in accordance with the clinical negligence reporting guidelines. Such requests are normally received by the Governance Team. Where such correspondence is received by another

department; it must be passed immediately to the Head of Corporate Governance, unacknowledged.

Routinely for employer's/public liability claims, a Pre-Action Protocol Letter of Claim is received from the Claimant's solicitors; occasionally a request for compensation is made by a Litigant in person. These are reported to the NHSLA in accordance with the non-clinical claims reporting guidelines.

Delegation Limits

From 1 April 2002, the NHSLA meets all/any demands for compensation as a result of clinical negligence. As there are no longer any excesses in the CNST scheme, all claims and NHSLA authorisation will be required before admissions are made and monetary compensation is offered.

The Governance Team will work in conjunction with the NHSLA to determine the conduct of individual cases, reporting appropriate cases and, at an appropriate stage, in line with the CNST Reporting Guidelines. It is therefore normally inappropriate for payments to be made by NHS Leeds West Clinical Commissioning Group; the only exceptions may be small ex-gratia payments, caused by administrative failures, involving loss of out-of-pocket expenses. These may be made in appropriate circumstances, subject to them not compromising NHSLA responsibilities in relation to liability.

For non-clinical claims the standard excesses applying are:

- Employers Liability Claims - £10,000
- Public Liability Claims - £3,000
- Property Expenses Scheme £20,000

Timescales and procedures for the exchange of information with other parties

There are timescales relating to the period within which a claim should be brought which is described as the 'limitation period'. For personal injury and clinical negligence claims, the Claimant should issue their Claim within a period of 3 years from the date of the incident which allegedly caused them harm, or within 3 years of their 'date of knowledge' if this can be proven to be later.

There are two main exceptions to this relating to children (their 3 year period does not commence until they reach the age of 18) or people with a disability who are incapable of managing their own affairs. These individuals may bring an action at anytime whilst the disability exists.

There are a number of timescale targets which apply to the claims management process. The Governance Team on behalf of NHS Leeds West

Clinical Commissioning Group will aim to meet the following targets, where applicable:

- a) In conjunction with the Information Governance Manager, provide a copy of medical records under the Data Protection Act 1998 (DPA), the Access to Health Records Act 1990 (applies to deceased patients only) and the Pre-action Protocol for the Resolution of Clinical Disputes – within 40 days of receiving a properly authorised request or within 21 days for deceased patients' records.
- b) Reporting a letter of claim regarding clinical negligence to the NHSLA – within 24 hours of receipt. The letter of claim indicates that the formal legal process has commenced and there will be three months to respond formally, provided that the letter is Protocol compliant. The Governance Team will need to obtain records, clinician's comments and produce a preliminary analysis, prior to reporting this will normally be completed within the forty days of receipt of the request for disclosure.
- c) Reporting a potential employer/public liability claim to the NHSLA – immediately when a letter of claim has been received with the completed report form and disclosure list and as much key documentation as possible. If all the necessary documentation is not immediately available this should not delay the reporting. The letter of claim should be sent alone in the meantime.
- d) Acknowledge the Claimant's solicitors Letter of Claim – within 21 days for LTPS claims and 14 days for Clinical Negligence claims.
- e) Acknowledge the service of formal proceedings to the NHSLA immediately.

8. CONFIDENTIALITY

Staff involved in any claim will be made aware of the importance of maintaining confidentiality, particularly in relation to documentation and disclosure of records in accordance with the 'Confidentiality: NHS Codes of Practice'(DH2003).

The Governance Team will arrange the correct storage of all relevant records, by storing the original records securely in the designated location. If the records are required elsewhere, their whereabouts will be tracked and recorded on the case file.

On release of records, the Governance Team, with the Information Governance Manager, shall determine the level of disclosure and check records to ensure that they contain only documents which should be disclosed to the patient's solicitors. Where the records are not disclosed in their entirety, a copy of the records will be retained with the claims file.

9. SUPPORT MECHANISMS FOR PATIENTS/CARERS AND STAFF

Staff

Being required to be involved in litigation or inquest proceedings when individuals practice, or conduct is under scrutiny, can be very stressful.

Systems are in place to assist staff during the investigation of a potential claim or Coroners Inquest and all members of staff must be informed about the support and counselling service available. Any member of staff involved in the investigation of a claim will be kept informed of the progress of an investigation. Staff are asked to contact the Governance Team if they require some support or representation with preparation or attendance at proceedings.

It is not the intention of the investigation process to assess whether disciplinary action against an individual member of staff should be considered. However, if, as a result of the investigation, there is prima facie evidence of a breach of the law, professional misconduct, or repetitive incidents, further action may be taken. In these circumstances, the appropriate senior manager will decide whether the Disciplinary Policy and Procedures should be invoked.

Staff should also be aware that in exceptional circumstances their actions may give rise to personal criminal liability.

Patients/Carers

Promoting a culture of openness is a pre-requisite to improving patient safety and the quality of healthcare systems. It involves apologising and explaining what happened to patients who have been unintentionally harmed as a result of their healthcare treatment. It ensures communication is open, honest and occurs as soon as possible following an incident. The National Patient Safety Agency (NPSA) are advocating this “Being Open” approach and it relates particularly to Step 5 of Seven Steps to Patient Safety *‘Involve and communicate with patients and public’*. The approach is mandated for Trusts through the NPSA Safer Practice Notice 10 (September 2005). The stance on openness is consistent with previous recommendations by other agencies, including the NHS Litigation Authority Circular 02/02. This circular requires healthcare staff to apologise to patients harmed as a result of healthcare treatment, and explains that an apology is not an admission of liability.

The key elements and principles of “Being Open” are outlined in NHS Leeds West Clinical Commissioning Group Being Open Statement including in the Incident Management Policy and Procedures.

10. LINKS WITH GOVERNANCE AND RISK MANAGEMENT

Claims handling is part of the overall Governance and Risk management function of NHS Leeds West Clinical Commissioning Group. This is to ensure that there is a robust interface, in a way which enables the best use of information available around adverse incidents, thus avoiding duplication and unnecessary expense. Most claims will arise from incidents that have been reported under the incident reporting procedures and/or a complaint may also have been made.

The Governance Team has established systems in place for the sharing of information to ensure an integrated approach.

11. LIAISON WITH THIRD PARTIES

The Governance Team will report as appropriate to the Head of Governance, to determine if external agencies should be involved in the claim investigation process, for example:

- where the circumstances give rise to suspicion of an unlawful act, the Executive Director for Governance will consult with the Chief Accountable Officer to decide whether the matter should be reported to the Police Services/Health and Safety Executive.
- where the circumstances give rise to allegations of professional misconduct, the Executive Director for Governance will advise whether the matter should be reported to the relevant professional body.
- where Health and Safety issues arise, and the matter has not previously been reported, the Head of Governance will advise the Executive Director for Governance if the matter should be reported to the Health and Safety Executive, reported to the National Patient Safety Agency and/or Strategic Health Authority, and National Clinical Assessment Authority
- the Head of Governance is responsible for informing the Executive Director for Governance, who will be responsible for advising whether the following agencies should be notified: Medical & Health Regulatory Association, Serious Hazard of Transfusion and Department of Counter Fraud Services.

The Governance Team will liaise with the NHSLA; Claimants; Coroner and Claimant/Defence solicitors as required. Specifically, NHSLA liaison will involve reporting appropriate cases in accordance with the NHSLA reporting guidelines.

12. CORONER

Correspondence with HM Coroner in the context of claims will be rare. When it occurs, the correspondence will be sent to the Governance Team. Coronial proceedings may alert the potential for a claim for damages. The Governance Team should always be notified of any inquest proceedings by the clinical member of staff involved with the patients care. The NHSLA may then be forewarned, as the NHSLA must be notified when a significant litigation risk has been identified.

Any employed manager that has staff who are asked to be involved in Coroner Court Proceedings must make contact with the Governance Team as soon as they become aware, and most definitely no later than six weeks in advance of the proceedings, in order to establish if any legal representation is required for employees. If it becomes necessary to obtain legal representation the procedure for seeking legal advice will be followed and the costs may be met by NHS Leeds West Clinical Commissioning Group.

13. INDEPENDENT SECTOR TREATMENT CENTRES (ISTCs)

These are a group of clinics and surgeries, both static and mobile, owned by the private sector but providing treatment free of charge to NHS patients. They are specifically designated by the Department of Health to provide this treatment. One-off waiting-list initiatives agreed locally by commissioners are excluded from this category.

If a claim arises from treatment to a patient attending an ISTC for NHS treatment then NHS Leeds West Clinical Commissioning Group/NHS England membership covers this treatment under the CNST arrangements.

ISTC owners are expected to comply with the NHSLA reporting guidelines. If claims are reported direct to the NHSLA, the owners must simultaneously advise NHS Leeds West Clinical Commissioning Group. Alternatively ISTC owners should report fully to the Governance Team who will notify the NHSLA promptly.

14. INVESTIGATION AND ROOT CAUSE ANALYSIS

The majority of claims originate from either a complaint or an incident, and will as a consequence have been investigated in accordance with the Incident Management Policy and Guidance or the Serious Incident Policy. The investigating manager will already have carried out a detailed investigation using root cause analysis. This information should be obtained as part of a claims investigation.

If a claim is received which has not previously been investigated, the Head of Governance will appoint a Governance Support Manager/investigation manager, who will carry out the investigation adopting a root cause analysis approach. See Incident Management Policy and Guidance and Serious Incident Policy and Guidance. The purpose of conducting a root cause analysis of claims is to identify the real cause of the claim, to establish legal causation. Root Cause Analysis can also reveal underlying system failures and other contributory factors that may have had an impact on the claim.

15. CLAIMS DATA COLLECTION AND ANALYSIS

The Governance Team will have the responsibility to establish and maintain a claims database of all claims relating to NHS Leeds West Clinical Commissioning Group, including information about the nature of each claim, financial data and other information.

This database will assist in the production of relevant and timely reports, including analysis of trends, as required by the Governing Body and NHSLA. Due regard will be paid to the confidentiality of data relating to individuals.

16. LEARNING FROM EXPERIENCE

NHS Leeds West Clinical Commissioning Group is committed to learn and make changes to practice to improve services as a result of claims. A systematic approach will be adopted to encourage learning and promote improvements in practice based on individual and aggregated analysis of incidents, complaints and claims, is a key.

Practice development and organisational learning occurs following the recommendations made from investigations into claims. The Governance Team will support clinical teams to produce and implement action plans to develop good practice. Monitoring of progress against agreed action plans will be undertaken.

17. DECISION PROCESS

The decision on resolving claims will be made on advice from the NHSLA.

18. EX-GRATIA PAYMENTS

Any “ex-gratia” settlements offered by NHS Leeds West Clinical Commissioning Group, whether as a consequence of a case passing through the claims or complaints process are, by definition, not payments based upon legal liability, and are therefore not reimbursable under CNST by the NHSLA. Ex-gratia payments can be made in settlement of small claims. In all cases

the offer must be made “*without prejudice or acceptance of liability as an ex-gratia payment and goodwill gesture, in full and final settlement*”.

19. REVIEW AND REVISION ARRANGEMENTS

The Claims Handling Policy will be reviewed on a three yearly basis, or earlier in the event of changes to NHSLA requirements, changes in legislation and good practice. The policy is subject to audit every 3 years, to ensure effective implementation, to be carried out by the Internal Auditors.

20. MONITORING COMPLIANCE/EFFECTIVENESS

Monitoring the effectiveness of the implementation of this policy will be monitored by the six monthly reports of all claims, which will be submitted to the Assurance Committee.

The reports will inform against the following quality performance indicators:

- Specify the numbers of claims received
- Identify the subject matter of those claims
- Recommendation and actions taken

Objective Scrutiny: This will be evidenced by the NHSLA Annual Review of the Solicitors Risk Management reports on claims.

Definitions of a claim and the NHSLA Schemes relevant to the organisation – See Appendix 1

Claim

For the purposes of this policy Leeds West CCG has adopted the following definition of a claim as defined in the NHSLA Guidelines:

'An allegation of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any untoward occurrence that carries significant litigation risk for Leeds West CCG'.

This includes complaints leading to claims, notification of serious adverse events, incident reporting, issues generated by risk management processes where these represent a significant litigation risk, and resulting in requests for disclosure of medical records where an allegation of negligence giving rise to a personal injury has been intimated.

The NHSLA administers and oversees the following finance pooling schemes, of which Leeds West CCG is a member.

Clinical Negligence Scheme for Trusts (CNST)

The NHSLA CNST scheme handles all clinical negligence claims against member NHS bodies. The Clinical Negligence Reporting Guidelines 5th edition October 2008 have been developed in cooperation with the NHSLA, and the Association of Litigation and Risk management (ALARM), to provide a framework within which to work. Clinical Negligence is defined as a breach of duty of care by members of the health care professions employed by NHS bodies, or by others consequent on decisions or judgements made by members of those professions acting in their professional capacity in the course of employment, and which are admitted as negligent by the employer, or are determined as such through the legal process. NHS bodies are liable in law for the negligent acts and omissions of their staff in the course of their NHS employment: under NHS Indemnity. NHS bodies take direct responsibility for costs and damages arising from clinical negligence where they (as employers) are vicariously liable for the acts and omissions of their healthcare professional staff.

All new clinical negligence claims must be reported to the NHSLA in line with 5th Edition Reporting Guidelines October 2008.

Risk Pooling Scheme for Trust (RPST)

LTPS and PES are collectively known as RPST. The NHSLA requires Leeds West CCG to comply with CNST and RPST reporting guidelines, which detail good practice in claims management and reflect and underpin the timescales and requirements of the Civil Procedure Rules and Clinical Governance. They encourage appropriate tasks to be handled by the organisation rather, than by referral to solicitors and also widen the definition of a claim to encompass complaints/incidents/inquests, if a significant litigation risk is present. A central requirement of membership of the Schemes is the promotion and development of good risk management practices within Trusts.

Employers and Public Liabilities Scheme (LTPS)

The LTPS element of the Risk Pooling Scheme for Trusts covers employers' liability claims for injuries sustained in the workplace, public liability claims for personal injury sustained by visitors to NHS premises, product liability claims and cover for professional negligence by employees and liabilities of Directors. A fee of £200 (subject to NHSLA revision at any time) may be charged for the investigation of claims settled below the excess. Leeds West CCG has a legal and statutory duty to take reasonable care to provide competent staff, safe plant and equipment, safe premises and safe systems of work. Leeds West CCG may be liable to pay compensation to any employee for any injury or loss suffered as a result of a breach of these responsibilities. Breach of these circumstances may also give rise to criminal liability.

Claims by employees and the public are invariably notified by means of a letter from solicitors. However, on occasions, a member of the public may claim in person.

From 1st August 2006 all new claims reported to the NHSLA must include the following documentation:

- NHSLA LTPS Report form;
- Letter of Claim;
- All documents relating to the type of claim being reported;
- A completed 'NHSLA Disclosure List', indicating which documents are enclosed. The declaration must be signed by the Head of Governance.

All LTPS Claims must be reported to the NHSLA immediately with the completed forms and all existing records, incident reports, and related documents. However, if some documents are not immediately available this should not delay reporting the claim. The letter of claim should be sent alone in the meantime.

A request for further information will often be made by the NHSLA. Such requests should be managed promptly, by making relevant enquiries of the appropriate department. The NHSLA may appoint a Claims Inspector, if appropriate, in these circumstances a member of the Corporate Governance Team should attend any site inspection.

Property Expenses Scheme (PES)

The PES scheme covers a claim by Leeds West CCG for accidental loss of, destruction of, or damage to, any property (buildings and contents) of NHS Leeds, where such claim is in excess of £20,000.

The Corporate Governance Team will report all claims to the NHSLA who will make a decision as to the appointment of a loss adjuster.

Where damage to property has occurred, particularly following a major event such as flooding, fire or lightning strike, the manager of the department concerned must seek advice from the Corporate Governance Team. The Corporate Governance Team will seek advice from the Estates team to confirm that the damage that has occurred exceeds the excess and estimates for the repairs will be requested. The Corporate Governance Team will report all claims to the NHSLA who will make the decision if a loss adjuster should be appointed.

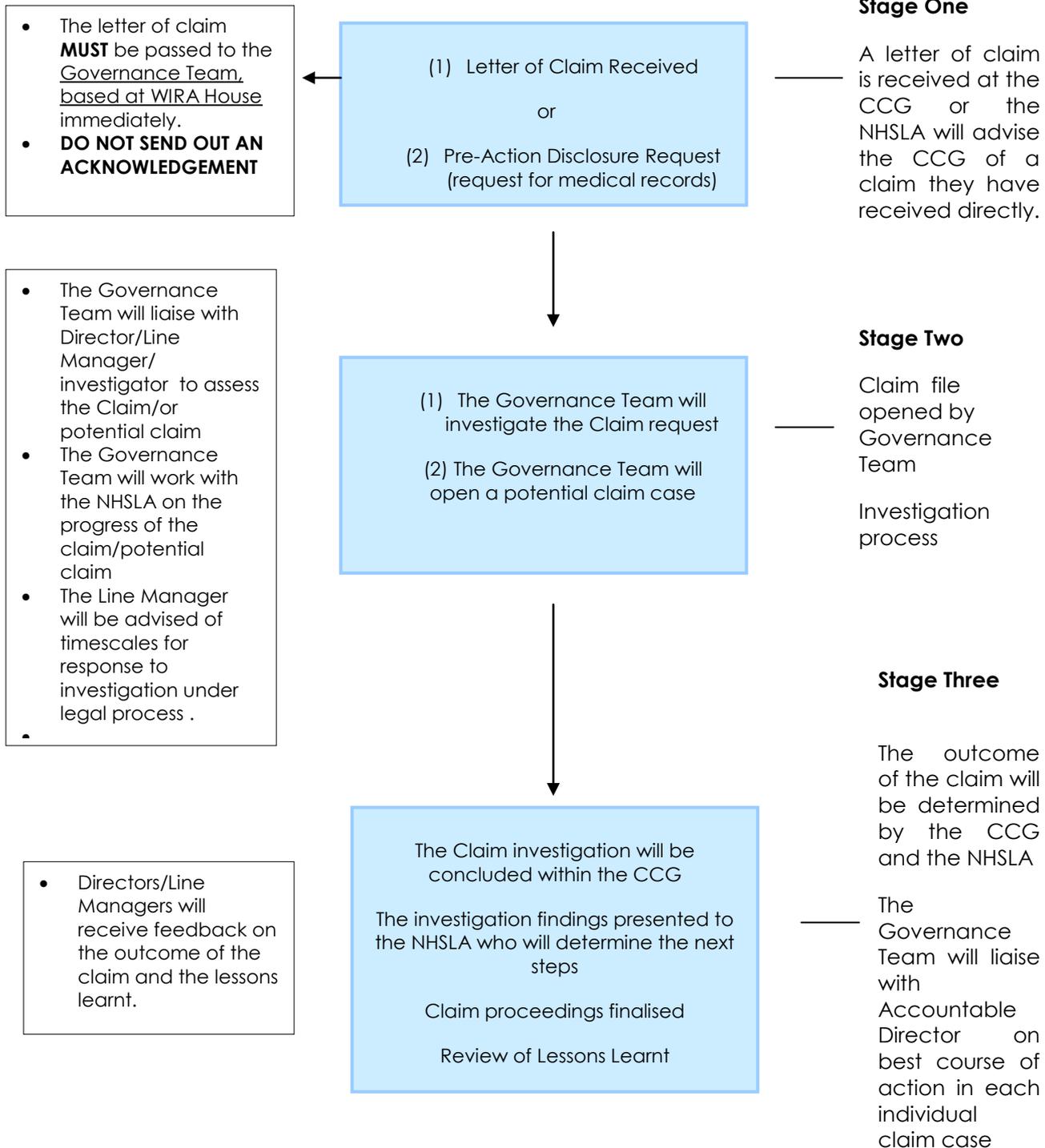
If a loss adjuster is to be appointed the Corporate Governance Team will facilitate a site visit.

Significant Litigation Risk

A central requirement of the membership of the NHSLA schemes is the development and promotion of good risk management practices. Where a claim has been received and a risk assessment of significant litigation has been established such claims should be thoroughly investigated adopting a root cause analysis approach. The purpose of conducting a root cause analysis of these claims is to identify the real causes of the incident and to establish legal causation. In accordance with the NHSLA Guidelines the following circumstances may give rise to a significant litigation risk:

- where the likelihood of settlement is judged to be above 50%, regardless of the potential value of the claim;
- An incident likely to generate substantial compensation (i.e. in excess of £250,000);
- Publicly or media-sensitive cases;
- Serious professional misconduct;
- Where a Letter of Claim and/or any other formal proceedings issued by the Courts is the first communication received

CLAIMS PROCESS FLOWCHART



References

- Department for Constitutional Affairs 1998.
- Pre-Action Protocols for the Resolution of Clinical Disputes 1998/183 [online]. London: the Stationary Office. Available from www.dca.gov.uk
- Department for Constitutional Affairs 1998. Pre-Action Protocols for Personal Injury Claims [online]. London: the Stationary Office. Available from www.dca.gov.uk
- The National Health Service Litigation Authority Framework Document. Available from www.nhsla.com (Publications – Claims publications)
- Clinical Negligence Reporting Guidelines Version 1 – April 2014. Available from www.nhsla.com (Publications – Claims publications)
- LTPS Claims Reporting Guidelines. April 2014 Available from www.nhsla.com (Publications – Claims publications)
- The NHS Leeds West Clinical Commissioning Group Incident Management Policy and Guidelines with Being Open Statement
- The NHS Leeds West Clinical Commissioning Group Serious Incident Policy and Guidelines
- The Complaint NHS Leeds West Clinical Commissioning Groups Policy and Procedures