



London Ambulance Service **NHS**  
NHS Trust

**Claims Handling Policy and Procedure: clinical negligence, liabilities to third parties and property expenses scheme claims**

## DOCUMENT PROFILE and CONTROL.

**Purpose of the document:** is to explain the processes for managing claims and how information from claims is used to facilitate organisation and individual learning.

**Sponsor Department:** Legal Services

**Author/Reviewer:** Head of Legal and Risk Services. To be reviewed by August 2013.

**Document Status:** Final

Amendment History			
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11/09/2008	2.0	Head of Legal Services	

**\*Version Control Note:** All documents in development are indicated by minor versions i.e. 0.1; 0.2 etc. The first version of a document to be approved for release is given major version 1.0. Upon review the first version of a revised document is given the designation 1.1, the second 1.2 etc. until the revised version is approved, whereupon it becomes version 2.0. The system continues in numerical order each time a document is reviewed and approved.

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### Links to Related documents or references providing additional information

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Ref. No.	Title	Version
	Department for Constitutional Affairs, 1998. <u>Pre-action Protocols for the Resolution of Clinical Disputes 1998/183</u> [online]. London: The Stationary Office. Available from: <a href="http://www.dca.gov.uk">www.dca.gov.uk</a>	
	Department for Constitutional Affairs, 1998. Pre-Action Protocol for Personal Injury Claims [online]. London: The Stationary Office. Available from <a href="http://www.dca.gov.uk">www.dca.gov.uk</a>	
	The National Health Service Litigation Authority Framework Document. Available from <a href="http://www.nhsla.com">www.nhsla.com</a>	
	Clinical negligence reporting guidelines fourth edition – January 2007. Available from <a href="http://www.nhsla.com">www.nhsla.com</a>	
	Non-clinical claims reporting guidelines Available from <a href="http://www.nhsla.com">www.nhsla.com</a>	
	NHSLA Disclosure List. Available from <a href="http://www.nhsla.com">www.nhsla.com</a>	
	Memorandum of Understanding, DOH, July 2004	
TP/004	Complaints and Feedback Procedure	
TP/005	Risk Management Policy and Strategy	
TP/006	Serious Untoward Incidents Policy	
TP/009	Policy for Access to Health Records, Disclosure of Patient Information; Protection and Use of Patient Information.	
TP/015	Responding to Enquiries and giving evidence at Coroners' Inquests	
TP/024	Being Open Policy	
	Information Management and Technology Security Policy	
H&S / 011	Incident Reporting Procedure	
HS018	Stress Management Policy	
TP054	Investigation of Incidents, PALS, Complaints, and Claims Policy	
TP055	Learning from Untoward Incidents, PALS, Claims, and Complaints Policy	

Document Status: This is a controlled record as are the document(s) to which it relates. Whilst all or any part of it may be printed, the electronic version maintained in P&P-File remains the controlled master copy. Any printed copies are not controlled nor substantive.

## **1 Introduction**

The London Ambulance Service NHS Trust (LAS) recognises the importance of effective claims management and that learning from claims is an integral part of risk management and governance.

The policy and procedure have been revised in accordance with the LAS's Risk Management Policy and Strategy in setting out the roles, responsibilities, organisation structures, and processes relevant to the handling of claims where the LAS is a party.

The purpose of the document is to explain the processes for managing claims and how information from claims is used to facilitate organisation and individual learning. The effective handling of claims requires all staff to co-operate with the investigation of a claim where they may be able to provide information and or other assistance.

## **2 Scope**

This policy and procedure set out the revised arrangements for the handling of clinical negligence, personal injury, property damage, and other liability claims against the LAS to comply with the rules and practices for civil litigation. The policy and procedure includes guidance on how claims are dealt with by the LAS, including involvement with the NHS Litigation Authority (NHSLA), the LAS's commercial insurers, claimants and their solicitors, solicitors acting on behalf of the LAS, and Coroners; and NHSLA Claims reporting guidelines for the Clinical Negligence Scheme for Trusts (CNST), the Liabilities to Third Parties Scheme (LTPS), and the Property Expenses Scheme (PES). The principal changes are to the delegated authority, format, and monitoring arrangements for ensuring that there is compliance with the objectives.

The arrangements are modelled specifically on the NHSLA website document "Claims Handling Policy – Clinical Negligence, Liabilities to Third Parties and Property Expenses Scheme Claims", Clinical Negligence Scheme for Trusts (CNST) Reporting Guidelines Fourth Edition – January 2007, the NHS Litigation Authority's Risk Management Standards for Ambulance Trusts, April 2008, the rules of the CNST, the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES) administered by the NHS Litigation Authority, and the requirements of the Trust's commercial insurers.

## **3 Objectives**

The aim of the policy is to demonstrate that the processes for managing clinical negligence, personal injury, other liability and property expenses claims comply with the NHSLA requirements. Compliance with this aim will entail :

1. The specification of clearly defined duties, timescales, roles, responsibilities and delegated authority for claims management in the LAS.

2. Compliance with the legal and good practice requirements for NHS bodies in respect of claims and risk management, including the requirements of membership of the CNST and Risk Pooling Scheme for Trusts, the Pre-Action Protocol for the Resolution of Clinical Disputes and the Pre-Action Protocol for Personal Injury Claims and avoiding the cost penalties for non – compliance.
3. The provision of information about the NHSLA schemes the LAS is a member of i.e. the CNST, LTPS, and PES.
4. Good communication with relevant stakeholders.
5. Effective arrangements for monitoring.
6. Demonstrating that the analyses of claims are used to identify where service and other improvements can be introduced.

## **4 Duties and Responsibilities**

The individual, committee / group levels of responsibility for claims handling and policy development complement the arrangements in TP/005 Risk Management Policy.

### **4.1 Trust Board**

The Trust Board approves the objectives of the policy and scheme of delegation. The Trust Board has delegated responsibility to the RCAG for ensuring that claims are managed in accordance with this policy and will obtain assurances from the RCAG on an annual basis.

### **4.2 Risk Compliance and Assurance Group**

The Risk Compliance and Assurance Group has overarching responsibility for claims management and has delegated authority from the LAS Trust Board for monitoring and reviewing the LAS's exposure to litigation and ensuring that there are effective processes for organisation and individual learning from claims.

### **4.3 Chief Executive**

The Chief Executive Officer has ultimate responsibility for ensuring that claims are dealt with effectively and efficiently.

### **4.4 Designated board member(s)**

Aside from claims heard by Employment Advisory Tribunals, for which the Director of Human Resources and Organisation Development is responsible, and property expenses claims, for which the Director of Finance is responsible, the Director of Corporate Services is responsible for the handling of liability claims and through the Risk Compliance and Assurance Group will keep the Trust Board informed on major developments.

#### 4.5 Claims manager/senior manager(s)

The Head of Legal Services, manages liability claims, aside from Employment Tribunal claims and claims relating to the LAS Estate, and reports directly to the Director of Corporate Services. The Deputy Director of Human Resources and senior Human Resources managers manage the handling of Tribunal claims. The Head of Estates reports to the Director of Finance and manages claims relating to the LAS estate. The claims handling responsibilities for the Head of Legal Services and the Head of Estates are summarised in Appendix 1.

Legal advice will be obtained from Panel Solicitors in accordance with the Scheme of Delegation for Legal Services and Standing Orders approved by the Trust Board.

The Head of Legal Services will obtain legal advice on claims against the LAS when necessary and advice is not available through the NHSLA. Generally legal advice will only be obtained in respect of claims subject to the fast track or multi track procedures which are below the excess for the LTPS, or are not covered by insurance; or for Coroners' Inquests or a public inquiry where it is advised that criticism may be expressed and / or there is a requirement for the LAS to be legally represented so that the parties are on equal footing.

The Deputy Director of Human Resources and other authorised managers will obtain legal advice on employment law claims in accordance with the Protocol with Panel Solicitors for the London Procurement Programme Legal Framework Agreement.

When it is necessary to obtain legal advice on conducting a detailed investigation or root cause analysis of a potential high value clinical negligence claim with estimated damages over £250,000 the Head of Legal Services will ascertain whether this may be treated as a cost of the claim by the NHS Litigation Authority or an expense to the Trust.

When legal advice is sought in respect of a claim the adviser will be asked to give clear advice upon:

- liability and causation;

- the strength of the defence and the probability of successfully defending the claim;
- the likely assessment on the award of quantum damages;
- the forecast legal costs of defending the claim including the claimant's costs;
- the future conduct of the claim including the use of mediation,
- Alternative Dispute Resolution and the initiation of Third Party proceedings.

#### 4.6 Clinicians/Specialist Advisors

The Medical Directorate provide the initial medical assessment on whether the duty of care may have been breached and causation established for all reported potential or actual clinical negligence claims. The Medical Directorate have a key role in determining the extent to which LAS employees may have caused or contributed to a particular injury or loss to enable the claim to be managed in accordance with the civil litigation rules and NHS Litigation Authority's CNST Reporting Guidelines. The Medical Directorate's report will state when it is made in response to actual or contemplated litigation and is subject to legal privilege.

The Head of Education and Development provides an assessment on the care and assistance provided by staff and whether this was in accordance with the Trust's protocols, procedures, training, or with National Clinical Guidelines and whether the care provided fell below an acceptable standard leading to the allegations made. The Head of Education and Development's report will state when it is made in response to actual or contemplated litigation, and is subject to legal privilege.

#### 4.7 Line managers

Line managers (AOM / PTS equivalent / heads of department) are responsible for ensuring that appropriate management support is provided to their staff throughout the conduct of a claim.

#### 4.8 Link with risk management and complaints management

The responsibilities for risk management, and clinical governance are set out in the Risk Management Policy and Strategy.

TP/005 Risk Management Policy and Strategy states that a root cause analysis will be conducted on all accidents / incidents and complaints assessed as high priority. The root cause analysis report will provide a factual account of the investigation with recommendations based on evidence and will be passed to the NHS Litigation

Authority by the Head of Legal Services where it is concluded that there is a significant litigation risk.

H&S/011 Incident Reporting Procedure sets out the requirements for the reporting and investigation of untoward incidents and accidents including the reporting to external agencies such as the Police, Health and Safety Executive, National Patient Safety Agency, Medical Devices Agency and NHS London.

TP/004 Complaints and Feedback Policy sets out the arrangements to investigate and respond to complaints in accordance with the NHS Executive's requirements and good practice. The Head of Legal Services is alerted where there is an intimation that a claim may be received and will liaise with the NHS Litigation Authority or motor insurer over the response.

## **5. General Issues Surrounding Claims Handling**

### **5.1 Definition of a claim and the NHSLA Schemes relevant to the organisation**

The NHSLA define a claim as “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 a significant litigation risk for the Trust”. This includes complaints leading to claims, notification of serious adverse events, untoward incidents or accidents, contentious inquests where the LAS may face criticism, requests for disclosure of records or witness statements, which represent a significant litigation risk. However, defining an incident as a ‘claim’ in the absence of a demand for compensation does not of itself imply that the NHSLA or the LAS accepts that compensation will ultimately be paid. It simply means that a preliminary analysis should be carried out and the matter may need to be reported.” (CNST Reporting Guidelines, Fifth Edition - undated but current on 11 8 2010 on the NHSLA website).

The NHSLA's definition of a clinical negligence claim may be adapted to identify other claims where breach of duty or contract has occurred causing foreseeable personal injury or loss / damage to property.

The LAS is a member of the NHSLA schemes which indemnify NHS bodies against clinical and non-clinical negligence claims, and provide “first party” insurance type cover for property expenses. The schemes of relevance to the LAS are:

For clinical negligence claims – the Clinical Negligence Scheme for Trusts (CNST). The CNST provides indemnity to members, their employees, and in defined circumstances to agents of the member, for clinical negligence claims arising from events which occurred on or after 1 April 1995. Clinical negligence claims arising from an event before 1 April 1995 are covered by the scheme for outstanding liabilities for clinical negligence of the former Regional Health Authorities. The CNST is funded by



the contributions of members based on the assessment of expenditure anticipated in the following year.

For employer and public liability claims – the Liabilities to Third Parties Scheme (LTPS). The LTPS provides indemnity to members and their employees for employer liability claims e.g. injuries arising through negligence from slips and trips, defective workplace equipment, lifting and handling; for public and product liability claims; for injuries to visitors to LAS premises; for defamation, professional negligence by employees and liabilities of directors; and also for claims alleging breach of the Data Protection Act 1998, the Human Rights Act 1998, and the Defective Premises Act 1972; arising from an event which occurred on or after 1 April 1999.

For property claims – the Property Expenses Scheme (PES). The PES provides indemnity to members for damage to property or theft arising from events occurring on or after 1 April 1999.

Further information on the cover and rules of the schemes is available on the NHSLA website [www.nhsla.com](http://www.nhsla.com).

## 5.2 Who may make a claim?

In a claim for clinical negligence a patient or litigation friend is required to prove that the treatment they received was below a minimum standard of competence, and that s/he suffered an injury, and that it is more likely than not that the injury would have been avoided or less severe with competent treatment.

The timescale for making a claim is three years from the date of injury but can be longer if the patient was a child, then the three years begins on the eighteenth birthday, or if the patient has a mental disorder within the meaning of the Mental Health Act 1983, then the three year rule does not apply.

## 5.3 Triggers for invoking the claims procedure

The procedure in Appendix 1 for investigating and reporting a claim will be invoked when a claim or potential claim is received or identified.

## 5.4 Delegation limits

NHS Trust Boards' delegated authority to make special payments is determined by the nature of the claim, the date of the incident from which the claim arose, and the insurance / NHS Litigation Authority indemnity in place at the time. The following apply to the LAS:

### 5.4.1 Clinical negligence claims

All claims for compensation arising from allegations of clinical negligence are passed to the NHS Litigation Authority. The LAS has a nil excess for claims that fall within the Clinical Negligence Scheme for Trusts and authorisation from the NHSLA is required before admissions are made or monetary compensation may be offered.

#### 5.4.2 Employer and public liability claims (excluding motor claims)

Under the Risk Pooling Scheme for Trusts (which includes the Liabilities to Third Parties Scheme and the Property Expenses Scheme) the LAS has delegated authority to settle claims up to the excess (£3,000 for public liability, £10,000 for employer liability, and £20,000 in respect of claims concerning plant, machinery, contents, and buildings) provided that this authority has not been relinquished to the NHS Litigation's Sub Excess Claims Handling Service. For Claims above the excess similar rules apply to the settlement of clinical negligence claims.

#### 5.4.3 Claims under contract

The Liabilities to Third Party Scheme does not provide cover for claims made under contract including claims heard by an Employment Advisory Tribunal and the LAS is not permitted to obtain commercial insurance except in limited circumstances, e.g. motor, income generation activities, travel, and terrorism. The LAS has delegated authority to make payments in respect of these claims unless they are novel, contentious, or repercussive in which case approval will be sought from the Department of Health.

#### 5.4.4 Motor claims

The LAS has a liability to pay up to £25,000 for each and every claim involving the main fleet of ambulances, rapid response units, motorcycle response units, and Patient Transport Service vehicles, from 1 November 2006. Claims against the motor insurance above the excess are the liability of the motor insurer, who holds the authority to negotiate settlement, once approval has been given by the LAS to make an admission of liability.

#### 5.4.5 Delegated Authority to Directors and Officers within the Trust

Within the limits under 5.4.1 – 5.4.4 the LAS Trust Board has delegated authority to:

- Directors to make ex-gratia payments up to £3,000 subject to a report to the Director of Finance.
- The Head of Legal Services to admit liability and / or agree to settle personal injury and other liability claims covered by the NHSLA schemes or commercial insurance; and other personal injury and liability claims not

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covered by the NHSLA schemes or commercial insurance up to £10,000 when legal advice has been obtained.

- The Director of Finance, the Director of Corporate Services, and the Director of Human Resources and Organisation Development to admit liability and / or agree to settle personal injury claims and other liability claims under contract and statute over £10,000 up to £50,000 where legal advice has been obtained and the case is not covered by the NHSLA schemes or commercial insurance.
- The Chief Executive Officer and Director of Finance to admit liability and / or agree to settle personal injury claims over £50,000 including costs where this is not covered by the NHSLA schemes or commercial insurance when legal advice has been obtained.
- The Director of Human Resources and Organisation Development to settle Tribunal claims up to £10,000 where legal advice has not been obtained and up to £50,000 where legal advice has been obtained.
- The Chief Executive Officer and Director of Finance to settle Tribunal claims over £50,000 subject to legal advice and a report from the Director of Human Resources and Organisation Development.
- The Director of Finance to settle claims that would fall within the terms of the Property Expenses Scheme up to the current level of excess (£20,000).

## 5.5 Timescales and procedures for the exchange of information with other parties

The management of claims in the LAS is based on the premise of the Civil Procedure Rules that it is in the interests of Claimants and Defendants to resolve claims as quickly as possible : by ensuring that claims are investigated thoroughly and promptly, through early and better exchange of information with the Claimant / their instructed solicitor, prompt reporting to the NHSLA, / commercial insurer, and early settlement where this is in the interests of the LAS or where there is a need for litigation for proceedings to be conducted as quickly as possible.

The rules for civil litigation, which came into effect on 26 April 1999, introduced protocols for clinical negligence and personal injury claims. The protocols require inter alia:

Records to be disclosed within 40 days in accordance with the Data Protection Act 1998.

A letter of claim to be acknowledged within 14 days.

A detailed and binding response to a letter of claim to be given within 3 months.

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Disclosure statements certifying that the search for documents has been carried out to the best of the signatory's ability.

Statements of Truth to be signed on all documents submitted in connection with the claim including the Defence and witness statements.

The responsibility for complying with the Civil Procedure Rules lies with the Director and manager responsible for dealing with the claim, the NHSLA, and with the LAS's commercial insurers.

Disclosure statements may be signed by:

All Directors

The Head of Legal Services

Senior Managers in Human Resources

The Head of Estates

Other senior managers selected by Directors or the Head of Legal Services

Statements of Truth may be signed by the above, aside from witness statements which must be signed by the individual making the statement.

## 5.6 Confidentiality

The duty of confidence and requirements on the disclosure of information to solicitors, the police, the media, and other health care organisations are detailed in TP /009 Policy for Access to Health Records, Disclosure of Patient Information : Protection and use of Patient Information.

Responsibility for identifying and arranging for the safekeeping of documentary records relevant to a claim is shared by the Head of Legal Services for claims under the CNST and LTPS and motor insurance, the Deputy Director of Human Resources for employment law claims, and with the Head of Estates and Financial Controller for claims under the PES.

The Head of Legal Services will ensure that relevant and timely information on claims is provided to risk management and governance groups in the LAS, to the NHSLA, and commercial insurers as may be required.

It is acknowledged that documentary records and reports which do not have as their sole or dominant purpose actual or prospective litigation are likely to be discloseable in law. Therefore when records and reports are compiled great care must be taken to

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present the facts and not express opinions, so far as reasonably practicable, where legal privilege does not apply.

## 5.7 Support Mechanisms for patients/carers and staff

It is appreciated that when claims are made it can be an extremely stressful experience for all involved.

The arrangements for supporting staff involved in litigation are detailed in Appendix 1 under “keeping interested parties informed and supported” and in TP/015 Procedure for Responding to Enquiries and Giving Evidence at Coroners’ Inquests and Statements at Police Interviews and in HS018 the Stress Management Policy.

The arrangements for communicating with patients and their relatives are detailed in TP/024 Being Open Policy and in TP/006 Serious Untoward Incidents Policy.

## 5.8 Reporting

The Head of Legal Services will ensure that any claim, as defined in 5.1, that falls within the scope of the CNST or LTPS is reported to the NHSLA, or if the claim is within the scope of the motor insurance that it is reported to the motor insurer. The Head of Estates will ensure that any claim for property loss or damage, excepting a fidelity guarantee expense, within the scope of the PES is reported to the NHSLA. Fidelity guarantee expense claims will be reported to the NHSLA by the Financial Controller.

### 5.8.1 Clinical Negligence Scheme for Trusts (CNST)

All claims in clinical negligence will be reported in accordance with the CNST Rules and Clinical Negligence Reporting Guidelines. The detailed reporting requirements are stated in Appendix 1.

### 5.8.2 Employers’ & Public Liabilities Scheme (LTPS) and Property Expenses Scheme (PES)

All claims above the LTPS and PES excess limits or which are handled by the NHSLA will be reported to the NHSLA in accordance with the LTPS and PES Rules and the Risk Pooling Scheme for Trusts (RPST) Guidelines. The detailed reporting requirements are stated in Appendix 1.

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### 5.8.3 Motor Claims

All accident report forms including the (LA420 and LA52) and claims reporting accident damage and / or injury to a third party driver and or passenger(s), or injury to passengers on a LAS vehicle, or pedestrian are reported to the LAS's motor insurer and when appropriate to the uninsured loss recovery insurer. The NHSLA Employers' Liability / Ensign / QBE Motor Policy Protocol distinguishes claims covered by the NHSLA scheme cover and claims covered by the motor insurer.

## **6. External Consultation and Communication with Stakeholders**

When investigating a claim or potential claim it becomes apparent that there may be allegations concerning another NHS body, a copy of the untoward incident investigation and other relevant documents will be requested to enable the Medical Directorate give a rounded judgement on breach of duty and causation.

When an Inquest is opened following the death of a person in custody and the Trust is an interested party, the Trust will conduct its own investigation and provide assistance to the Police and HM Coroner Inquiries, including but not limited to contributing to the pre- Inquest meetings and Gold Meetings, and facilitating investigations by the Police.

When investigating a patient safety incident involving death or serious untoward harm the Memorandum of Understanding Investigating patient safety incidents (unexpected death or serious untoward harm) : a protocol for liaison and effective communications between the National Health Service, Association of Chief Police Officers and the Health and Safety Executive issued in February 2006 by the Department of Health, will be followed. In this the LAS will work with all of the interested parties including the Police, Health and Safety Executive, HM Coroners, other NHS Trusts, Foundation Trusts, and Primary Care Trusts, in compliance with the Protocol.

In the event that an incident is investigated as a serious untoward incident the arrangements in TP/006 Serious Untoward Incidents Policy will apply.

## **7 Liaison with third parties**

The principal relationships and communications are with:

### **7.1 NHS Litigation Authority**

The Head of Legal Services is responsible for ensuring that new claims are reported to the NHSLA and advising on the LAS's position on whether the duty of care has been breached and causation is likely to be established.

### **7.2 Claimants / Solicitors**

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The Head of Legal Services is responsible for liaising with Claimants / their solicitors for all claims aside from claims under employment law, where the Deputy Director of Human Resources has this responsibility, or claims under the PES where responsibility is shared between the Head of Estates for property claims and the Financial Controller for claims involving theft.

### 7.3 Solicitors

Legal advice will be obtained from Panel Solicitors in accordance with the Scheme of Delegation for Legal Services and Standing Orders approved by the Trust Board.

The Head of Legal Services will obtain legal advice on claims against the LAS when necessary and advice is not available through the NHSLA. Generally legal advice will only be obtained in respect of claims subject to the fast track or multi track procedures which are below the excess for the Liabilities for Third Parties, or are not covered by insurance, or for Coroners' Inquests or a public inquiry where it is advised that criticism may be expressed and / or there is a requirement for the Trust to be legally represented so that the parties are on equal footing.

When legal advice is sought in respect of a claim the adviser will be asked to give clear advice upon:

liability and causation;

the strength of the defence and the probability of successfully defending the claim;

the likely assessment on the award of quantum damages;

the forecast legal costs of defending the claim including the claimant's costs;

the future conduct of the claim including the use of mediation,

Alternative Dispute Resolution and the initiation of Third Party proceedings.

### 7.4 Coroners

The Head of Legal Services is responsible for ensuring that there are effective arrangements for liaison with Coroners / their officers when LAS staff are asked to provide documentary or oral evidence at an Inquest. The arrangements to be

followed are described in TP /015 Procedure for Responding to Enquiries and giving evidence at Coroners' Inquests and statements at Police interviews.

The Head of Legal Services will report to Risk Compliance and Assurance Group on Rule 43 Reports made by Coroners and the LAS's response to the Coroner ,including an action plan where appropriate within the reporting timescale of 56 days.

## **8. Investigation and root cause analysis**

TP/54 Investigation of Incidents, PALS, Complaints, and Claims Policy sets out the approach and requirements for undertaking investigation and root cause analysis.

## **9. Learning from experience**

TP/055 Learning from Untoward Incidents, PALS, Claims, and Complaints Policy sets out the systematic approach to the analysis of and learning from incidents, PALS, claims, and complaints.

## **10. Reports**

The Risk Compliance and Assurance Group will receive a report from the Head of Legal Services every 6 months which provides:

- The number, trend analysis, and aggregate value of clinical negligence, personal injury and other liability claims against the LAS;
- All risk management recommendations made by panel solicitors instructed on claims under the NHSLA indemnity schemes.

The Clinical Quality, Safety and Effectiveness Group and Motor Risk Group, will provide reports and / or minutes every 6 months on the actions and recommendations from the review of claims data to the Risk Compliance and Assurance Group.

The Area Governance Groups and Learning from Experience Group will report quarterly to the Clinical Quality, Safety and Effectiveness Group on the actions taken to review the information and outcomes reported by the Head of Legal Services on clinical negligence claims and inquests where criticism against the LAS was anticipated. The Area Governance Groups will report quarterly to the Motor Risk Group on the follow up action arising from the review of reports from the insurers / broker on motor claims made against or on behalf of the LAS.

The Assistant Directors' Group will receive reports every two months which provide:

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- Summary information on the final outcome of personal injury and other liability claims against the LAS and consider what further remedial actions will be taken or proposed as a consequence of those claims, and report to RCAG.

## **11. Equality Impact Assessment**

The LAS has a legal obligation to meet the duties in the equalities legislation and to conduct equality impact assessments.

The Director of Corporate Services will ensure that an equality impact assessment is carried out in respect of the Claims Handling Policy and Procedure in accordance with the requirements of TP/002 Procedure for the Development, Issue and Review of Documentation annually or when the Policy and Procedure are updated, whichever is sooner.

## **12 Process for Reviewing the Claims Handling Policy and Procedure**

The Head of Legal Services will consult with the Deputy Director of Human Resources, the Head of Estates, and the Financial Controller on the effectiveness of the arrangements in this policy and procedure and identify what changes are required. The Head of Legal Services will report annually on the findings from the review to the Director of Corporate Services in the Performance Development Review meetings. In accordance with TP/002 Procedure for the Development, Issue, and Review of Documentation any significant amendments will be circulated for consultation prior to issue to ensure that the views of key stakeholders in the Trust are obtained.

Changes to the rules in the NHS Litigation Authority indemnity schemes and / or legislative changes pertinent to the handling of claims within these schemes will require the policy and procedure to be updated as will any alteration in the level of delegated authority on the handling of claims.

## Implementation Plan

<b>IMPLEMENTATION PLAN</b>	
<b>Intended Audience</b>	For all LAS staff
<b>Dissemination</b>	Available to all staff on the Pulse
<b>Communications</b>	Revised Procedure to be announced in the RIB and a link provided to the document
<b>Training</b>	<p>The Head of Legal Services will arrange regular and relevant training and support to be provided for staff in the handling of claims and associated areas of law with the assistance of the LAS's solicitors.</p> <p>The training will be evaluated as part of the Training Needs Analysis and revised on an annual basis.</p>
<b>Monitoring</b>	<p>The process for monitoring compliance with this policy is outlined in section 12 of this policy.</p> <p>The Head of Legal Services will report quarterly to the Director of Corporate Services on compliance with the NHSLA's reporting timescales for claims covered by the indemnity schemes and communication stakeholders. Any exception would be reported to RCAG with an action plan as appropriate.</p> <p>For information on reporting and monitoring see section 10 of this policy.</p>

### Procedures for Handling Claims in Clinical Negligence, Liability, and under the Property Expenses Scheme

On identification of a potential claim or receipt of a legal claim for compensation the Head of Legal Services or Director of Human Resources and Organisation Development if it is a Tribunal claim will initiate investigations with the relevant operational and support service managers and staff. Root cause analysis will be used wherever necessary to identify the real cause(s) of an incident giving rise to a claim.

#### 1. Clinical Negligence

##### Identifying a claim or potential claim

A claim is defined under definitions in the Policy, and is generally received as a Letter of Claim, but may also be by issue of a Claim Form and Particulars of Claim.

A potential claim is distinguished from a claim by an indication that a claim is being considered by a Claimant or following the investigation of an untoward incident in which a patient suffered harm or loss which may have been caused by a negligent act or omission by Trust staff and a claim may follow. Potential claims may be received as a request for records about the treatment of the patient, an enquiry to PALS, a complaint under the NHS Complaints Procedure, a communication with a Coroner's Officer indicating that the family of the deceased will be legally represented at the Inquest and may be critical of the LAS and / or the death occurred in custody.

Close collaboration between the Patient Experiences Department and Legal Services works to ensure a coherent and seamless approach to resolving issues of concern brought to the LAS by service users, members of the public, professional colleagues, etc, and by using the appropriate mechanisms as described in this policy and procedure.

Claims and potential claims are recorded on the claims module of the integrated data base for risk management.

##### Investigating a claim or potential claim

Acknowledge receipt of the claim and/or application for the release of medical records within 14 days.

Identify any existing incident or complaints file and link to the newly created Datix and Claim files.

Identify and request copy medical records.

Assess whether statements are required from any individual members of staff.

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Obtain the opinions of the Head of Education and Development on the duty of care owed and from the Medical Directorate on whether the duty of care may have been breached and causation is likely to be established.

Disclose copy medical records to the claimant's solicitors within 40 days of the request in accordance with the provisions of the Access to Health Records Act, Data Protection Act and the Pre-Action Protocol for the Resolution of Clinical Disputes.

Collate and analyse all the available factual information in order to complete a Preliminary Analysis which will include:

a synopsis and chronology,

an outline of the care management problems,

the LAS's opinion on breach of duty,

the opinion of the LAS Medical Directorate on causation,

an estimate of quantum,

a suggested strategy for future conduct and assessment of the litigation risk,

Assess whether the claim should be reported to the NHSLA in accordance with the current reporting guidelines. If so, the claim should be reported to the NHSLA within 2 months of receipt.

If the first notification of a claim is by way of service of proceedings or a formal letter of claim the matter must be reported to the NHSLA immediately.

If the claim is not reported to the NHSLA it should be kept under quarterly review for at least one year after the limitation period expires after which time the file may be closed if there is no further contact from the Claimant or his/her solicitors.

#### Reporting a claim or potential claim

All claims must be reported to the NHSLA in accordance with the CNST Reporting Guidelines. This will include:

untoward incidents involving the treatment of patients which have been assessed as having a high priority risk by application of the LAS Risk Prompt and Scoring Matrix in TP 054 Investigation of Incidents, PALS, Complaints, and Claims Policy;

claims arising from a complaints investigation and response that may be interpreted to have implied an admission of liability;

requests for the disclosure of records which have triggered the requirement to undertake a Preliminary Analysis investigation which in turn has indicated that it is possible a claim may follow with a significant litigation risk;

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letters of claim or Proceedings which are the first indication of action.

Prior to reporting a potential claim advice may be sought from the Team Leader at the NHSLA on whether the incident should be reported.

A Preliminary Analysis will be prepared for all claims and potential claims reported to the NHSLA. Where possible the Preliminary Analysis will be submitted within 40 days of the notification / identification of a claim.

#### Responding to a claim or potential claim

A letter of claim will be acknowledged within 14 days of receipt and forwarded to the NHSLA within one working day. Any additional information to the Preliminary Analysis Report that is relevant will be provided to the Case Manager / instructed Panel Solicitor with the Letter of Claim or an indication of what is being sought and will follow.

The LAS's response to the allegations of breach of duty and causation will usually be provided in the Preliminary Analysis Report. Where there has been a late notification or identification of the claim, for example when protective proceedings are issued near to limitation, the LAS's position will be given separately as agreed with the Case Manager / instructed Panel Solicitor.

A draft detailed response to a letter which is not a letter of claim commenting on the allegations of negligence and the Medical Directorate's opinion on breach of duty and causation may be prepared and discussed with the Case Manager at the NHSLA when it is appropriate for the response to come from the LAS.

#### The management and conduct of the claim

The CNST Reporting Guidelines state that if it is proposed to make an admission of liability agreement will be obtained from the Trust first and the Trust will be advised if settlement is to be negotiated. The authority to make an admission of liability is stated in 5.4.5 Delegated Authority to Directors and Officers within the LAS.

The Trust will provide every assistance to the NHSLA / instructed Panel Solicitor in obtaining timely opinions and conducting further investigations in support of the conduct of the claim.

#### Keeping interested parties informed and supported

When staff are asked to prepare a witness statement for a claim they will be supported by one or more of the following:

Legal Services,

Line manager / Team Leader / Duty Station Officer,

Emergency Operations Centre (EOC) Operations Officer / nominee,

PTS Manager,

Education and Development.

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Staff who give witness statements will be kept informed of the key stages in the claim.

Where expert reports on breach of duty and / or causation are provided these may be shared with the Medical Directorate, Head of Education and Development, or other senior manager who has contributed to the Preliminary Analysis, for comment or where there are criticisms of the LAS.

When a claim proceeds to trial staff giving witness evidence will receive necessary management support through their line manager and legal support through Legal Services both in the conferences before trial and at trial. Additionally if staff so wish they may choose to be accompanied by their union representative. It has been identified in round table review that staff may feel unsupported if line management are not aware / in attendance at key meetings before trial and that it is not sufficient to ensure that staff understand their role as a witness and the legal process.

All staff have access to the Employee Assistance Programme providing confidential information, advice, and support on a 24 hour year round basis.

### Mediation / Alternative Dispute Resolution

Mediation and other forms of alternative dispute resolution are actively promoted by the NHSLA in suitable cases. Mediation involves the use of a trained mediator, who is a neutral third party, to assist the parties to a dispute to find a mutually satisfactory outcome. Claims of relatively low financial value, but possessing other major emotional elements, such as the death of a child, might be suitable for mediation. Potentially however, all cases may benefit from mediation or alternative dispute resolution at any stage up to trial.

“The Clinical Disputes Forum’s Guide to Mediating Clinical Negligence Claims” July 2001, available from the NHS Litigation’s website [www.nhsla.com](http://www.nhsla.com) provides more detailed guidance on what mediation is, when it should be considered, and how the process should be used to reach a satisfactory outcome for all concerned in a clinical dispute.

### Closure and round table review

Closed claims and potential claims are reviewed quarterly by the Learning from Experience Group and Area Governance Groups to identify the actions and feedback to individuals / teams / Trust wide, and to make recommendations about training, procedures / protocols, and new equipment to the Clinical Quality Safety and Effectiveness Group.

## 2. Liability Claims

### Investigating employer or public liability claims

2.1 Acknowledge receipt of the claim within 14 days and request any further information such as claimant’s national insurance number if it has not already been provided.

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Ascertain the existence of earlier incident or complaint files and link to the newly created Datix and Claim files. Obtain copies of any incident and RIDDOR report forms.

Identify the relevant manager for the area where the incident took place and undertake further investigations including:

Obtaining copies of any training records for the claimant and, if appropriate, copies of any risk assessments, equipment inspection and maintenance records, premises inspection reports, relevant policies and procedures,

Obtaining copies of any sick certificates submitted by the claimant and details of their attendance

Obtaining a schedule of earnings for three months pre-incident and post incident from the Payroll Department

Identify any witnesses and obtain statements

If necessary arrange photographs to be taken of the incident site

Obtaining an opinion subject to legal privilege from relevant line and support service managers.

Assess the value of the claim and determine whether the matter should be reported to the NHSLA under the Risk Pooling Scheme for Trusts (RPST).

If the claim is to be reported to the NHSLA this must be done within 14 days.

If the claim is not being reported to the NHSLA a response to the claimant must be given within 3 months of the claim setting out the LAS's position on the question of liability in accordance with the terms of the Pre-Action Protocol

If the claim is not reported to the NHSLA it should be kept under quarterly review for at least one year after the limitation period expires after which time the file may be closed if there is no further contact from the Claimant or his/her solicitors.

### Reporting an employer or public liability claim

There is an obligation under the Liabilities to Third Parties Scheme to report to the NHSLA:

All incidents where a Letter of Claim is received and the estimated value of damages and costs exceeds £3,000 for claims under Public Liability and £10,000 for claims under Employer Liability.

All incidents which have or are likely to result in any of the following:

- death
- amputation of a limb
- major head injury
- absence of work of more than 10 consecutive days
- Health and Safety Executive prosecution
- Involvement of the media or politician
- Multiple claims from a common or single cause
- Novel, contentious, or repercussive claims.
- Part 36 Offers.

As caseload and other workload permit claims with an initial estimated value, inclusive of costs, within 20% of the excess sums above may be managed by Legal Services in accordance with the delegated authority by the Trust Board.

Where claims are passed to the NHSLA the LTPS reporting guidelines, which came into effect on 1 August 2006, require new claims to be reported on the LTPS Report Form attached to the Letter of Claim, and the completed NHSLA Disclosure List for workplace claims indicating which relevant documents are enclosed. The NHSLA have said that failure to complete the Disclosure List and provide the relevant documents within one month of reporting the claim may result in the claim not being accepted under the LTPS.

### The management and conduct of the claim

Personal injury claims are governed by the Protocol for Personal Injury Claims. Under the Protocol for Personal Injury Claims a Claimant is required to send a Letter of Claim providing a summary of the facts, the allegations, and details of injury or loss. The Letter of Claim should also identify which documents are sought for disclosure.

The Defendant has 21 days to acknowledge the Letter of Claim and three months to provide a Letter of Response. The Letter of Response should include an admission of liability or denial (with reasons), together with the documentation requested to be disclosed that is held and available.

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The Pre-Action Protocol for Personal Injury Claims encourages the use of jointly appointed experts and the disclosure of the Claimant's expert Medical Report to the Defendant. The Defendant may submit questions to the Claimant's medical expert, accept the Report, or obtain a Medical Report from another medical expert in accordance with the Civil Procedure Rules on the instruction and appointment of expert witnesses.

A Claimant's Offer to settle is known as a Part 36 Offer and can be made with the Letter of Claim, supported by the Medical Report, Schedule of Loss and other relevant documentation. A Response to a Part 36 Offer is required within 21 days. If a Part 36 Offer is rejected but is later successful punitive costs may be awarded against the party who rejected the Part 36 Offer.

Similar arrangements to keeping interested parties informed and supported will be followed to those described above for clinical negligence claims apply to liability claims.

Mediation /Alternative Dispute Resolution will be considered in appropriate cases as outlined for clinical negligence claims.

Closed claims will be reviewed by the Assistant Directors' Group and Area Governance Groups, and the actions taken or recommended will be reported to the Motor Risk Group (motor claims) and Risk Compliance and Assurance Group (other liability claims).

### 3. Property Expenses

There is an obligation for all member Trusts to report to the NHS Litigation Authority under the Property Expenses Scheme:

All claims where the estimated value will exceed the delegated excess of £20,000 for buildings and £20,000 for contents.

All claims that are within 20% of the delegated excess levels.

All claims with a potential value above the delegated excess and for which indemnity is sought must be handled by the NHSLA. Where the potential value subsequently reduces to a level within the delegated excess the claim will continue to be handled by the NHSLA until conclusion without the levy of a handling fee for the Loss Adjuster's work.

Claims below the delegated excess may incur a Loss Adjuster's fee.

**Roles and Responsibilities for the Handling of Claims, Indemnity and Insurance**

1.Claims

The Head of Legal Services, supported by the Claims Managers and other members of Legal Services, is responsible for managing litigation in clinical negligence, employer / public liability, and motor liability in accordance with the LAS’s Policy and Procedure for such claims. This will include:

Receiving, assessing, acknowledging receipt of all new claims and identifying the relevant liability insurer / indemnity provider.

Providing disclosure of health records to Claimants’ solicitors in accordance with the requirements of the Data Protection Act 1998 and Access to Health Records Act 1990 for deceased patients, the Pre-action Protocol for the Resolution of Clinical Disputes, and the Trust’s Policy for Access to Health Records, Disclosure of Patient Information, Protection and Use of Patient Information.

Investigating whether there are or may be grounds for a claim against the LAS as described in Appendix 1.

Producing a Preliminary Analysis, Claim Report Form and paginated bundle of documents for submission to the NHS Litigation Authority where it is concluded there are grounds for reporting an incident or claim, in accordance with the reporting requirements of the CNST and LTPS.

Liaising with external agencies including the Police, Independent Police Complaints Commission, Primary Care Trusts, NHS Trusts, and Foundation Trusts, , in connection with the investigation of claims involving the Trust as a potential co-defendant, including representing the Trust at “Gold Meetings” or meetings of an Incident Co-ordination Group. Typically “Gold Meetings” may be convened following the declaration of a Serious Untoward Incident involving NHS bodies and the police to ensure that there is a forum for communicating, exchanging information and co-ordinating multiple investigations.

Reporting claims under the Trust’s motor insurances to the motor insurer where a third party is involved or the accident damage is above the excess level. The Claims Guidelines under the current motor insurances provide that the insurer must be notified *as soon as you become aware of a claim or a circumstance or event which could give rise to a claim.* To encourage prompt reporting Key Performance Indicators are reported quarterly to Ambulance Operations Managers and Patient Transport Service Managers.

Establishing and maintaining contact with Trust staff (and former staff) assisting with the conduct of a claim in clinical negligence, employer / public / motor liability to

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ensure that they are updated on progress and outcome, are supported as necessary, and involved in the review of risk management action at file closure.

Liaising with the NHSLA Case Managers for the CNST and LTPS, Panel Solicitors and instructed Counsel, the motor insurer and instructed solicitors / Counsel, on the further investigation and strategy for the conduct of the claims, including the instruction of experts and assessment of witness evidence.

Receiving quarterly and ad hoc reports on the reserves for employer / public and motor liability claims and advising the Financial Controller of the sums to be included in accounting provisions.

Receiving, reviewing and authorising the payment of legal fees invoiced by panel solicitors, the NHS Litigation Authority for below excess costs incurred under the Liabilities to Third Parties Scheme, and invoices from the motor insurer for below excess motor liability payments.

Using the integrated risk management data base to produce reports on the management of claims and risk management action taken / proposed as stated in paragraph 10 of the Policy.

Conducting a quarterly joint review with the Trust's motor insurer of claims with an estimated reserve of over £10,000 under the Trust's motor insurance and an audit of 10% of all closed claim files.

Advising the Head of Patient Experiences Department and others on the investigation of and response to complaints and serious untoward incidents where there may be grounds for a claim or an inquest or public inquiry may be held or other parallel investigations undertaken in accordance with the Memorandum of Understanding issued by the Department of Health.

Liaising with the Head of Patient Experiences to review complaints where parallel investigations may be / are being undertaken.

Attending round table meetings with the Trust's Medical Director and other senior managers to explain to Claimants and their legal advisers of the risk management action taken following the incident that gave rise to a claim.

Arranging training for managers and staff in the handling and investigation of claims as identified in the Training Needs Analysis.

The Head of Estates is responsible for the handling of claims under the Property Expenses Scheme for damage, loss, or destruction of the Trust's property or estate and will report and investigate such claims in accordance with the rules of the Scheme.

The Financial Controller, supported by the Senior Financial Accountant, is responsible for submitting a summary loss report, which includes below excess losses to the Trust property and estate under the Property Expenses Scheme.

## 2. Indemnity and Insurance

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The NHS (Clinical Negligence Scheme) Regulations 1996 which established the Clinical Negligence Scheme for Trusts, defined clinical negligence as “ a liability in tort owed by a member to a third party in respect of or consequent upon personal injury or loss arising out of or in connection with any breach of duty of care owed by that body to any person in connection with the diagnosis of any illness, or the care or treatment of any patient, in consequence of any act or omission to act on the part of a person employed or engaged by a member in connection with any relevant function of that member”.

Health Service Guidelines HSG 96/48 set out the NHS Indemnity Arrangements for clinical negligence claims in the NHS. An executive summary with questions and answers about the applicability of NHS indemnity is available from the NHSLA website at [www.nhsla.com](http://www.nhsla.com)

The Head of Legal Services is the nominated representative for the LAS to liaise with the NHSLA on enquiries about NHS indemnity and coverage by the CNST

The Financial Controller is responsible for providing financial information to the NHSLA for the assessment of the annual contribution to the CNST.

Health Service Circular HSC (1998) 174 announced that NHS Trusts could not obtain commercial insurance except for specialist areas including the motor fleet, motor traders, airside liability, engineering inspection, income generation, and Public Finance Initiative Schemes. More recently the CEO of the NHS has confirmed that insurance may also be taken out against loss arising from acts of terrorism.

The Head of Legal Services and Financial Controller are responsible for advising the Director of Finance on the appropriate level of specialist insurance to hold and answering enquiries about such insurances. The Head of Legal Services and Financial Controller are assisted by the Trust’s broker Jardine Lloyd Thompson.

The Head of Legal Services and Financial Controller hold the Summary of Insurances and insurance policies since Trust status was achieved in April 1996. These documents contain the excess levels and other conditions which apply for the term of insurance.

Health Service Circular HSC (1999) 021 announced the provisions of the Liabilities to Third Parties Scheme and the Property Expenses Scheme. The Membership Rules can be obtained from the NHSLA web site or alternatively from the Head of Legal Services.

The Head of Legal Services and Financial Controller seek the advice of the RPST Helpdesk on enquiries about the administration and indemnity cover provided under the Liabilities to Third Parties Scheme and the Property Expenses Scheme.

**Witness Statement, Guidance and Template**

The following details should be included in a witness statement and are intended to guide staff who have been asked to produce a witness statement in connection with a clinical negligence claim.

Name and Job Title

Length of Service with the LAS and period of time in current role

Times recorded on the Call Assignment Form, Patient Report Form e.g. time of despatch, arrival etc.

Any difficulty encountered in locating the patient/location

Brief details (where known) of other people present on scene with the patient

Details obtained about the patient's condition from the patient, relatives, friends or bystanders

Conversations recalled with others on scene

Details of the treatment provided to the patient, measurements taken, and drugs, oxygen etc administered from your arrival on scene until the patient was handed over to hospital staff

Comment on any criticisms made about your involvement

**Do's and Don'ts**

Do write the statement in chronological order.

Do give as much detail as you can about the patient's condition, the advice and treatment you gave.

Do write your own statement and do not do this jointly with another witness such as your crewmember. If you are asked to give evidence in Court at a later stage, the evidence that you give will be about your actions and observations.

Do sign and date each page of your witness statement.

Do not make up anything you are unable to remember and did not record.

Do not include reference to drug or alcohol abuse or other comments which cannot be substantiated, e.g. he was drunk, or are speculative in nature.

Do not include opinions about the patient or others, keep to the facts.

Do not include abbreviations unless these are explained in full.

**Witness statement template :**

I make this statement in connection with a claim for damages by the name of the Claimant.

I am currently employed as .....and have held this position since .....

1. This statement is based on the entries (I) made on the patient report form at the time and also from my recollection of events.
2. On (..date..) at (..time..) I was a member of a LAS crew with (..name..). A call was passed to me / us at (..time..).
3. I / we attended (..address..). This was a (house/flat/street/other public place) in a part of London where traffic and parking conditions were (...give details if there was a delay in arriving). I / we had been told that (brief initial message). I / we arrived at (..time..).
4. I / we were faced with (..describe situation..). I / we did (..this..) and we did (..that..). Also present were (..names of people..).
5. We placed the injured person in our ambulance (... describe how the patient was conveyed. We arrived at (..hospital..) at (..time..) and handed over the patient to (..hospital staff..).
6. This statement is true to the best of my knowledge and belief.

**Name (print) :** .....

**Signature:**.....

**Date :** .....