



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 Services. To be reviewed by August 2018.

Document Status: Final

Amendment History			
Date	*Version	Author/Contributor	Amendment Details
15/09/2015	5.1	IG Manager	Document Profile and Control update
15/06/2015	4.3	Legal Services Manager	Section 5.4.5 amended
May 2015	4.2	Head of Legal Services	Revision throughout
08/08/2012	4.1	IG Manager	Document Profile & Control update
20/04/2012	3.1	Head of Legal Services	Section 9 expanded and monitoring section updated.
02/07/2010	3.0	Head of Legal Services	Review and monitoring updated.
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.

For Approval By:	Date Approved	Version
SMT	26/08/15	5.0
ADG	18/07/12	4.0
RCAG	23/08/10	3.0
SMG	17/09/08	2.0
Ratified by (if appropriate):		

Published on:	Date	By	Dept
The Pulse	15/09/15 (v5.1)	Governance Administrator	G&A
The Pulse	06/08/12(v4.1)	Governance Co-ordinator	GCT
The Pulse	08/10/10	Governance Administrator	GCT
LAS Website	15/09/15 (v5.1)	Governance Administrator	G&A
LAS Website	06/08/12(v4.1)	Governance Co-ordinator	GCT
LAS Website	08/10/10	Governance Administrator	GCT
Announced on:	Date	By	Dept
The RIB	22/09/15	IG Manager	G&A
The RIB	07/08/12	IG Manager	GCT

EqIA completed on	By
27/07/2010	Legal/Staffside & others
Staffside reviewed on	By

Links to Related documents or references providing additional information		
Ref. No.	Title	Version
	Pre-action Protocols for the Resolution of Clinical Disputes [online]. London: The Stationery Office. Available from: http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rcd	
	Pre-Action Protocol for Personal Injury Claims [online]. London: The Stationery Office. Available from http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic	
	Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents [online]. London: The Stationery Office. Available from: http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-employers-liability-and-public-liability-claims	
	Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims [online]. London: The Stationery Office. Available from: https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-low-value-personal-injury-employers-liability-and-public-liability-claims	
	The National Health Service Litigation Authority Framework Document. Available from www.nhs.uk	
	Reporting Claims to the NHSLA. Available from http://www.nhs.uk/Claims/Documents/Reporting%20Guidelines.pdf	
	NHSLA Disclosure List. Available from www.nhs.uk	
TP/004	Complaints and Feedback Procedure	
TP/005	Risk Management Policy and Strategy	
TP/006	Serious Incidents Policy	
TP/009	Policy for Access to Health Records, Disclosure of Patient Information; Protection and Use of Patient Information.	
TP/015	Procedure for Responding to Enquiries, Giving Evidence at Coroners Inquests and other Court Hearings, and Statements at Police Interviews.	
TP/034	Being Open and Duty of Candour Policy and Procedure	
TP/048	Information Security Policy	
H&S / 011	Incident Reporting Procedure	
HS018	Stress Management Policy	
TP054	Investigation of Incidents, PALS, Complaints, and Claims Policy	
	Standing Orders, Reservation and Delegation of Powers of the Trust Board of Directors	November 2014
	Standing Financial Instructions	November 2014

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 purpose of this policy 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 sets out the 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 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 solicitor; solicitors acting on behalf of the LAS; and Coroners.

The arrangements are modelled specifically on the NHSLA website document Reporting claims to the NHS LA April 2014, 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 and the Trust's commercial insurer's 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, the Pre-Action Protocol for Personal Injury Claims, the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents 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 Quality Governance Committee for ensuring that claims are managed in accordance with this policy and will obtain assurances from the Quality Governance Committee on an annual basis.

4.2 Quality Governance Committee

The Quality Governance Committee will be responsible for providing assurance to the Trust Board.

4.3 Clinical Safety, Development and Effectiveness Committee*

The Clinical Safety, Development and Effectiveness Committee (CSDEC) has overarching responsibility for claims management and monitoring and reviewing the LAS's exposure to litigation and ensuring that there are effective processes for organisation and individual learning from claims.

*Quarter 1/2 of 2015/16 will see a review of the LAS committee structure. As such, this Policy will be reviewed and updated to reflect any changes at the earliest opportunity.

4.4 Chief Executive

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

4.5 Designated board member(s)

Aside from claims heard by Employment Tribunals, for which the Director of Strategy and Transformation is responsible, and property expenses claims, for which the Director of Finance is responsible, the Director of Corporate Affairs is responsible for the handling of liability claims and through CSDEC will keep the Trust Board informed on major developments.

4.6 Head of Legal Services

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 Affairs. The claims handling responsibilities for the Head of Legal Services are summarised in Appendix 1.

4.7 The Assistant Director of Human Resources

The Assistant Director of Human Resources is responsible for managing the handling of Employment Tribunal claims and reports to the Director of Strategy and Transformation.

4.8 The Head of Estates

The Head of Estates reports to the Director of Corporate Affairs and manages claims relating to the LAS estate. The claims handling responsibilities for the Head of Estates is summarised in Appendix 1.

4.9 Assistant Director of Operations – Fleet and Logistics

The Assistant Director of Operations- Fleet and Logistics is responsible for the overall management of motor vehicle accident damage claims (excluding personal injury).

4.10 Clinicians/Specialist Advisors

The Medical Directorate provide the initial medical assessment on whether the duty of care may have been breached and causation if possible is 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 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 Medical Directorate also 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/JRCALC and whether the care provided fell below an acceptable standard leading to the allegations made.

The Head of Estates, the Head of Education and Development and the Head of Safety & Risk shall provide support and assistance in the investigation of claims including provision of relevant documents.

4.11 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.

4.12 All staff

All staff are responsible for co-operating with the investigation of a claim where they may be able to provide information and/or other assistance. Support will be provided to staff asked to prepare a statement, attend meetings in relation to a claim and/or Court.

4.13 Link with risk management and complaints management

The responsibilities for risk management, and clinical governance are set out in the (TP005) Risk Management Policy and Strategy.

The 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 the Police, Health and Safety Executive, The National Reporting and Learning System , 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 of a claim and will liaise with the NHS Litigation Authority or motor insurer over the response as appropriate.

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 *“any demand, however made, against a Member for monetary compensation in respect of a Qualifying Liability. It will usually, but not always be a letter before action or a Claim Form”*

LAS therefore needs to be aware that potential claims can be identified from complaints, 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 the matter may need to be reported.

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 an assessment of the Trust's claims history.

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.

5.2 Who may make a claim?

In a claim for clinical negligence a patient or litigation friend must show that they were owed a duty of care; that the relevant practitioner acted in a manner that would not be regarded as proper and reasonable by a responsible body of relevant practitioners skilled in that particular art; and as a result the claimant suffered an injury which would not otherwise have occurred i.e. the action of the relevant practitioner was more than 50% likely to have caused the injury.

The timescale for making a claim is three years from the date of injury or from the date of knowledge of the alleged negligence. If the patient was a child, then the three

years begins on their 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

The LAS Trust Board has delegated authority in the Standing Orders, Reservation and Delegation of Powers of the Trust Board of Directors (Standing Orders) to recommend/approve settlement of legal claims in accordance with the limits and requirements as allocated. The Standing Orders should be referred to directly for the detail of the level of authority required in set circumstances.

5.5 **Obtaining Legal advice in respect of claims**

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 Assistant 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.

5.6 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 Pre-action protocol for the resolution of Clinical disputes requires inter alia:

- A copy of the protocol for the resolution of clinical disputes to be sent to a litigant in person at the earliest opportunity.
- Records to be disclosed within 40 days in accordance with the Data Protection Act 1998/Access to Health Records Act 1990.
- A letter of claim/notification to be acknowledged within 14 days.
- A detailed and binding Letter of Response to be given within 4 months of receipt of the letter of claim. Where an extension is required, the request should be made as soon as the need is identified.
- That where it is not possible for the Claimant to allow 4 months between the service of the letter of claim and issuing of proceedings because of limitation issues, the parties should agree a stay so the protocol can be complied with.
- 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 Pre-action protocol for personal injury claims requires inter alia:

- Records to be disclosed within 40 days in accordance with the Data Protection Act 1998/Access to Health Records Act 1990.
- A letter of claim to be acknowledged within 21 days.
- A detailed and binding Letter of Response to be given within 3 months of receipt of the letter of claim.
- 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.

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The Pre-action protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims applies to claims valued between £1,000 and £25,000 where the incident occurred on or after 31 July 2013. It requires inter alia:

- A decision on liability within 30 days (employer's liability claims) or 40 days (public liability claims). Failure to meet these time scales takes the claim outside of the Low Value protocol with potential costs consequences.

The Pre-action protocol for Low Value Personal Injury (Claims in Road Traffic Accidents) Claims applies to claims up to £25,000 where the accident occurred on or after 31 July 2013 and up to £10,000 where the accident occurred on or after 30 April 2010 and before 31 July 2013 and where the claim includes damages in respect of personal injury. It requires inter alia:

- The insurer must complete the 'Insurer Response' section of the Claim Notification Form and send it to the Claimant within 15 business days.

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, Trust Lawyer, Claims and Inquest Managers
- Senior Managers in Human Resources
- The Head of Estates
- The Assistant Director of Operations/Corporate Fleet Manager
- 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.

5.7 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, the Head of Legal Services and Assistant Director of Operations – Fleet and Logistics as appropriate for motor insurance, the Assistant

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Director of Human Resources for employment law claims, and with the Head of Estates and Director of Finance for claims under the PES.

The Head of Legal Services will ensure that relevant and timely information on claims is provided to the relevant 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 present the facts and not express opinions, so far as reasonably practicable, where legal privilege does not apply.

5.8 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 both TP/015 ‘Responding to enquiries from Coroners, Police, the IPCC and others in relation to interviews, the preparation of statements and giving evidence at Inquests and other Court Hearings’ and in HS018 the Stress Management Policy.

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

5.9 Preparation of statements

Appendix 3 sets out a guidance note and checklist for Trust staff asked to prepare a statement in relation to a claim. Appendix 4 provides the statement template to be used in relation to claims.

5.10 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 relates to personal injury and is within the scope of the motor insurance that it is reported to the motor insurer. The Head of Fleet will ensure that any claim (except for personal injury) falling within the scope of the motor insurance 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 Director of Finance.

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5.10.1 Clinical Negligence Scheme for Trusts (CNST)

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

5.10.2 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 'Reporting claims to the NHS LA'. The detailed reporting requirements are stated in Appendix 1.

5.10.3 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 / 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 serious incident investigation and other relevant documents will be requested to enable the Medical Directorate to give a rounded judgement on breach of duty and causation.

The Memorandum of Understanding between the Care Quality Commission, the Health and Safety Executive and Local Authorities in England, (dated 1 April 2015) will be followed where appropriate.

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.

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7.2 Claimants / their solicitors

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 Director of Finance for claims involving theft.

7.3 Solicitors

Legal advice will be obtained from Panel Solicitors in accordance with paragraph 5.5 above.

7.4 Coroners

The Head of Legal Services is responsible for ensuring that there are effective arrangements for liaison with Coroners Courts when LAS staff are asked to provide documentary or oral evidence at an Inquest. The arrangements to be followed are described in TP /015Procedure for Responding to Enquiries, Giving Evidence at Coroners Inquests and other Court Hearings, and Statements at Police Interviews..

8. Investigation and root cause analysis

TP054 The Investigation and learning from Incidents, PALS, Complaints, and Claims Policy sets out the approach and requirements for undertaking investigation and root cause analysis.

9. Reports

The Clinical Safety, Development and Effectiveness Committee (CSDEC)* will receive a report from the Head of Legal Services every 6 months which provide the number, trend analysis, and aggregate value of clinical negligence, personal injury and other liability claims against the LAS.

The 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 CSDEC* who in turn will report to the Quality Governance Committee.

The Area Governance Groups will report quarterly to the CSDEC* 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.

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*The appropriate committee to receive such reports is to be reviewed and revised as part of the review of the committee structure due to take place in Quarter 1/2 2015/16 and this Policy will be updated thereafter.

10. 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 Affairs 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.

11. Process for Reviewing the Claims Handling Policy and Procedure

The Head of Legal Services will consult with the Director of Strategy and Transformation, the Head of Estates, the Assistant Director of Operations – Fleet and Logistics and the Director of Finance 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 Affairs 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				
Intended Audience	For all LAS staff			
Dissemination	Available to all staff on the Pulse			
Communications	Revised Procedure to be announced in the RIB and a link provided to the document			
Training	<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>			
Monitoring:				
Aspect to be monitored	Frequency of monitoring AND Tool used	Individual/ team responsible for carrying out monitoring AND Committee/ group where results are reported	Committee/ group responsible for monitoring outcomes/ recommendations	How learning will take place
Duties (Paragraph 4)	Annual PDR process	Head of Legal Services will provide a summary to the Director of Corporate Affairs	<i>To be reviewed post re-structure Quarter 1/2 2015/16</i>	Review of Outcome Reports
Action to be taken, including timescales (Paragraph 5.6)	Annual review – audit summary report	Head of Legal Services will provide a summary to the Director of Corporate Affairs,	<i>To be reviewed post re-structure Quarter 1/2 2015/16</i>	Review of Outcome Reports
Communications with relevant stakeholders (Paragraphs 6 and 7)	Annual review	Head of Legal Services will provide a summary to the Director of Corporate Affairs	<i>To be reviewed post re-structure Quarter 1/2 2015/16</i>	Review of Outcome Reports

Procedures for Handling Claims in Clinical Negligence, Liabilities to Third Parties Scheme, 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 Strategy and Transformation 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 receipt of a Claim Notification Form, 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 .

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, and professional colleagues, 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, complaints or inquest file and link to the newly created Claim on Datix.

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 Medical Directorate on the duty of care owed and whether the duty of care may have been breached and whether 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 relevant pre-action protocol.

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

Reporting a claim or potential claim

All claims must be reported to the NHSLA in accordance with the 'Reporting claims to the NHS LA' Guidelines. This includes:

- A letter of claim and/or Part 36 offer and/or Proceedings are received
- Serious incident where investigations suggest there have been failings in the care provided; and there is the possibility of a large-value claim (i.e. damages >£500,000)
- Disclosure request (or some other indication that a claim is being considered – e.g. Limitation extension request) received; and LAS' investigation (e.g. complaint review or incident investigation) reveals possibility of a claim with a significant litigation risk regardless of value.
- Group actions (i.e. the potential to involve a number of patients) or

- Serial offender claims (i.e. claims arising from the alleged negligence and/or serious professional misconduct of a member of staff affecting a number of patients.
- Notification of inquest where it is considered likely that a civil claim is or is likely to be pursued and external representation at inquest is required and LAS makes an application to the NHSLA for inquest funding.
- Portal claims where a Defendant Only Claim Notification Form is received from the Claimant's solicitor who confirms the NHSLA have not been made aware of the claim via the portal or where no contact is received within 3 working days of receipt of the form.

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

Responding to a claim or potential claim

A letter of claim will be acknowledged within 1 days of receipt and forwarded to the NHSLA within one working day. Any additional information that is relevant will be provided to the Case Manager or the instructed Panel Solicitor when available.

The LAS's response to the allegations of breach of duty and causation will be provided to the NHSLA/Panel solicitor as appropriate.

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 'Reporting claims to the NHS LA' Guidelines state that the NHSLA will seek the approval of LAS before making any liability admissions and will keep the Trust updated at key stages throughout the claim. 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,
- PTS Manager,

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 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.

'Mediating claims in the NHS: Supporting patients, their families and the NHS to resolve disputes fairly' July 2014 is available from the NHS Litigation's website www.nhsla.com. This 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

Until the introduction of the new committee structure in Quarter 1/2 2015/16, any concerns/trends identified from closed claims will be highlighted by the Head of Legal Services to the Director of Corporate Affairs and others as appropriate. This Policy will be updated to reflect the appropriate reporting line post re-structure.

2. Liabilities to Third Parties Claims

From 1 August 2013 Employer's Liability and Public Liability claims up to the value of £25,000 will be managed by the NHSLA using a web based portal ('Portal claims').

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Ordinarily, the NHSLA will be notified directly by the Claimant's solicitor through the portal and must acknowledge receipt by the next working day. LAS should be sent a paper copy of the 'Defendant only - Claim Notification Form'

All other claims should be notified to LAS by way of Letter of Claim.

Investigating employer or public liability claims

Upon notification of a claim (whether receipt of a Letter of Claim or a Defendant only - Claim Notification Form) the following investigations will be undertaken:

A request for any further information such as claimant's national insurance number if it has not already been provided.

Ascertain the existence of earlier incident or complaint files and link to the newly created Claim on Datix.

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 a schedule of sickness absence

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

Obtain 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.

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 on Personal Injury Claims.

If the claim is not reported to the NHSLA it should be kept under 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

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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 reported to the NHSLA the 'Reporting Claims to the NHSLA' guidance requires new LTPS claims to be reported on the LTPS Claim Report Form and submitted to the NHSLA through the Claims Wizard. The NHSLA have produced the following documents to help support submission of a claim: the LTPS Claim Useful Documents Guide; LTPS Witness Details Form; LTPS Witness Statement template LTPS Earnings Schedule for Employer's Liability claims. Where appropriate, these should be used to help submit the relevant information to the NHSLA.

The management and conduct of the claim

Personal injury claims are governed by the Protocol for Personal Injury Claims and the Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) 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 (from the date of the Letter of Claim) to provide a Letter of Response. The Letter of

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Response should include an admission of liability or denial (with reasons), together with the documentation requested to be disclosed that is held and available.

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. A Part 36 Offer shall specify a period of for acceptance of not less than 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 for keeping interested parties informed and supported will be followed to those described above for clinical negligence claims.

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

Until the introduction of the new committee structure in Quarter 1/2 2015/16, any concerns/trends identified from closed claims will be highlighted by the Head of Legal Services to the Director of Corporate Affairs and the Director of Strategy and Transformation. This Policy will be updated to reflect the appropriate reporting line post re-structure.

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 and Inquest Managers, Trust Lawyer and other members of Legal Services, is responsible for managing litigation in clinical negligence, employer / public liability, and motor liability for claims involving personal injury 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 relevant Pre-action Protocols, and the Trust's Policy for Access to Health Records, Disclosure of Patient Information, Protection and Use of Patient Information (TP/009).
- Investigating whether there are or may be grounds for a claim against the LAS as described in Appendix 1.
- Preparing a Claim Report Form and 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, Clinical Commissioning Groups, NHS Trusts, and NHS 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 Incident involving NHS bodies and the police to ensure that there is a forum for communicating, exchanging information and co-ordinating multiple investigations.
- Establishing and maintaining contact with Trust staff (and former staff) assisting with the conduct of a claim in clinical negligence, employer / public / motor liability (relating to personal injury) to ensure that they are updated on progress and outcome, are supported as necessary.
- 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

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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 CNST, employer / public and motor liability (personal injury) claims and advising the Director of Finance of the sums to be included in accounting provisions; liaising with the NHSLA to ensure that the reports are up-to-date and accurate and ensuring up-to-date data entered onto Datix.
- Receiving, reviewing and authorising the payment of legal fees invoiced by panel solicitors, the NHSLA 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 9 of the Policy.

- 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.
- 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 Assistant Director of Operations – Fleet and Logistics is responsible for

- 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.

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- 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.

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 Director of Finance 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

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 Director of Finance is responsible for providing financial information to the NHSLA for the assessment of the annual contribution to the CNST.

The Head of Legal Services and/or Director of Finance will 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.

The Head of Legal Services and Head of Financial Services 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 Director of Finance are assisted by the Trust's broker Jardine Lloyd Thompson.

The Head of Legal Services and Director of Finance 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.

Appendix 3

Guidance for staff in preparing a witness statement – claims against LAS

In accordance with TP/013 Claims Handling Policy and Procedure all staff are responsible for co-operating with the investigation of a claim where they may be able to provide information and/or other assistance.

For guidance on statements for the Coroner or other external organisations please see TP/015 Procedure for Responding to Enquiries, Giving Evidence at Coroners Inquests and other Court Hearings, and Statements at Police Interviews.

Support for staff asked to assist in a claims investigation

You will be able to access support in relation to your involvement in a claims investigation from both your line manager/other member of the management team as well as the Legal Services team. This will include:

- being given time to prepare your statement;
- being accompanied to all meetings in relation to the claim and/or Court by your line manager/other member of the management team. Additionally if you so wish you may also choose to be accompanied by your union representative; and
- being kept informed of the key stages in the claim by the Legal Services team.

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

Please be aware that on occasion claims can take some time to resolve. Should you have any questions at any point about the claim investigation and/or your involvement please contact the Legal Services team.

The witness statement

Ordinarily where staff can assist with a claims investigation they will be asked to prepare a witness statement setting out their recollection of events.

The witness statement should be completed on the template provided by Legal Services, this can also be found on Pulse

Once complete, you should return your statement to Legal Services and retain a copy for yourself, bearing in mind the requirements of confidentiality.

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Below is a checklist to help you prepare a full and detailed statement. Please read this before you prepare your statement and then check that you have covered all points referred to in the checklist before returning your statement to Legal Services.

Witness Statement Checklist:

Key information included:

- Full Name and Job Title
- Length of Service with the LAS and period of time in current role
- Work address

Either

(a) Details of the call

- Times recorded on the Call Log, Patient Report Form e.g. time of despatch, arrival etc.
- Description of call made/received on MDT
- Any difficulty encountered in locating the patient/location or entering premises
- 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
- Details of conversations recalled with the patient and others on scene
- As much detail as you can provide about the patient's condition, the advice and treatment you gave and the rationale for the decisions made and any differential diagnosis reached
- Details of the treatment provided to the patient, measurements taken, drugs/oxygen administered etc. from your arrival on scene until the patient was handed over to hospital staff
- If appropriate, details of any contact made with the clinical hub for clinical advice.
- If appropriate, the rationale behind non-conveyance including discussions with the patient about this and any advice/steps taken in relation to accessing services within the community
- Comments on any criticisms made about your involvement/address specific points raised by Legal Services, if appropriate

Or

(b) Event/incident:

- Time, date and location of what you witnessed
- Brief details (where known) of other people present at the time
- Details of conversations recalled with others on scene

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- As much detail as you can about what happened
- Address any specific points raised by Legal Services

Review:

- Have I used the statement template?
- Have I prepared the statement on my own? Statements cannot be prepared jointly with someone else. The statement needs to reflect your recollection so you can answer questions on your actions/observations if required to at Court.
- Have I presented the information in chronological order?
- Have I been factual and not included any speculation or opinion- for example a reference to drug or alcohol abuse or other comments which cannot be substantiated, e.g. 'he was drunk'.
- Have I set out the full term/explanation for all abbreviations used.
- Have I arranged for a member of management team or equivalent to check my statement?
- Have I signed and dated each page of the statement?
- Have I retained a copy for my records, having been mindful of confidentiality.

What next?

Your statement will help inform the Trust's investigation of the claim. Legal Services are available to assist you in answering any questions on your involvement in the subsequent investigation and claim.

Witness statement template – claims against LAS

Staff are referred to TP/013 Claims Handling Policy and Procedure Appendix 3: Guidance for staff in preparing a witness statement – claims against LAS – which sets out guidance and a checklist for use in the preparation of a statement for claims against LAS.



London Ambulance Service **NHS**
NHS Trust

Witness Statement of [YOUR FULL NAME]

Re: [NAME OF CLAIMANT]

Statement of: [Your full name]

Job Title: [Your job title]

Station/base: [Your station or base]

Length of Service: [Years]

Legal Services Ref: [Number provided by legal]

1

2

This statement is true to the best of my knowledge and belief

Name: _____ Signature: _____ Date: _____