

## CLAIMS HANDLING POLICY

Lead Author:	Serco Claims & Litigation Manager
Developed by:	Adapted by Cambridgeshire and Peterborough Clinical Commissioning Group's Secretary
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Related CCG Policies (to be read in conjunction with):	<p>The Policy should be read in conjunction with: all other CPCCG policy documents for the management of risk in the workplace:</p> <ul style="list-style-type: none"> <li>• Risk Management Policy</li> <li>• Reporting and Investigation Guidelines for Serious Incidents</li> <li>• Policy for the management of concerns and complaints and responding to feedback from patients and the public</li> <li>• Records Management and Life-cycle Policy</li> <li>• Being Open and Duty of Candour Policy</li> <li>• Data Protection and Access to Records Policy</li> <li>• Equity &amp; Diversity Policy</li> <li>• Disciplinary Policy and Procedure</li> </ul>

## DOCUMENT CONTROL SHEET

<b>Purpose of document</b>	<p>This document describes Cambridgeshire and Peterborough Clinical Commissioning Group's (CPCCG's) claims management process providing guidance on how claims involving third parties such as NHS Resolution (NHSR), solicitors, claimants and the coroner should be dealt with within the organisation in order to fulfil CPCCG's commitments in ensuring:</p> <ul style="list-style-type: none"> <li>• the timely and effective management of claims and other legal actions against CPCCG;</li> <li>• that CPCCG learns from claims to prevent re-occurrence and monitors the effectiveness of the relevant procedures;</li> <li>• that CPCCG staff are supported during the investigation of a claim or other legal proceedings;</li> <li>• compliance with the requirements for membership of the NHSR schemes.</li> </ul>
<b>Dissemination</b>	<p>The Policy must be disseminated to all services within CPCCG and is available on the staff intranet.</p>
<b>Implementation</b>	<p>Senior Managers are required to bring the Policy to the attention of all staff.</p>
<b>Review</b>	<p>Documents should be updated two years after ratification or earlier if there is new national guidance or legislation.</p>
<b>Equality and Diversity</b>	<p>An Equality and Diversity Impact Assessment and concluded that the policy is compliant with the Equality and Diversity Policy. No negative impacts were found.</p>

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## 1. INTRODUCTION

Cambridgeshire and Peterborough Clinical Commissioning Group (CPCCG) is committed to ensuring:

- the timely and effective investigation, response and management of any claims, which includes allegations of clinical negligence or personal injury and other legal actions against CPCCG;
- that CPCCG learns from claims to prevent reoccurrence and monitors the effectiveness of the relevant procedures; and
- that CPCCG staff are supported during the investigation of a claim or other legal proceedings through the provision of reliable and complete information from the start of any claim.

CPCCG will ensure that any healthcare governance issues, which may emerge, are addressed promptly and the outcomes used to facilitate wider organisational learning.

This document describes the claims management policy and procedures followed by CPCCG and gives guidance on associated matters. The policy and procedures comply with the requirements of the National Health Service NHS Resolution (NHSR) for the management of claims, and are based on current guidance issued by the NHSR. Any future changes in guidance will be followed, and may supersede the procedures laid down in this document.

## 2. PURPOSE

### 2.1 Policy Statement

- This document was developed in order to fulfil CPCCG's commitments as described in Section 1 above and to ensure compliance with the requirements of the Department of Health and the NHS Resolution (NHSR) in the management and handling of all claims.
- All members of staff are expected to co-operate fully, as required, in the investigation and investigation of each claim and the implementations of lessons identified and learned through the evaluation of claims against CPCCG.
- CPCCG will follow the requirements of NHSR in the management of all claims in a manner consistent with the guidance in CPCCG's Policy of Being Open.

### 2.2 Scope of the Policy

The policy is to be used by all CPCCG employees involved in the claims process which applies to the management of the following types of claim:

- Clinical Negligence ('CSNT')
- Employer's Liability ('LTPS')
- Public Liability ('PL')
- Claims in respect of loss or damage to CPCCG property under NHSR's Property Expenses Scheme ('PES')

This document also provides guidance/direction for seeking advice with respect to legal actions not covered by the NHSR's schemes, for example, Judicial Review, general medico-legal queries, Inquests etc. – see Appendix 8.

The policy and procedures are relevant to all CPCCG staff and Serco's Claims & Litigation Manager.

The objectives of the procedures described are to:

- Ensure the timely and effective management of claims and other legal actions against CPCCG
- Ensure that CPCCG learns from claims to prevent reoccurrence

- Ensure that CPCCG staff are supported during the investigation of a claim
- Ensure accountability and responsibilities for the management of all claims against CPCCG are clearly defined
- Ensure that the relationship between CPCCG and Serco is clearly documented and agreed
- Ensure that CPCCG complies with the requirements for membership of the NHSR schemes and also with the requirements of the Pre-action Protocol for the Resolution of Clinical Disputes and the Pre-action Protocol for Personal Injury, so avoiding the cost penalties associated with non-compliance.
- Provide guidance on claims investigation
- Provide direction for CPCCG staff seeking advice and support on miscellaneous matters related to legal claims not covered by the NHSR's Schemes, and other matters where legal advice may be necessary
- Recommend when external agencies should be involved in the investigation of a claim or legal matter
- Describe procedures for monitoring the effectiveness of the policy and procedure.

### 3. GENERAL ISSUES SURROUNDING CLAIMS HANDLING

#### 3.1 Main types of claim

The main types of claim which fall within the scope of the policy are

- Clinical negligence claims – injury to a patient as a result of treatment
- Employer's liability claims – injury to a member of staff at work
- Public liability claims – injury to a member of the public, otherwise than as a result of treatment
- Directors' and Officers' liability claims – protection for officers against whom action is taken personally
- Professional indemnity claims – insurance for CPCCG against claims resulting from breaches of professional duty, slander etc.
- Personal accident claims – for injury to staff caused by assault or to a member of an emergency call out team.
- Damage to or theft of CPCCG property, damage to or theft of patients' personal effects
- Claims not covered by the NHSR's Schemes – see Appendix 8

#### 3.2 Who may make a claim?

Any patient or their representative, member of the public, or employee who instructs solicitors to act on their behalf to pursue a claim against CPCCG, or who issues legal proceedings against CPCCG or who pursues compensation ('claimants'). Claimants may also pursue a claim against CPCCG in their own capacity and will be referred to as Litigant(s) in Person.

#### 3.3 Triggers for invoking the claims procedure

The following events are regarded as identifying a potential claim against CPCCG:

- Receipt of **legal proceedings**;
- a **letter of claim**; or
- a **letter indicating a likely claim** from a patient; member of the public or employee or from a solicitor

These should be sent to the Serco Claims & Litigation Manager immediately.

#### 3.4 Disclosure of documents

Copies of the documents requested in the letter of claim must ordinarily be disclosed to the claimant within three months of receipt of the claim, if liability is to be disputed. Where a claim has been reported in accordance with the Policy, disclosure will be dealt with by NHSR and/or its Panel Solicitors.

Requests for disclosure of documents should be forwarded immediately to CPCCG Information Governance Manager who will handle the disclosure request and notify the Serco Claims & Litigation Manager.

Examples of disclosure of documents include requests made by:

- a solicitor which is not being made for the purpose of a claim against another party (e.g. no reason given or it states that it is being made in furtherance or investigation of a potential claim against CPCCG);
- a patient/relative who states that they are making a complaint or claim against CPCCG; or
- a patient/relative who does not give a reason for the request, in which case efforts should be made to discover the reason, either by review of the records or by asking the patient.

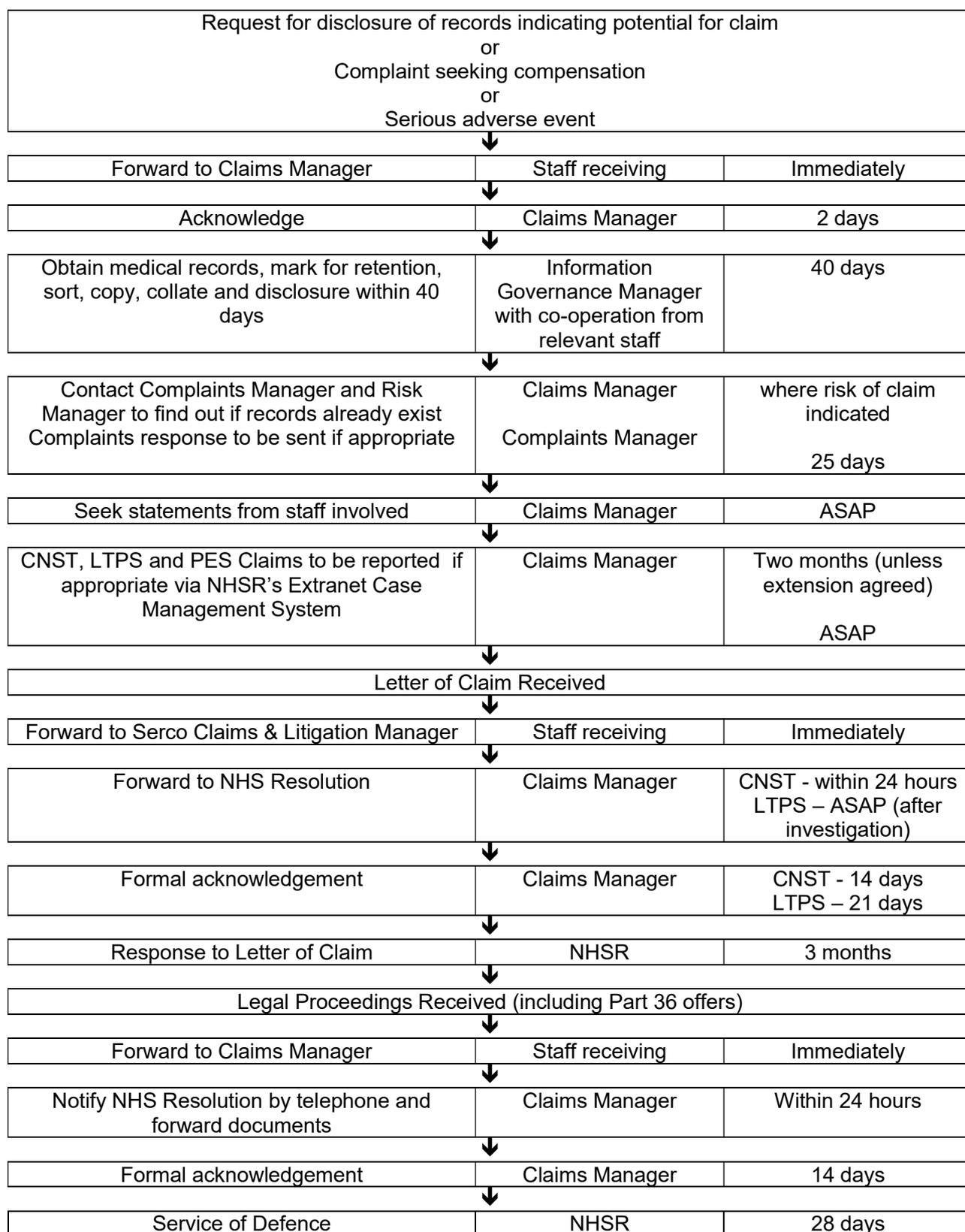
Receipt of a **complaint** seeking compensation – the Patient Experience Manager or any other CPCCG Manager should notify and liaise with the Serco Claims & Litigation Manager.

A **serious incident** which may generate substantial compensation – relevant Managers should notify and liaise with the Serco Claims & Litigation Manager.

All potential claims should be forwarded immediately to the Serco Claims & Litigation Manager.

See Appendix 14: Contacts within Serco

See Appendices 5, 6, 7 and 8 for details of claims handling procedures.



### **3.5 Delegation limits**

**Clinical Negligence Claims:** All clinical negligence claims made against CPCCG fall within the NHSR's CNST. Therefore, only the NHSR has authority to make or authorise the making of admissions or settling of any claim.

**Employers Liability and Public Liability Claims:** The Chief Finance Officer has authority to agree settlement of claims below the excess values (total value including claimant and defence costs).

Defence documents connected with claims and other legal actions should be signed by the Chief Operating Officer, or nominated Deputy, except for witness statements which should be signed by the member of staff making the statement.

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

It is important for all involved that reported claims are resolved as quickly as possible.

There are a number of timescale targets which apply to the claims management process. Serco, on behalf of CPCCG, will normally aim to meet these targets.

There are timescales relating to the period within which a claim should be brought known as the 'limitation period'. The three-year limitation period still applies in that Proceedings have to be issued within three years of the incident or date of knowledge of harm arising out of the incident, or three years from the date of the Claimant's 18th birthday in the event the claimant is a child. Different rules apply for claimants who lack sufficient mental capacity.

### **3.7 Confidentiality**

The Serco Claims & Litigation Manager and all CPCCG staff involved in a claim will follow the principles and procedures set out in CPCCG Data Protection and Access to Records Policy.

### **3.8 Support mechanisms for patients/carers and staff**

All CPCCG staff can obtain support and advice initially and throughout any legal process from the Serco Claims Manager, who will arrange for independent legal advice if appropriate. Staff may also consult their manager or Union representative.

All staff have access to a confidential counselling telephone service.

The effectiveness of the support provided for staff will be monitored via the use of the Legal Services Evaluation questionnaire (Appendix 12)

Patients and carers bringing a claim against CPCCG are able to access free advice through Citizens Advice Bureaux.

### **3.9 Clinical Negligence Scheme for Trusts (CNST)**

See Appendix 5

### **3.10 Liabilities to Third Parties Scheme (LTPS)**

See Appendix 6

### **3.11 Property Expenses Scheme (PES)**

See Appendix 7

### **3.12 Accessing legal advice & management of claims not covered by the NHSR's Schemes**

See Appendix 8

## 4. DUTIES & RESPONSIBILITIES

### 4.1 The Cambridgeshire & Peterborough Clinical Commissioning Group

CPCCG responsibility to ensure that systems are in place to manage claims in accordance with current legislation.

The Finance Committee will be informed about all claims so it can be assured that the claims management system within the organisation is working effectively.

### 4.2 Committees with overarching responsibility for claims management

The Integrated Performance and Assurance Committee has overall responsibility for the management of claims and has responsibility for reviewing the Claims Handling Policy and processes. The Committee also maintains an overview of incidents, complaints, claims and Patient Advisory and Liaison Service information so that trends can be identified, action plans monitored and learning agreed and disseminated to appropriate stakeholders; identifying and managing any high or extreme risks identified by claims or other risk information, adding these to the risk register and monitoring the management of these risks; auditing the claims process.

### 4.3 Roles and Responsibilities

CPCCG's Chief Officer is accountable for the proper and effective handling of claims within CPCCG.

CPCCG's Secretary is responsible for ensuring effective processes are in place for claims management supported by the **CPCCG's Corporate Services Manager**.

CPCCG's Chief Finance Officer is responsible for managing payment of claims in accordance with CPCCG's Standing Financial Instruments. See Appendix 11, Financial Management.

### 4.4 Senior Managers

CPCCG retains responsibility for claims made against it, but under the terms of the Service Level Agreement with Serco having responsibility for the day to day management of claims.

Serco is responsible for ensuring that the appropriate procedures are followed in accordance with Appendices 5, 6, 7 and 8:

- When a formal complaint is pursued under the NHS complaints procedure and where there is a demand for compensation.
- When there is a request for disclosure for records under the relevant Pre-Action Protocol indicating that the claimant is contemplating legal action against CPCCG
- When a letter of claim is received
- Where legal proceedings have been entered against CPCCG
- When advice, information or support is required with respect to claims/legal proceedings not covered by the NHSR's Schemes, general medico-legal queries and other matters as described in Appendix 8

### 4.5 Serco Claims & Litigation Manager

The Serco Claims & Litigation Manager's role is to manage the handling of claims, support the CPCCG's staff and liaise with the NHSR, Panel Solicitors, CPCCG Officers, Claimants' Solicitors and others as necessary.

The Serco Claims & Litigation Manager will carry out such preliminary action, investigation and analysis of reportable claims as is required by the NHSR and will liaise with the NHSR as necessary over the conduct of such claims.

The Serco Claims & Litigation Manager will consult relevant staff within CPCCG regarding all significant developments during the course of managing each claim, and will seek authorisation from CPCCG as appropriate.

In summary, the Claims & Litigation Manager is responsible for:

- Receiving, acknowledging and assessing all new claims that may arise against CPCCG;
- Notifying CPCCG (nominated contact) that a claim has been received;
- Setting up and maintaining a claim file and recording details on a Datix database;
- Notifying and liaising with the NHR and/or solicitors nominated by the NHR, as required and in accordance with the NHR's reporting requirements, in connection with claims;
- Obtaining expert clinical advice (within or outside the organisation as appropriate);
- Identifying, obtaining and/or arranging for the preservation of relevant records and other items, such as equipment involved in incidents, and disclosing copy records if required;
- Obtaining more information from the patient or their solicitor if necessary and continuing to liaise with the patient/carer/solicitor during the course of the litigation process if appropriate;
- Establishing and as necessary maintaining contact with relevant staff, and former staff, and obtaining information;
- Establishing an objective account of the original incident, giving appropriate weight to the recollection of the staff originally involved (this may already be available from incident report forms);
- Undertaking the initial preliminary analysis of clinical negligence claims on facts, breach of duty, causation and quantum;
- Supporting staff involved in the litigation process;
- Notifying and liaising with other agencies as appropriate during the course of a claim;
- Ensuring that information obtained during claims investigations is shared with staff directly involved in the case and senior managers as appropriate for risk management purposes, and that lessons learned in the process of claims management are used for risk management purposes in the context of future service provision, as well as liaising closely with the staff managing complaints;
- Systematically reviewing case files to ensure that claims are progressed and brought to a conclusion as swiftly as possible;
- Notifying all relevant staff when the claim is concluded;
- Making recommendations to managers on risk management issues, to identify any procedures requiring remedial action, including systematic review of all cases after closure, and inform CPCCG's Secretary and/or service manager who will allocate responsibility for any remedial action required;
- Participating in risk management activities by contributing positively to educational programmes for the benefit of 'front line' staff; and
- Ensuring that the Finance Committee and Quality, Outcomes and Performance Committee is provided with reports as set out in section 10; monitoring the effectiveness of the above, as appropriate.

#### 4.6 Role of Clinicians/Specialist Advisors

The Serco Claims & Litigation Manager will seek clinical advice where appropriate, either independently or in liaison with NHR Case Managers. Clinicians within CPCCG may be asked to provide advice within their speciality in connection with a claim, or independent advisers may be appointed where this is not possible/appropriate (e.g. insufficient expertise or the need to eliminate bias).

The Serco Claims & Litigation Manager will seek information and advice from other Specialists, e.g. Safety Advisers, when appropriate.

#### 4.7 **Role of the CPCCG's Staff**

All CPCCG staff involved in the investigation and learning from claims should ensure that:

- claims are investigated in a timely manner under the direction of the Legal Services Manager to adhere to the deadlines set in the NHR's Reporting Guidelines and the Civil Procedure Rules;
- staff are supported during and following the investigation of claims and relevant support mechanisms are identified and offered including Occupational Health Department, the CPCCG's legal advisors, and the Policy for Supporting Staff Involved In Incidents, Complaints and Claims is followed;

- appropriate risk management arrangements are implemented where action is identified and risk assessments are carried out post-incident to ensure a risk of recurrence is minimised; and
- if the claim is the first indication of harm an incident report is raised and further action taken as required following consultation with the Legal Services Manager.

The full co-operation of CPCCG staff is essential to ensure that the opportunity to defend any claim is maximised (or in the case of property and contents claims, fully documented and substantiated). Witness statements (and where appropriate, opinions) shall be sought and carefully considered. The Claims & Litigation Manager will request and provide general advice on writing comments and/or statements (see also Appendix 10)). In some cases, solicitors will be involved in drafting statements.

In respect of clinical negligence claims, the clinician with responsibility for the overall care of the claimant will be consulted prior to release of medical records to the claimant and/or their nominated solicitor. The clinician responsible for the on-going care of the patient shall be kept advised of the progress of the claim, including details of the claim's resolution. Where necessary, the clinician responsible for the ongoing care of the patient will ensure that appropriate steps are taken to ensure the continuing quality of the patient's care, taking into consideration relevant information obtained during the claims investigation.

Those CPCCG staff involved in a claim are encouraged to contact the Claims & Litigation Manager for information, advice or support on any matter (see Appendix 14, contacts). Members of staff are welcome to contact Serco either directly or through their line manager.

## **5. TRAINING / SUPPORT**

### **5.1 Support and dialogue with patients and carers**

CPCCG recognises and embraces the approach adopted by the NHSR in its guidance on apologies and explanations.

CPCCG aims to be open and honest with patients and their relatives where an adverse event has occurred.

In line with the NHSR's guidance, whilst effective dialogue is encouraged to acknowledge adverse events, offer apologies, explanations and expressions of sympathy, staff should not discuss liability or blame with patients or their family/representatives.

There is a due legal process whereby negligence is determined and any compensation is decided, and this process is compromised if discussions are held between the CPCCG's staff and patients about litigation.

If a patient or carer asks for further support or information about litigation staff should advise them to seek legal advice via the Citizens' Advice Bureau. Staff should not attempt to advise patients on matters of litigation.

Where a solicitor is on record as advising a patient, member of staff or member of the public all contact in relation to the claim or circumstance shall be directed through the legal advisor.

### **5.2 Support and training for staff**

CPCCG has a designated policy that sets out the arrangements for supporting staff involved in incidents, complaints and claims.

The Claims & Litigation Manager will ensure that staff receive support and, where applicable, training when they are required to report into or be involved in the claims handling process.

## **6. LINKS WITH INCIDENT, RISK AND COMPLAINTS MANAGEMENT**

The Serco Claims & Litigation Manager should be notified of all serious incidents and will take action as appropriate if a potential claim is identified. See CPCCG Incident Reporting Process set out in the Risk Management Policy.

Where, during the course of managing a claim, any risk management issues are identified, the Serco Claims & Litigation Manager will report these immediately to the CPCCG Secretary and/or appropriate service manager and action will be taken according to CPCCG's Risk Management policy.

The Serco Claims & Litigation Manager will share the NHSR clinical panel solicitors' risk management reports on CNST claims with the CCG Secretary and other appropriate colleagues for action

The Serco Claims & Litigation Manager should be notified directly by CPCCG Patient Experience Manager of all complaints which may give rise to a claim. See CPCCG Complaints Policy.

## **7. EXTERNAL CONSULTATION AND COMMUNICATION WITH STAKEHOLDERS**

### **7.1 Consultation Process**

This policy was developed by Serco Risk Services in consultation with CPCCG corporate affairs leads, and taking into consideration NHSR guidance. There was no patient involvement.

### **7.2 Communication with stakeholders**

The Serco Claims & Litigation Manager is responsible for communication with stakeholders or ensuring that this is carried out by CPCCG staff. See section 4.6 above and section 8 below.

## **8. INTERNAL CONSULTATION, APPROVAL AND RATIFICATION PROCESS**

The CPCCG's Integrated Performance and Assurance Committee has reviewed and approved this document.

CPCCG Governing Body has ratified this document.

Future versions will be revised by the Serco Claims Manager for approval by the Finance Committee

## **9. LIAISON WITH THIRD PARTIES**

The Serco Claims & Litigation Manager is responsible for ensuring proper liaison with the NHSR, CPCCG staff, solicitors, claimants and others as appropriate.

CPCCG Risk Management Policy provides information regarding responsibilities for informing/involving external agencies after the occurrence of an adverse event.

During the course of claims investigations, it may also become evident that the involvement of other agencies is appropriate, and if so this will be undertaken by the Serco Claims Manager after consultation with relevant CPCCG staff if necessary.

Examples of external agencies are:

- The Police (suspected criminal activity)
- The Coroner (sudden or unexpected death)
- Witness Care Team, Crown Prosecution Service (in the event of a criminal trial)
- Other NHS organisations (patient safety issues)
- Professional Regulatory bodies (serious concern regarding professional performance/ fitness to practise Environmental Health)
- National Clinical Assessment Service
- Medicines and Healthcare Products Regulatory Agency (concerns about medicines or medical equipment – consult with CPCCG Chief Pharmacist)

- Health and Safety Executive (should be notified immediately by the Chief Operating Officer in the event of fatality or major injury or other event reportable under RIDDOR – see Risk Management Policy).

## **10. INVESTIGATION AND ROOT CAUSE ANALYSIS**

The purpose of a detailed investigation is to determine the root cause of an incident and recommend action to be taken. Refer to CPCCG's Incident Reporting and Management Policy.

All severe adverse events or large value claims (in excess of £250,000) should be the subject of a detailed investigation. Other claims should be considered by the Chief Finance Officer for detailed investigation.

Investigations should be carried out by a team nominated by the appropriate Director in liaison with CPCCG Secretary.

The investigation procedure to be followed is that in the Policy and Procedure for Recording, Reporting and Investigating Adverse Events

The results and recommendations of any investigation resulting from a claim, and actions taken as a result, should be reported to CPCCG Chief Finance Officer / CCG Secretary.

## **11. CLAIMS DATA COLLECTION AND ANALYSIS**

The Serco Claims & Litigation Manager will maintain a register of all claims against. See Appendix 13.

The Serco Claims Manager will prepare and send to CPCCG quarterly and annual reports on:

- The number and aggregate value of claims
- Details of individual claims
- The progress and likely outcome of these claims, including the expected settlement date
- The outcome of concluded claims
- Any proposed remedial action/risk management issues arising out of a particular claim
- Trends identified

The above processes will be monitored by audit.

The Serco Claims Manager will inform CPCCG's Secretary of claims analysis.

CPCCG Quality Outcomes and Performance Committee is responsible for the analysis of incidents, complaints and claims on an aggregated basis.

## **12. LEARNING FROM EXPERIENCE**

It is important that all risk information is reviewed together so that trends are highlighted, action plans put in place and monitored, and learning is disseminated. This role is part of the terms of reference of the Quality Outcomes and Performance Committee.

## **13. EQUALITY IMPACT ASSESSMENT**

The CCG Secretary has undertaken the Equality Impact Assessment of this policy (Appendix 4).

## **14. REVIEW AND REVISION ARRANGEMENTS INCLUDING VERSION CONTROL**

This policy will be reviewed every two years or more often if necessary, according to the process described in section 7 above.

Version Control - This is attached as Appendix 2.

## 15. DISSEMINATION AND IMPLEMENTATION

### 15.1 Dissemination of the policy

This policy is available on the CPCCG's web-site and Staff Extranet. The CCG Secretary will arrange for all managers to have access to the policy.

The Chief Finance Officer will ensure that the finance team have access to the policy. See also Appendix 3.

### 15.2 Implementation of the policy

This policy will be implemented by the Serco Claims & Litigation Manager.

The CPCCG's senior managers should ensure implementation of claims management procedures described in this policy, and that staff are aware of their responsibilities with respect to the identification of potential claims, co-operation with claims investigations and reporting to the Serco Claims & Litigation Manager.

**Training:** The CPCCG's senior managers and others should attend relevant training provided by Serco. The Serco Claims & Litigation Manager will receive on-going training as necessary and appropriate.

## 16. DOCUMENT CONTROL INCLUDING ARCHIVING AND RETRIEVAL ARRANGEMENTS

Previous versions of this document will be kept and are available from the Serco Claims & Litigation Manager.

## 17. MONITORING COMPLIANCE WITH AND THE EFFECTIVENESS OF THE CLAIMS HANDLING POLICY

The effectiveness of the claims handling policy and process will be monitored by the Finance Committee on a rolling basis by:

- review of claims information and progress with claims
- review of timescales for claims handling
- review of claims handling evaluation forms
- review of outcomes of claims
- consideration of any lessons learnt during the handling of claims

The Serco Claims & Litigation Manager will assess the effectiveness of claims handling by means of an evaluation form completed at the conclusion of each claim by the staff involved in the claim (Appendix 12). The implementation of the Policy will be audited once every three years.

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements
Duties	Serco Claims & Litigation Manager	report	Quarterly	CCG Secretary/Chief Finance Officer. Exceptions and updates to Integrated Performance and Assurance Committee. Annual Report to be provided
NHSR schemes relevant to the organisation (CNST, LTPS and PES)	Serco Claims & Litigation Manager	report	Quarterly	CCG Secretary. Exceptions and updates to Integrated

				Performance and Committee dependent upon activity but at least annually. Annual Report to be provided
Action to be taken, including timescales	Serco Claims & Litigation Manager	report	Quarterly	CCG Secretary. Exceptions and updates to Integrated Performance and Assurance Committee. Annual Report to be provided
How the organisation communicates with relevant stakeholders, such as staff, unrepresented claimants (in person), NHSR, panel and claimant solicitors, HM Coroner, etc.	Serco Claims & Litigation Manager	report	Quarterly	CCG Secretary. Exceptions and updates to Finance Committee. Annual Report to be provided

## 18. REFERENCES

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Apologies and Explanations, NHSR letter from Chief Executive to all NHS bodies May 2009 (NHSR.com)

Independent Sector Treatment Centres (ISTCs) and CNST, NHSR January 2006 (NHSR.com)

## 19. ASSOCIATED DOCUMENTATION

- Department of Health Records Management: Code of Practice 2006
- CPCCG Data Protection and Access to Records Policy
- CPCCG Complaints Policy and Procedure
- CPCCG Risk Management Policy

## 20. DEFINITIONS

- Claim:** allegations of negligence and/or demand for compensation.
- NHSR:** the National Health Service NHS Resolution (NHSR) is a Special Health Authority, which indemnifies NHS organisations against various risks including Employer's and Public Liability and Clinical Negligence. The Authority also advises on and monitors compliance with risk management recommendations arising from claims.
- CNST:** the Clinical Negligence Scheme for Trusts (CNST) is the membership scheme, which handles all clinical negligence claims against CPCCG where the incident took place on or after 01 April 1995.
- ELS:** the Existing Liabilities Scheme (ELS) is the NHSR scheme, which deals with all claims relating to incidents that occurred before 01 April 1995.
- RPST:** the Risk Pooling Scheme for Trusts (RPST) is the NHSR's scheme, which covers all non-clinical claims. The scheme began on 01 December 1999. RPST includes the Liabilities to Third Parties Scheme and the Property Expenses Scheme.
- LTPS:** the Liabilities to Third Parties Scheme (LTPS) indemnifies CPCCG against claims from third parties including employees and members of the public arising from incidents occurring since 01 December 1999. Indemnity arrangements before the inception of this scheme were with commercial insurers, details of which are held by the Legal Services Manager.
- PES:** the Property Expenses Scheme (PES) covers damage to or loss of property owned by or the responsibility of the CPCCG.
- CPCCG's Legal Advisors:** appointed Solicitors as contracted to CPCCG to provide legal advice including on the management of claims.
- NHSR Panel Solicitors:** solicitors appointed by the NHSR to manage aspects of claims with a duty to both the NHSR and the CCG.

## Appendix 1 Checklist for the Review and Approval of Procedural Document

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

	Title of document being reviewed:	Yes/No/ Unsure	Comments
1.	Title		
	Is the title clear and unambiguous?		
	Is it clear whether the document is guideline, policy, protocol or standard?		Title states both policy and procedure
2.	Rationale		
	Are reasons for development of the document stated?		Section 2.1
3.	Development Process		
	Is the method described in brief?		Section 6.1
	Are people involved in the development identified?		6.1; 7.1
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?		
	Is there evidence of consultation with stakeholders and users?		
4.	Content		
	Is the objective of the document clear?		2.5
	Is the target population clear and unambiguous?		2.4; 4
	Are the intended outcomes described?		2.5
	Are the statements clear and unambiguous?		
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?		17
	Are key references cited?		17
	Are the references cited in full?		17
	Are supporting documents referenced?		17
6.	Approval		
	Does the document identify which committee/group will approve it?		7.1.1; 7.1.2
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	n/a	
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how this will be done?		14.1; 14.2.1; 14.2.2; App 3
	Does the plan include the necessary training/support to ensure compliance?		14.2.3
8.	Document Control		
	Does the document identify where it will be held?		14.1
	Have archiving arrangements for superseded documents been addressed?		15; App 2
9.	Process to Monitor Compliance and Effectiveness		
	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?		16

	Title of document being reviewed:	Yes/No/ Unsure	Comments
	Is there a plan to review or audit compliance with the document?		16
10.	Review Date		
	Is the review date identified?		Front page
	Is the frequency of review identified? If so is it acceptable?		Front page – annual review
11.	Overall Responsibility for the Document		
	Is it clear who will be responsible for co-ordinating dissemination, implementation and review of the document?		App 3

#### Individual Approval

If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.

Name		Date	
Signature			

#### Committee Approval

If the committee is happy to approve this document, please sign and date it and forward copies to the person with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation's database of approved documents.

Name		Date	
Signature			

## Appendix 2 - Version Control Sheet

### Document Revisions

Version	Summary of Revisions	Made by	Approved by
1	Adapted from former PCT Policy to reflect CCG requirements	Serco Claims Manager CCG Secretary	Finance and Performance Committee Governing Body January 2016
2	Amended to reflect the change of name from NHR to NHS Resolution across whole document Cover page – related policies reviewed and updated Section 2.1 – Bullet added to cover Duty of Candour requirements Page 9 – Flow chart amended slightly to reflect use of NHR’s external Case Management System Section 4.1 onwards amended to reflect revised Committee Framework Section 4.3 amended to reflect Accountable Officer change from Chief Clinical Officer to Chief Officer and to provide clarification on Director responsibilities. Relevant updates to job titles and other minor updates included throughout policy. Section 17 amended to state Director/Associate Director of Corporate Affairs. Added: Exceptions and updates to Finance Committee as appropriate. Annual Report required. Equality Impact Assessment – Updated Jan 18 Appendix 5, 6, 7 & 8: – amended to make clearer. Appendix 14 – Contact details updated.	CCG Secretary/ Serco Claims and Litigation Manager	Finance Committee, and Governing Body – May 2018.
2.1	Amended to reflect the changes in roles and responsibilities, and pilot Committee Structure	CCG Secretary	For presentation to Integrated Performance and Assurance Committee 30.04.2019

### Appendix 3 - Plan for Dissemination of Claims Policy

To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

Title of document:			
Date finalised:			Dissemination lead:
Previous document already being used?	Yes / No (Please delete as appropriate)	Print name and contact details	
If yes, in what format and where?			
Proposed action to retrieve out-of-date copies of the document:			
To be disseminated to:	How will it be disseminated, who will do it and when?	Paper or Electronic	Comments

Dissemination Record - to be used once document is approved.

Date put on register / library of procedural documents		Date due to be reviewed	
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Disseminated to: (either directly or via meetings, etc.)	Format (i.e. paper or electronic)	Date Disseminated	No. of Copies Sent	Contact Details / Comments

Acknowledgement: University Hospitals of Leicester NHS Trust

## Appendix 4 - Equality Impact Assessment

### Equality Impact Assessment - Form

<b>Name of Proposal (policy/strategy/function/service being assessed)</b>	Claims Handling Policy
Those involved in assessment:	CCG Secretary, Corporate Governance Team
Is this a new proposal?	Revised CCG Policy
Date of Initial Screening:	19 March 2014 Updated January 2018 Updated April 2019

What are the aims, objectives?	<ul style="list-style-type: none"> <li>the timely and effective management of claims and other legal actions against CPCCG</li> <li>that CPCCG learns from claims to prevent reoccurrence and monitors the effectiveness of the relevant procedures</li> <li>that CPCCG staff are supported during the investigation of a claim or other legal proceedings</li> </ul>
Who will benefit?	CPCCG staff, partner organisations (where applicable), public, patients and member practices.
Who are the main stakeholders?	CCG managers and staff (and other providers and partners where applicable).
What are the desired outcomes?	<ul style="list-style-type: none"> <li>the timely and effective management of claims and other legal actions against CPCCG</li> <li>that CPCCG learns from claims to prevent reoccurrence and monitors the effectiveness of the relevant procedures</li> <li>that CPCCG staff are supported during the investigation of a claim or other legal proceedings</li> </ul>
What factors could detract from the desired outcomes?	Lack of awareness and/or non-enforcement of the policy.
What factors could contribute to the desired outcomes?	Increased awareness of the requirements set out in the policy throughout CPCCG.
Who is responsible?	Chief Finance Officer

Have you consulted on the proposal? If so with whom? If not why not?	Policy developed by ASP SERCO developed from PCT Policy. Discussed with the Policies Review Task and Finish Group which included representatives from different Departments/sections of CPCCG
---	---

Which protected characteristics could be affected and be disadvantaged by this proposal (Please tick )		Yes	No
Age	<u>Consider:</u> Elderly, or young people		✓
Disability	<u>Consider:</u> Physical, visual, aural impairment Mental or learning difficulties		✓
Gender Reassignment	<u>Consider:</u> Transsexual people who propose to, are doing or have undergone a process of having their sex reassigned		✓
Marriage and Civil Partnership	<u>Consider:</u> Impact relevant to employment and /or training		✓
Pregnancy and maternity	<u>Consider:</u> Pregnancy related matter/illness or maternity leave related mater		✓
Race	<u>Consider:</u> Language and cultural factors, include Gypsy and Travellers group		✓
Religion and Belief	<u>Consider:</u> Practices of worship, religious or cultural observance, include non-belief		✓
Sex /Gender	<u>Consider:</u> Male and Female		✓
Sexual Orientation	<u>Consider:</u> Know or perceived orientation		✓

What information and evidence do you have about the groups that you have selected above?

N/a
-----

Consider: Demographic data, performance information, recommendations of internal and external inspections and audits, complaints information, JNSA, ethnicity data, audits, service user data, GP registrations, CHD, Diabetes registers and public engagement/consultation results etc.

<p><b>How might your proposal impact on the groups identified? For example you may wish to consider what impact it may have on our stated goals: Improving Access, Promoting Healthy Lifestyles, Reducing Health Inequalities, Supporting Vulnerable People</b></p>
---

Examples of impact re given below:

- a) Moving a GP practice, which may have an impact on people with limited mobility/access to transport etc.

- b) Planning to extend access to contraceptive services in primary care without considering how their services may be accessed by lesbian, gay, bi-sexual and transgender people.
- c) Closure or redesign of a service that is used by people who may not have English as a first language, and may be excluded from normal communication routes.

Please list the positive and negative impacts you have identified in the summary table on the following page.

1 Summary	
Positive impacts (note the groups affected) N/a	Negative impacts (note the groups affected) N/a

Summarise the negative impacts for each group:

N/a
-----

What consultation has taken place or is planned with each of the identified groups?

N/a
-----

What was the outcome of the consultation undertaken?

N/a
-----

What changes or actions do you propose to make or take as a result of research and/or consultation?

<b>Briefly describe the actions then please insert actions to be taken on to the given Improvement Plan template provided.</b> N/a
---

Will the planned changes to the proposal:

**Please state Yes or No**

Lower the negative impact?	N/a
Ensure that the negative impact is legal under anti-discriminatory law?	N/a
Provide an opportunity to promote equality, equal opportunity and improve relations i.e. a positive impact?	N/a

Taking into account the views of the groups consulted and the available evidence, please clearly state the risks associated with the proposal, weighed against the benefits.

--

N/a

What monitoring/evaluation/review systems have been put in place?

The effectiveness of the Claims Policy will be reviewed by the Finance Committee on a regular basis.

When will it be reviewed?

November 2020, or earlier if required by changes in local or national requirements.

<b>Date completed:</b>	April 2019
<b>Signature:</b>	Sharon Fox Associate Director of Corporate Affairs
<b>Approved by:</b>	
<b>Date approved:</b>	

## **Appendix 5 - Procedure for the management of Clinical Negligence Scheme for Trusts (CNST) cases**

CNST claims are those involving any clinical incident that occurred after 1 April 1995. The definition of a claim being 'an allegation of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury, or any clinical incident which carries significant litigation risk for CPCCG. These claims will be managed by the Serco Claims & Litigation Manager in accordance with the CNST Reporting Guidelines (Fifth Edition – October 2008) and the Pre-Action Protocol published under the Civil Procedure Rules in 1999.

**Independent Sector Treatment Centres (ISTCs) and CNST:** Formally constituted ISTCs cannot be members of the CNST scheme, but arrangements have been made to allow ISTC providers treating NHS patients to benefit from the referring CPCCG's CNST membership – therefore the same benefits of CNST coverage for clinical negligence will apply as the do where an NHS patient is treated in an NHS hospital.

### **CPCCG Procedure for Handling Clinical Negligence Claims**

#### **1. Notification of a claim**

CPCCG is usually informed that solicitors are investigating a potential clinical negligence claim by letter. This notification can also come directly from a claimant or someone acting on their behalf as a litigant friend. The first notification of a claim will ordinarily give some indication as to the matter that is being investigated. It is accepted that some notifications will not house sufficient detail to identify what the specific issue is.

At this stage, the solicitor will usually be asking to have a copy of the medical records. The solicitor must provide written consent from their client for the notes to be disclosed to them. If appropriate consent is not received, the records cannot be disclosed. Providing the appropriate consent is obtained, a copy of the medical records must ordinarily be disclosed within 40 days of receipt of the request.

#### **2. Disclosing records**

The Legal Services Team will ask the relevant department for two copies of the medical records. Case Notes Release will deal with General notes.

An invoice for the copy records or x-rays will be generated by the Legal Services Department and sent to the Finance Department. Charges will be in line with the CPCCG's Procedure for Providing Subject Access to Health Records under the Data Protection Act 1998.

One copy set will be kept with the claim file held by the Legal Services Team. The second copy will be sent to the claimant's solicitors by secure transfer.

The Legal Services Team will check for records relating to complaints, inquests and serious incidents and will obtain same records for the purpose of the claim investigation.

#### **3. Reporting Claims to the NHSR**

All claims will be handled and reported to the NHSR in accordance with the CNST Reporting Guidelines (October 2008). Claims will be reported to the NHSR when a significant litigation risk has been established.

This would include:

- Claims where the preliminary investigations, following receipt of a request for disclosure of records, indicate that there is a significant risk of an admission of breach of duty;
- Claims where a formal letter of claim is the first indication of any action;

- Claims arising from the complaints procedure where the response indicates an admission of liability and where the Complaints Department has notified the Serco Claims & Litigation Manager;
- Incidents that have occurred and are graded red and reveal a possible breach of duty, which has the potential to lead to a claim;

If proceedings are issued and served on CPCCG, the NHSR should be informed immediately.

The Claims & Litigation Manager will report all claims via the NHSR's Claims Management System, an electronic system that forms part of the NHSR's extranet function. Where the following information is available, it will accompany the reporting of a clinical negligence claim:

- Letter of Claim and any preceding correspondence;
- Any clinicians' comments;
- Copy complaints file;
- Copy incident report and associated action plan.

Upon acceptance of the claim by the NHSR, NHSR will appoint a case manager who will liaise with Serco's Claims & Litigation Manager regarding future management of the claim. In the case of a CNST claim, NHSR may appoint panel solicitors or deal with the claim "in house" depending on the value and/or complexity of the claim. Each case will be assessed on its own merits.

Following acceptance of a CNST claim, the NHSR will assume responsibility for all costs of the claim thereafter.

Claims that pre-date the formation of CPCCG will be sent to the NHSR who will liaise with the Department of Health for their action as the holders of liabilities for that period.

#### **4. Further progress of a claim**

Where a claim is pursued following disclosure of records, the claimant's solicitors will send CPCCG a formal Letter of Claim. This should outline the allegations in detail and provide CPCCG with details of the loss suffered by the claimant as a result of the alleged negligence. CPCCG has four months to provide a reasoned response before proceedings can be issued. On receipt of a formal Letter of Claim, the following will happen:

1. The Letter of Claim must be acknowledged within 14 days
2. The Letter will be reviewed with the appointed NHSR Case Manager alongside information provided to date by the Serco Claims & Litigation Manager
3. The Letter may be reviewed by the relevant clinician for further comment
4. The Letter may be reviewed by the CPCCG's expert if one has been commissioned
5. The Letter of Claim must be reported to the NHSR if not already done so.

A formal Letter of Response will always be sent from the NHSR, with the CPCCG's agreement to the content. The Serco Claims & Litigation Manager will liaise with the relevant staff to ensure CPCCG agrees to any admissions or repudiations as is relevant to the case.

Proceedings must be issued within 3 years of the date of the incident or the date of knowledge of harm (if different) – i.e. where a patient may only have discovered harm later than the actual incident date. In the case of a child, these proceedings must start no later than 3 years from the date of the child's 18th birthday. Different rules apply for individuals who do not have requisite mental capacity. The court will then control the timetable for the claim. At this stage, NHSR will instruct panel solicitors, (if this has not already happened).

**Acknowledgement of Service:** This must be filed by NHSR or its panel solicitors with the relevant Court within 14 days of receipt of the Claim Form/Particulars of Claim. Failure to do so could result in judgment being found for the claimant by default.

**Defence:** CPCCG will be given 28 days to serve its defence. This may be extended by a further 28 days by mutual agreement with the claimant's solicitor, but anything more than this will require a consent order from the Court.

**Allocation Questionnaire:** The Questionnaire must be completed and returned to the Court by a particular date. Information included will include details of CPCCG's witnesses and experts.

**Case Management Conference:** This is a meeting with the claimant's solicitor in front of a judge to set the timetable. Deadlines will be set for:

- Exchange of expert evidence
- Exchange of witness statements
- Experts to confer and produce a schedule of agreement/disagreement
- Date for trial

Few claims actually proceed to trial. Most are discontinued by the claimant or settled before court proceedings are issued.

## 6. Settlement

Only NHSR can negotiate settlement of a claim. A settlement is usually negotiated where liability for breach of duty of care has been clearly identified. On occasions, a claim is settled where, on the balance of probabilities a defence of the claim would be difficult if it continued to trial – this is usually referred to as a financial or litigation risk and suggests that there would be a significant risk of losing at trial.

Settlement may be negotiated at any point in the history of a claim, depending on the defensibility of the claim. A settlement can include payment for the following:

- General damages for pain, suffering and loss of amenity.
- Financial loss including for care and loss of earnings.
- Claimant's costs.

If NHSR settles a claim, it is usually on the basis that they will assume responsibility for the Claimant's legal costs. Before any payments for damages can be made, a certificate of recoverable benefits must first be obtained from the Compensation Recovery Unit (CRU). NHSR is responsible for making all payments for settlement of clinical claims. If a claim is nearing settlement, a briefing note should be sent a relevant officer of CPCCG, as identified by the Serco Claims & Litigation Manager, outlining the details of the case and the expected settlement, so that CPCCG is aware of a pending settlement and any potential media that could be associated therewith.

## 5. Claim Outcome

At the conclusion of a claim, the Serco Claims & Litigation Manager will prepare a quarterly Claim Outcome Report that will include the following detail:

- Claimant details.
- Brief synopsis of the claim.
- Outcome to reflect successful defence, settled before proceedings, settled in court, withdrawn, statute-barred (out of time).
- Breakdown of quantum (damages and costs).
- Risk Management recommendations (if any).
- Summary to include reflections on the handling of the claim and interactions and involvement of clinicians and other staff members.

This Claim Outcome Report will be forwarded to relevant CPCCG Leads for noting, monitoring and authorising any learning outcomes.

## **6. Information and Data Storage**

Throughout the lifetime of a claim, a system of paper and/ or electronic files will be maintained to support operational procedures in the management of claims. All claims records and documentation regardless of whether they are paper-based or electronic will be stored securely in accordance with Data Protection and Information Governance Policies and Guidance.

The Head of Risk will be responsible for the security of the information held within the Risk Services Team.

## **Appendix 6 Procedure for Handling Employer's Liability Claims or Public Liability Claims (Liabilities to Third Parties Scheme LTPS)**

### **1. Letter Before Action**

Employer's Liability (EL) or Public Liability (PL) claims are normally made via solicitors in the form of a Letter of Claim. This letter usually provides a brief narrative of the matter that the claim relates to and advises CPCCG to refer to its insurers. The three-year limitation period still applies in that Proceedings have to be issued within three years of the incident or date of knowledge of harm arising out of the incident, or three years from the date of the claimant's 18th birthday in the event the claimant is a child. Different rules apply for claimants without sufficient mental capacity.

Serco's Claims & Litigation Manager will ensure that every claim is recorded on a secure Database.

In the event of an Employer's Liability claim, Serco's Claims & Litigation Manager will liaise with the employee's line manager where appropriate by way of investigating the claim and identifying where any further support may be required. CPCCG Health and Safety Advisor will also be informed of all non-clinical claims so that action can be taken to ensure that CPCCG has properly investigated any relevant incidents and learning has been considered and initiated.

Serco's Claims & Litigation Manager will liaise with the relevant General Manager to identify how best to investigate the matter and to arrange for collation of documentary evidence required in the NHSR registration process.

### **2. Referral to the NHSR**

All non-clinical claims will be reported to the NHSR on receipt of first notification. Serco's Claims & Litigation Manager will report all non-clinical claims within 21 days of receipt of the first notification (usually a Letter of Claim).

Serco's Claims & Litigation Manager will report all claims via the NHSR's Claims Management System, an electronic system that forms part of the NHSR's extranet function. Where the following information is available, it will accompany the reporting of a clinical negligence claim:

### **3. Disclosure of documents**

Copies of the documents requested in the letter of claim must ordinarily be disclosed to the claimant within three months of receipt of the claim, if liability is to be disputed. Disclosure is dealt with via the NHSR and/or NHSR Panel Solicitors.

The following information is likely to be required for disclosure in LTPS claims:

- Incident Report.
- RIDDOR report and any other correspondence with the Health and Safety Executive.
- Witness statements of any staff who observed the incident or are witnesses of fact taken before the claim was intimated.
- A manager's report completed before the claim was intimated.
- Risk assessments.
- Earnings and absence details if employee.

Serco's Claims & Litigation Manager will request employee information as required from CPCCG Employee Services Department. Other requests will be addressed to the relevant staff members responsible for the document or process, including but not exhaustive of the CPCCG's Health and Safety Advisor, the Head of Estates and Facilities, the relevant General Manager for the CSU, and the relevant service lead (for housekeeping, maintenance, repair, catering and other such services).

Nearly all non-clinical claims require extensive disclosure by the claimant's solicitors in accordance with Civil Procedure Rules. Serco's Claims & Litigation Manager will determine what information does or does

not exist through discussions with relevant staff and will liaise with NHSR where disclosure lists seem disproportionate to the matter in hand.

#### **4. Legal Proceedings**

Where proceedings are served upon CPCCG these should be forwarded immediately to NHSR. NHSR will manage all non-clinical claims through legal proceedings and may instruct Panel Solicitors to take conduct of the claim on behalf of the CPCCG. Throughout such proceedings, Serco's Claims & Litigation Manager will deal with matters arising on behalf of CPCCG and will coordinate the involvement of CPCCG staff who may be required as witnesses.

#### **5. Settlement**

Only NHSR can negotiate a settlement to the claim. A settlement is usually negotiated where liability for breach of duty of care has been clearly identified. On occasions, a claim is settled where, on the balance of probabilities a defence of the claim would be difficult if it continued to trial – this is usually referred to as a financial or litigation risk and suggests that there would be a significant risk of losing at trial.

A settlement may be negotiated at any point in the history of a claim, depending on the defensibility of the claim. A settlement can include payment for the following:

- General damages for pain, suffering and loss of amenity.
- Financial loss including for care and loss of earnings.
- Claimant's costs.

If NHSR settles a claim, it is usually on the basis that they will assume responsibility for the claimant's legal costs. Before any payments for damages can be made, a certificate of recoverable benefits must first be obtained from the Compensation Recovery Unit (CRU).

NHSR is responsible for making all payments for settlement of claims. If a claim is nearing settlement, a briefing note should be sent to a relevant officer of the CPCCG, outlining the details of the case and the expected settlement, so that CPCCG is aware of a pending settlement and any potential media that could be associated therewith.

#### **6. Claim Outcome**

At the conclusion of a claim, Serco's Claims & Litigation Manager will prepare a quarterly Claim Outcome Report that will include the following detail:

- Claimant details.
- Brief synopsis of the claim.
- Outcome to reflect successful defence, settled before proceedings, settled in court, withdrawn, statute-barred (out of time).
- Breakdown of quantum (damages and costs).
- Risk Management recommendations (if any).
- Summary to include reflections on the handling of the claim and interactions and involvement of staff.

This Claim Outcome Report will be forwarded to a relevant officer of CPCCG and the Health and Safety Committee for noting and monitoring any learning outcomes and clinical governance issues.

#### **7. Information and Data Storage**

Throughout the lifetime of a claim, a system of paper and/or electronic files will be maintained to support operational procedures in the management of claims. All claims records and documentation regardless of whether they are paper-based or electronic will be stored securely and in accordance with Data Protection and Information Governance Policies and Guidance.

The Head of Risk will be responsible for the security of the information held within the Risk Services Team.

## **Appendix 7 Procedure for Management of Property Expenses Claims**

Serco's Claims & Litigation Manager will receive, assess and notify property and contents claims covered by the NHSR's Property Expenses Scheme (PES) in conjunction with the relevant service managers, as detailed in the NHSR PES manual.

The following claims will be reported to the Scheme:

- All cases where the potential will exceed the excess
- Cases within 20% of the excess, regardless of whether CPCCG wishes the NHSR to handle the claim on a sub-excess basis.
- Cases where the potential develops to the extent that the excess will be breached.

Serco's Claims & Litigation Manager will work with NHSR in investigating the claim and providing appropriate information and evidence as required.

### **Property Expenses**

These are claims being made by CPCCG where CPCCG or patients' property has been damaged or destroyed. Schedule 2 to the PES Rules sets out the qualifying expenses for which claims can be submitted.

Claims exceeding or within 20% of the PES scheme excesses (Buildings £20,000; Contents £20,000) should be reported to NHSR by Serco's Claims & Litigation Manager via NHSR's Claims Management System, an electronic system that forms part of the NHSR's extranet function.

CPCCG's Limit of Cover is £1 million.

Claims from patients for loss of small items (e.g. spectacles) should be processed through the Finance Department following completion of a losses and compensation form.

Claims below the excess will be handed by the Claims & Litigation Manager in co-operation with the Finance Department and CPCCG's solicitors, if necessary.

## **Appendix 8 Procedure for accessing legal advice and management of claims not covered by the NHSR's Schemes**

Staff seeking clarification on whether a claim may fall under one of the NHSR's Schemes, or queries regarding any aspect of NHSR Scheme cover, should contact the Serco Claims & Litigation Manager.

Staff seeking legal advice or guidance in relation to whether or not a legal opinion may be required are directed under the list of issues below. Where possible, advice will be provided in-house and where this is not possible, appropriate legal assistance will be arranged and the Serco Claims & Litigation Manager will liaise between relevant staff and solicitors, including instructing appropriate solicitors and maintaining a case file. Any external legal costs arising will be payable by CPCCG.

**Clinical law:** Contact the Serco Claims & Litigation Manager

**Commercial insurance:** Advice on indemnity and levels of insurance from the Serco Claims & Litigation Manager

**Consent and capacity (Mental Capacity Act 2005):** Contact CCG Legal Advisor

**Contracts:** Contact the CCG Commissioning Directorate

**Employment law claims – claims of unfair dismissal, discrimination etc:** Refer to the Human Resources Department.

**Ex-gratia payments** - There may be occasions when CPCCG may wish to make an ex-gratia payment without an admission of liability. In these circumstances the claim is not within any NHSR Scheme and CPCCG would not be able to recover any costs from NHSR and would need to be satisfied that the CNST reporting guidelines had not been breached. Decisions on whether to settle claims which are not reported to NHSR will normally be based on an assessment of the likely outcome of the claim, on the balance of probabilities, if it should come to Court.

Any decision on settling a claim must be authorised by the Chief Finance Officer and should be based on the following considerations:

- The strength of CPCCG's defence
- The relative costs of defending or settling the claim
- The likelihood of a settlement attracting further claims
- Documentation showing the reasons for the decision should be kept on file. Contact Serco's Claims & Litigation Manager.

**'Good Samaritan' acts:** Serco's Claims & Litigation Manager

**Human Rights Act:** Serco's Claims & Litigation Manager

**Income generation activities (activities relating to the provision of services, supplies or products for financial gain to parties outside the NHS):** Serco's Claims & Litigation Manager

**Inquests:** Serco's Claims & Litigation Manager will support CPCCG staff requested to attend an inquest and/or supply a witness statement and, where appropriate, will arrange formal legal representation where this is deemed necessary.

**Judicial Review:** Serco Claims & Litigation Manager (NB – Judicial Review is not reportable under NHSR scheme rules and may require additional funding by CPCCG with cases it receives.

**Motor vehicles:** CPCCG Corporate Services Team

**Public Liability:** The Serco Claims & Litigation Manager

**Property (legal questions, not insurance issues):** CPCCG Corporate Services Team

**Research:** CPCCG Research Governance Manager

**Small loss and compensation claims** (e.g. damage to staff clothing and property): Claims should be passed to Serco's Claims & Litigation Manager with a completed Loss and Compensation form (available from Serco's Claims & Litigation Manager) and payment will be agreed at the discretion of CPCCG's Chief Finance Officer and budget holder.

**Witnesses for the prosecution in criminal trials:** Where an employee of CPCCG has been approached by the Police for a statement and/or attendance a court in support of the case by the Crown Prosecution Service ('CPS'), the Serco Claims & Litigation Manager will provide support and information for staff, including where necessary accompanying staff to trials and liaison with the Court Witness Service where appropriate. Where a CPCCG employee has been requested to attend an 'interview under caution' (i.e. as a potential defendant), CPCCG's position would be such employees seek their own legal representation.

## Appendix 9 – Apologies and Explanations

May 1st 2009

To: **Chief Executives and Finance Directors  
All NHS Bodies**

Dear Colleagues

### Apologies and Explanations

I am pleased to report that the Authority's letter of 15 August 2007, on providing apologies and explanations to patients or their relatives, has been updated and endorsed widely by other organisations, so it seemed appropriate to reissue it with those endorsements included. To ensure the widest possible distribution to staff in the NHS and beyond, the co-signatories have all incorporated links to this letter on their own websites. To reduce the possibility of misunderstandings by front-line staff, the original letter has been reworded slightly in places.

### Apologies

It is both natural and desirable for clinicians who have provided treatment which produces an adverse result, for whatever reason, to sympathise with the patient or the patient's relatives; to express sorrow or regret at the outcome; and to apologise for shortcomings in treatment. It is most important to patients that they or their relatives receive a meaningful apology. We encourage this, and stress that apologies do not constitute an admission of liability. In addition, it is not our policy to dispute any payment, under any scheme, solely on the grounds of such an apology.

### Explanations

Patients and their relatives increasingly ask for detailed explanations of what led to adverse outcomes. Moreover, they frequently say that they derive some consolation from knowing that lessons have been learned for the future.

In this area, too, the NHSR is keen to encourage both clinicians and NHS bodies to supply appropriate information whether informally, formally or through mediation.

Explanations should not contain admissions of liability. For the avoidance of doubt, the NHSR will not take a point against any NHS body or any clinician seeking NHS indemnity, on the basis of a factual explanation offered in good faith before litigation is in train. We consider that the provision of such information constitutes good clinical and managerial practice.

***To assist in the provision of apologies and explanations, clinicians and NHS bodies should familiarise themselves with the guidance on Being Open, produced by the National Patient Safety Agency and available at [www.npsa.nhs.uk/nrls/alerts-and-directives/notices/disclosure/](http://www.npsa.nhs.uk/nrls/alerts-and-directives/notices/disclosure/)***

### CPCCG Formal Admissions

In keeping with our financial and case management responsibilities, the NHSR will make or agree the terms of formal admissions within or before litigation. This circular is intended to encourage scheme members and their employees to offer the earlier, more informal, apologies and explanations so desired by patients and their families.

### Medical Defence Organisations

It is critically important to note that all of the above applies to the provision of NHS indemnity to NHS bodies and employees. Should any individual clinicians wish to adopt a particular policy vis a vis apologies and explanations, in a matter which might expose them to an action brought against them as an individual, they should seek the advice of their medical defence organisation and/or professional body.

## **Staff Support**

We should not lose sight of the traumatic effect that adverse outcomes, and their aftermath, might have on NHS staff as well as on patients and their relatives. Some may find compliance with these recommendations cathartic or therapeutic; others will not. None will find compliance easy. Recognising this, employers should do whatever is necessary by way of offering training, support, counselling or formal debriefing.

Yours sincerely

**Stephen Walker CBE**

Chief Executive

*We endorse the NHSR guidance on apologies and explanations.*

*For many years we have advised our members that, if something goes wrong, patients should receive a prompt, open, sympathetic and above all truthful account of what has happened. Any patient who has had the misfortune to suffer through an error of whatever nature should receive a full explanation and a genuine apology. We encourage members to adopt this approach. There are no legal concerns about taking this course of action: it is quite different from admitting liability.*

Dr Michael Saunders

Chief Executive

Medical Defence Union

Dr Stephanie Brown

Director of Policy and Communications

Medical Protection Society

Dr Jim Rodger

Head of Professional Services

Medical and Dental Defence Union of Scotland

## **Appendix 10 - Guidance for staff in preparation of comments and statements in connection with legal action**

General guidance for staff in the preparation of comments and statements in connection with legal action appear below:

- There will be occasions where staff are providing CPCCG (as employer) with formal witness statements to assist it to defend claims of various kinds made against it. All staff are reminded that when providing factual statements for any purpose they are obliged to provide CPCCG with a full, comprehensive and honest account. Failure to do so may result in significant risk to CPCCG in financial terms and act to the detriment of its reputation generally. In addition, the providing of intentionally untrue or misleading information in a statement will also place the individual open to disciplinary action by CPCCG and/or professional bodies and in some cases, action against them by the Courts.
- Once a claim has been notified to CPCCG the Serco Claims & Litigation Manager will seek to contact appropriate staff witnesses. (This may include former employees). At this stage the member of staff will simply be asked to provide written comments on the allegations which have been made and a factual account of their personal involvement in the incident or (in the case of clinical negligence claims) episode(s) of treatment. They may refer to the records to refresh their memory. In many cases such informal statements provided by staff may prove sufficient to deal with the claim.
- Once formal legal proceedings against CPCCG have been commenced (and in the case of some significant claims prior to this) the Serco Claims & Litigation Manager in association with the legal advisers acting on behalf of CPCCG will arrange to interview the key witnesses. These interviews will take place in negotiation with the member of staff (and/or their manager) at a date, time and venue convenient to them.
- A formal statement will be compiled on the basis of the information given by the witness during these interviews and will be forwarded to the witness for consideration. The witness will be advised that they should make any amendments or additions they feel are necessary before signing the statement. Under the Civil Procedure Rules, it is a requirement that the statement should include a 'statement of truth' i.e. the witness will be signing to indicate that the information they have given is true to the best of their knowledge. If a witness were to sign a statement knowing it to contain false statements, then he/she may be personally answerable to the Courts for contempt of the Court.
- Once a claim has been formally instigated against CPCCG it will be incumbent on CPCCG to serve a defence document in the prescribed timetable. This document will usually be compiled, issued and served by the solicitor/NHSR acting on behalf of CPCCG (or other adviser) and will be based on the factual details previously collated from contemporaneous records, witness statements and other investigations (including in many cases the reports of independent experts). The defence document is required to incorporate a Statement of Truth signed by the individual nominated to sign on behalf of CPCCG, usually an Executive Director.
- To enable the Chief Clinical Officer to sign on behalf of the CPCCG, copies of the key supporting documents (most notable the statement of claim, witness statements and expert reports) will be made available by the Serco Claims & Litigation Manager. In some cases, the signatory may wish to have access to CPCCG's file of the claim before signing. It will be incumbent on CPCCG's legal (or other) advisers to bring to the attention of the individual signing the defence on behalf of CPCCG any doubts or other queries about the content of the various documents. As with individual witnesses the signatory of the statement of truth will be answerable to the Court if it is signed by them in full knowledge that it contains untruths falsely or maliciously presented.

## **Appendix 11 Financial Management**

The NHSR is responsible for the overall determination of how a claim is handled within the relevant Scheme, and for negotiation and authorisation of out-of-court settlements, but will take the views of CPCCG into account.

**N.B. NHSR authorisation is required before admissions may be made and monetary compensation may be offered. In the absence of such authorisation, the NHSR will not reimburse CPCCG either for the compensation awarded or for any of the costs generated. Any such payments made by the CPCCG will fall outside the scheme and could possibly result in criticism from auditors.**

Responsibility for the accounting and management of clinical negligence claims rests with NHSR (although CPCCG retains legal responsibility for such claims). In respect of other legal claims such as personal injury (under the Liabilities to Third Parties Scheme), property losses, and other legal actions not covered by NHSR's Schemes, CPCCG must make financial provisions for the excess amounts or other legal expenses.

CPCCG maintains a register of losses and compensation payments made.

The current NHSR Scheme excesses are as follows:

<b>Scheme</b>	<b>Excess applicable</b>
CNST	No excess
Property Expenses Scheme:	
Buildings:	£20,000
Contents	£20,000
Public liability	£3,000
Employer's liability	£10,000
Product liability	£3,000
Professional indemnity	£3,000

All CPCCG payments to NHSR, except NHSR Panel Solicitor costs, will be funded direct by CPCCG up to the point the applicable 'excess' threshold is breached. CPCCG is notified by NHSR, via Serco's Claims & Litigation Manager, of any sums NHSR has agreed to pay arising out of the handling of the claim. The notification will take the form of a 'Payment Requisition', together with appropriate supporting documentation.

In order to ensure the completeness and accuracy of CPCCG accounts, Serco's Claims & Litigation Manager will notify CPCCG's Chief Finance Officer via email of any claim lodged against CPCCG and all claims made by CPCCG in respect of CPCCG property, upon receipt (or submission). In addition, CPCCG will be provided with quarterly reports on all legal claims. In all instances the Chief Finance Officer will be given the maximum possible notice by Serco's Claims & Litigation Manager of any cash payments associated with legal claims.

## Appendix 12 Serco Risk Services: Legal Service Evaluation

The Serco Risk Team aims to provide partner teams and individuals with fast, responsive claims management and legal advice.

Please take a few minutes to tell us how we are doing. Your responses will be kept confidential and only used to improve the service.

1. Which CPCCG department do you work for: \_\_\_\_\_

2. Was your contact for:

- General legal advice
- A legal claim
- Witness support at Court

3. Was the advice/claim concerning:

- You personally as part of your employment
- Your team

Please rate your satisfaction with the service – please circle one number

0 = Not applicable 1 = Very Dissatisfied 2 = Dissatisfied 3 = Neither Satisfied nor Dissatisfied 4 = Satisfied 5 = Very Satisfied

Ease of reaching an appropriate Serco advisor, e.g. Claims Manager	0	1	2	3	4	5
Timeliness of initial response by Serco advisor	0	1	2	3	4	5
Understanding of your query/request by Serco advisor	0	1	2	3	4	5
Ability to resolve query/request or make appropriate referral	0	1	2	3	4	5
Contact with you/your team during the claim/other legal process	0	1	2	3	4	5
Provision of support to staff directly affected by a claim/legal process	0	1	2	3	4	5
Knowledge of relevant legal procedures	0	1	2	3	4	5
Communication about legal procedures	0	1	2	3	4	5
Courtesy	0	1	2	3	4	5
Overall rating of your engagement with the service	0	1	2	3	4	5

Is there anything we could do to improve our service?

Please return to Serco Risk Services Team, Serco UK&E Local Regional Government, Citizen Services, Serco ASP, Kingfisher House, Hinchingsbrooke Business Park, Huntingdon, PE29 6FH

## Appendix 13 – Database

A database of all claims relating to CPCCG is maintained by Serco's Claims & Litigation Manager. Data will be processed in compliance with the Data Protection Act 1998.

Contents of Database:

- Patient's details (name, age, date of birth, date of death)
- Claimant's name
- Claimant's solicitor
- Details of all members of staff involved, including specialty and degree of involvement
- Location of Incident
- Date of incident
- Date of notification of claim
- Specialty or department of treatment (for clinical negligence cases)
- Nature of incident
- Resulting harm or disability
- Estimate of Quantum
- Estimate of claimant's costs
- Other parties involved in claim and proportionate share of costs
- Probability
- Defence solicitor
- Estimate of defence costs
- Stage of claim
- Outcome

## **Appendix 14 Contacts within Serco**

Rachel Stevens  
Claims & Litigation Manager

Tel: 01480 398603

Mob: 07718 186471

Secure Email: [rachelstevens3@nhs.net](mailto:rachelstevens3@nhs.net)

Address: Serco Health, UK&E Local Regional Government, Kingfisher House, Hinchingsbrooke Business Park, Huntingdon, PE29 6FH

Responsible for: Overall management of claims handling and inquest management services for Cambridgeshire & Peterborough Clinical Commissioning Group

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Out of Hours advice is available through CPCCG's solicitors – information with CPCCG Directors on Call