

Claims Management Policy and Procedure

April 2021

Version:	2.1
Date ratified:	29 April 2021
Policy Number:	CO002/010/2022
Name of originator/author:	Sue Laing, Corporate Services Risk and Governance Manager
Name of Sponsor:	Associate Director of Corporate Services
Name of responsible committee	Governance Sub-committee
Date issued:	May 2021
Review date:	1 October 2022
Target audience:	All staff working within or working on behalf of NHS Sheffield CCG

To ensure you have the most current version of this policy please access via the NHS Sheffield CCG Intranet Site by following the link below:

<http://www.intranet.sheffieldccg.nhs.uk/policies-procedure-forms-templates.htm>

Policy Audit Tool

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

Please give status of Policy:	Revised
--------------------------------------	----------------

1.	Details of Policy	
1.1	Policy Number	CO002/10/2022
1.2	Title of Policy:	Claims Management Policy and Procedure
1.3	Sponsor	Associate Director of Corporate Services
1.4	Author:	Corporate Services Risk and Governance Manager
1.5	Lead Committee	Governance Sub-committee
1.5	Reason for policy:	Good Practice
1.6	Who does the policy affect?	All staff
1.7	Are the National Guidelines/Codes of Practices etc issued?	Yes
1.8	Has an Equality Impact Assessment been carried out?	Yes
2.	Information Collation	
2.1	Where was Policy information obtained from?	National best practice NHS Resolution Guidance
3.	Policy Management	
3.1	Is there a requirement for a new or revised management structure for the implementation of the Policy?	No
3.2	If YES attach a copy to this form.	
3.3	If NO explain why.	Can be operated under existing structures
4.	Consultation Process	
4.1	Was there external/internal consultation?	Yes
4.2	List groups/persons involved	Governance Sub-committee Deputy Clinical Lead
4.3	Have external/internal comments been included?	Yes
4.4	If external/internal comments have not been included, state why.	N/A

5.	Implementation	
5.1	How and to whom will the policy be distributed?	Staff will be made aware of all new policies via the Weekly Round-Up Bulletin. Policies will be made available on the CCGs intranet and shared as part of the Team Brief process.
5.2	If there are implementation requirements such as training please detail.	There may be a requirement for additional training for some staff.
5.3	What is the cost of implementation and how will this be funded	N/A
6.	Monitoring	
6.2	How will this be monitored	Governance Sub-committee
6.3	Frequency of Monitoring	Quarterly

Document Control Information

Table of revisions

Date	Section Revision	Author
February 2018	Policy updated to take reflect changes to internal structures	Sue Laing
	Amendments to ensure compliance with Policy for the Development and Management of Procedural documents	Sue Laing
	Changes to NHSLA to NHS Resolution	Sue Laing
	Includes reference to Deprivation of Liberty Safeguards	Jo Harrison
	Remove references throughout to Yorkshire and Humber Commissioning Support	Sue Laing
	Include Section B – para 7.6 Claims relating to Deprivation of Liberty	Jo Harrison
	General review and re-ordering of content (Section A – Policy / Section B Procedure)	Sue Laing
	Update references to Chief Officer (Accountable Officer)	Sue Laing
April 2021		Sue Laing

Contents		Page
Section A – Policy		
1	Introduction	6
2	Purpose	6
3	Scope	7
4	Legislation and Guidance	7
5	Definition of Terms	7
6	Roles and Responsibilities	9
7	Risk Management	11
8	Liaison with Third Parties	11
9	Dissemination, Review and Training	12
10	Monitoring and Compliance	12
11	References and Links to Other Documents	12
12	Confidentiality	13
13	Freedom of Information	13
14	Equality and Diversity Statement	13
Section B – Claims Handling Procedure		
1	Definition of a claim	15
2	NHS Resolution	15
3	Who is covered by the NHS Resolution Indemnity Scheme	17
4	Who can make a claim?	17
5	Notification of claims	18
6	Triggers for invoking the claims procedure	19
7	Negligence claims	19
8	Clinical negligence claims	21
9	Claims handling	21
10	Financial Management	23
11	Investigation and Root Cause Analysis	23

12	Claims Handling Reports	23
13	Support Mechanisms for staff, patients and carers	23
14	Communications and Dealing with the Media	24
	Appendix 1 - Timescales	25
	Appendix 2 - External Reporting Requirements	26
	Appendix 3 - Equality Impact Assessment	27

1 Introduction

NHS Sheffield CCG is committed to effective and timely investigation and response to any claim received by the organisation in respect of alleged negligence or personal injury, and the importance of taking action to minimise such claims through effective risk management. This policy is based on current guidance from NHS Resolution and any future changes in guidance will be followed and may supersede the procedures laid down within the policy.

This policy should be read in conjunction with the CCG's Risk Management Strategy in order to ensure that the CCG approach to the management of risks identified as a result of any claim is fully understood in context.

A Claims Handling Procedure is attached at Appendix 1 providing guidance to staff on the process to be followed and their role and responsibilities within that process.

NHS Resolution governs the financial risk pooling schemes. NHS Sheffield CCG is a member of the **Clinical Negligence Scheme (CNST)**, for clinical negligence claims, **Liabilities to Third Parties Scheme (LTPS)** and **Property Expenses Scheme (PES)** for non-clinical claims to provide indemnity cover for employers and public liability claims and property damage claims.

The CCG is committed to a fair blame approach when handling claims, which will always be directed at the organisation rather than the individual. This commitment will not, however, prejudice any subsequent disciplinary action where breaches of law, professional misconduct, or unacceptable repetitious acts have occurred.

The Claims Handling Procedure contains guidance on how claims involving third parties such as NHS Resolution, solicitors, claimants and the coroner, are to be dealt with by the organisation. It also sets out NHS Resolution claims reporting guidelines for PES, LTPS and CNST.

As a commissioner of NHS services, the number of claims received by NHS Sheffield CCG is likely to be limited.

2 Purpose

The purpose of this document is:

- To provide assurance to the CCG Governing Body that appropriate systems are in place for the handling of claims and monitoring of learning from the events giving rise to those claims.
- To enable the CCG to protect the public purse against malicious or false claims. NHS Sheffield CCG will seek to defend any claim where liability is in doubt. It is however, acknowledged that the legal process could have a significant impact from both a financial, social and personal perspective and where liability can be proven, the CCG will seek to settle claims promptly and fairly, without court proceedings.
- To ensure opportunities to learn from claims are fed back into the organisation.

3 Scope

This policy applies to those members of staff that are directly employed by NHS Sheffield CCG and for whom NHS Sheffield CCG has legal responsibility. For those staff covered by a letter of authority/honorary contract or work experience, this policy is also applicable whilst undertaking duties on behalf of the CCG or working on CCG premises and forms part of their arrangements with the CCG. As good employment practice, agency workers are also required to abide by CCG policies and procedures as appropriate, to ensure their health, safety and welfare whilst undertaking work for NHS Sheffield CCG.

4 Legislation and Guidance

The following legislation and guidance has been taken into consideration in the development of this document:

- NHS Resolution guidance
- Data Protection Act 1998
- Access to Health Records Act 1990
- Common law duty of confidentiality
- General Data Protection Regulation May 2018
- Health and Safety at Work Act (1974)

5 Definition of Terms

The CCG	NHS Sheffield CCG
Claimant	Any person who uses services or their representative, member of the public, or employee who instructs solicitors to act on their behalf to pursue a claim against the CCG, or who enters legal proceedings against the CCG or who pursues compensation.
Claim	An allegation of negligence and/or a demand for compensation, made following an adverse incident resulting in personal injury, or any untoward occurrence that carries a significant litigation risk for the CCG. Claims can relate to alleged clinical negligence, personal injury or any other instance where it is alleged that the organisation has breached its duty of care to an employee, patient, contractor, visitor or any other third party.
Clinical Claim	Allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury or any clinical incident which carries significant litigation risk for the organisation.
CNST	Clinical Negligence Scheme for Trusts The Clinical Negligence Scheme for Trusts handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995 (or when the body joined the scheme, if that is later).
Clinician	A health professional engaged in the care of patients.

Deprivation of Liberty Safeguards	Article 5 of the Human Rights Act states that 'everyone has the right to liberty and security of person. No one shall be deprived of his or her liberty [unless] in accordance with a procedure prescribed in law'. The Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm.
ELS	Existing Liabilities Scheme
LTPS	Liabilities to Third Parties Scheme Covers employers' liability claims, from straightforward slips and trips in the workplace to serious manual handling, bullying and stress claims. In addition, LTPS covers public and products liability claims, from personal injury sustained by visitors to NHS premises to claims arising from breaches of the <i>Human Rights Act</i> , the <i>Data Protection Act</i> and the <i>Defective Premises Act</i> . There is also cover for defamation, professional negligence by employees and liabilities of directors.
NHS Resolution	The NHS Litigation Authority (NHSLA) was established in 1995 as a Special Health Authority and is a not-for-profit arm's length body of the Department of Health. In April 2017, it changed its operating name to NHS Resolution to better reflect its work in handling and resolving negligence claims. NHS Resolution handles negligence claims on behalf of NHS organisations and independent sector providers of NHS care in England who are members of the schemes. The organisation's main responsibilities are: Providing indemnity to providers of NHS care in England: <ul style="list-style-type: none"> • Helps to resolve disputes fairly • Shares learning about risks and standards in the NHS • Helps to improve safety for patients and staff They are responsible for advising the NHS on human rights case law and handling equal pay claims.
Non clinical claim	A demand for compensation made following an adverse incident resulting in damage to property and/or personal injury
PES	Property Expense Scheme
Pre-action Protocols	Aims to achieve settlement of claims without the need for expensive and risk court proceedings.
RSPT	Risk Pooling Scheme for Trusts Two separate schemes covering non-clinical risks, the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES) that are collectively known as the Risk Pooling Scheme for Trusts.

6 Roles and Responsibilities

6.1 Governing Body

The Governing Body will decide if the CCG will insure through risk pooling arrangements administered via NHS Resolution.

6.2 Accountable Officer

Overall accountability for ensuring that there are systems and processes to effectively manage claims lies with the Accountable Officer.

6.3 Director of Finance

As the designated executive lead for litigation and claims, the Director of Finance

- has overall accountability for ensuring that NHS Sheffield CCG has the necessary insurance arrangements in place
- is responsible for ensuring that there are sufficient provisions for managing the payment of membership fees and claims in accordance with Prime Financial Policies.
- will advise the Governance Sub-committee (GSc), the Audit and Integrated Governance Committee (AIGC) and the Governing Body of any major developments and significant risks related to the management of claims.
- will make recommendation to the Accountable Officer with regard to final approval for payment of settlements recommended by the insurers.
- will be responsible for ensuring that arrangements with regard to the management of claims are appropriate and complementary to the CCG's risk management programme and for reporting any claims annually to the Governing Body.

6.5 Associate Director of Corporate Services

The post holder will be the responsible manager for liaising with the appropriate senior manager for any preliminary actions, investigating claims including the following:

- Receiving and informing NHS Resolution of any new claims that may arise against NHS Sheffield CCG
- Identifying and arranging for the preservation of relevant records and other items, such as equipment involved in incidents etc
- Establishing and as necessary, maintaining contact with relevant staff and former staff
- Obtaining reports from staff involved in the incident
- Liaising with NHS Resolution and relevant staff at appropriate stages of a claim

- Maintaining close links with the CCG's clinical advisors to ensure that there is close integration between claims management and clinical audit, incident reporting, risk management, complaints procedures and health and safety responsibilities.
- Informing the CCG's communication team of any claims and potential claims
- Updating the Director of Finance on claims developments.
- Compliance with the Data Protection Act 1998 and General Data Protection Regulation in so far as it relates to claims management
- Ensuring the organisation's policy and systems for claims management are continually reviewed to ensure that they meet the requirements of the insurer
- Providing and/or sourcing legal advice
- Providing technical advice on claims management and litigation matters
- Monitoring the progress and outcome of claims, including expected settlement dates
- Ensuring claims of significant risk are brought to the attention of the Director of Finance
- Corporate reporting and information sharing

NHS Resolution will appoint defence solicitors from an approved panel of solicitors with regard to claims when necessary.

In the event of a claim arising from a serious incident, there may be the need to involve external agencies. The Associate Director of Corporate Services will consult with the Director of Finance to obtain authority for involvement of external agencies (for further information see **Appendix 2 of the Claims Handling Procedure**).

6.7 Directors, Deputy Directors, Heads of Service and Senior Managers

It is the responsibility of Directors, Deputy Directors, Heads of Service and senior managers when allocated the task of investigating and providing a management report on any claim to ensure they follow guidance on investigation procedures as outlined in the Incident Reporting Procedure. In addition they should:

- Inform the Associate Director of Corporate Services of all claims correspondence within 48 hours, no contact may be made with the CCG's solicitors/legal advisors without prior agreement from the Director of Finance.

Co-operate with the investigation process ensuring access is allowed to the relevant documentation and appropriate members of staff for interview/statement taking.

- Assist the Associate Director of Corporate Services in obtaining reports/statements from members of staff as requested within the timescales identified for the purpose of processing the legal claim

6.8 CCG Continuing Health Care (CHC) Mental Capacity Act (MCA) / Deprivation of Liberty Safeguards (DoLS) / Deprivation of Liberty in the Community (DoLiC) Lead – For all claims resulting from Court of Protection Matters

- Informing the CCG's Associate Director of Corporate Services of all claims arising from Court of Protection proceedings or that are related to functions of Continuing Health Care.
- Receiving and informing NHS Resolution of any new claims that may arise against NHS Sheffield CCG
- Identifying and arranging for the preservation of relevant records and other items, such as equipment involved in incidents etc
- Establishing and as necessary, maintaining contact with relevant staff and former staff
- Obtaining reports from staff involved in the incident
- Liaising with NHS Resolution and relevant staff at appropriate stages of a claim
- Maintaining close links with the CCG's clinical advisors to ensure that there is close integration between claims management and clinical audit, incident reporting, risk management, complaints procedures and health and safety responsibilities.

6.9 Staff

Responsibilities of staff (including all employees, whether full/part time, agency, bank or volunteers) include:

- Notifying the Associate Director of Corporate Services immediately (at most within 2 days) of any letter or documentation received, which relates to a claim or court proceedings
- Promptly reporting incidents, ensuring investigation and ensuring that actions are taken to eliminate or reduce the risk of reoccurrence in line with the organisation's Incident Reporting Policy
- Co-operating with senior managers and the insurers in the investigation and handling of claims and potential claims.
- Ensuring compliance with all records management and related policies and procedures so that comprehensive records are available to support the investigation and management of current and potential claims

7 Risk Management

Claims handling is part of the overall system of risk management of the CCG. Close links have been established between this function and complaints and incident management. This is to ensure that these risk management functions interface in a way which enables the best use of the information available around adverse incidents, therefore avoiding duplication and unnecessary expense.

8 Liaison with Third Parties

In the event of a claim arising from a serious incident there may be the need to involve external agencies. The Associate Director of Corporate Services will consult with the

Director of Finance to obtain authority for involvement of external agencies (for further information **see Appendix 2 of the Claims Handling Procedure**)

9 Dissemination, Review and Training

9.1 Dissemination

This policy will, following ratification, be disseminated to staff via NHS Sheffield CCG's intranet, Weekly Round-Up and Team Brief. NHS Sheffield CCG will:

- Ensure that all staff and stakeholders have access to a copy of this procedural document via the organisations website
- Communicate to staff any relevant action to be taken in respect of complaints issues
- Upon approval of this procedural document notify staff of its status and its location.

9.2 Review

The procedural document will be reviewed every three years, and in accordance with the following on an as and when required basis:

- Legislative changes
- Good practice guidelines
- Case Law
- Significant incidents reported
- New vulnerabilities identified
- Changes to organisational infrastructure
- Changes in practice

9.3 Training

Staff will be offered relevant training commensurate with their duties and responsibilities. Staff requiring support should speak to their line manager in the first instance.

10 Monitoring and Compliance

Monitoring and compliance of the procedural document will be undertaken by the Governance Sub-committee

11 References and Links to Other Documents

11.1 References in relation to claims handling

- [NHS Resolution](https://resolution.nhs.uk/) <https://resolution.nhs.uk/>
- Civil Procedure Rules: <http://www.justice.gov.uk/courts/procedure-rules>

- DoH, NHS Redress 2005: Statement of Policy
- Department for Constitutional Affairs, 1998. Pre-Action Protocol for Personal Injury Claims [online]. London: The Stationary Office. Available from www.dca.gov.uk

11.2 Links to other Documents

- Incident Reporting Policy
- Serious Incidents (Policy for the management of Serious Incidents (SIs) Reported by Commissioned Service Providers or the Commissioning Function)
- Risk Management Strategy
- Confidentiality Code of Conduct
- Compliments and Complaints Policy
- Disciplinary Policy
- Communications and Engagement Strategy
- Management of Sickness Absence Policy
- Health and Safety Policy

12 Confidentiality

The confidentiality of information concerning legal claims is paramount. The Associate Director of Corporate Services will be responsible for ensuring all information relating to claims is handled in accordance with information governance and confidentiality procedures, relevant legal protocols and legislation including the Data Protection Act 1998, the General Data Protection Regulations (wef May 2018) and the Access to Health Records Act 1990.

Staff involved in the investigation of claims and those which have a role in the handling of claims are bound by the CCG Confidentiality Code of Conduct and as set out in employment contracts and Terms and Conditions of Service.

Advice on the appropriate and legal disclosure of information can be sought from the Caldicott Guardian and Senior Information Risk Owner (SIRO)

13 Freedom of Information

Any requests made for claims related information under the Freedom of Information Act 2000 will be subject to the normal range of absolute and qualified exemptions. Particular attention will be given to safeguarding person-identifiable information within claims files (Section 40)

14 Equality and Diversity Statement

NHS Sheffield CCG aims to design and implement services, policies and measures that meet the diverse needs of our service population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the Human Rights Act 1998

and promotes equal opportunities for all. This document has been assessed to ensure that no-one receives less favourable treatment on grounds of their gender, sexual orientation, marital status, race, religion, age, ethnic origin, nationality or disability. Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the person requesting has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered.

NHS Sheffield embraces the six staff pledges in the NHS Constitution. This policy is consistent with these pledges

An equalities impact assessment is attached at Appendix 2.

SECTION B – CLAIMS HANDLING PROCEDURE

Clinical Negligence, Employer/Public Liability and Property Expenses Scheme Claims

1 Definition of a Claim

For the purposes of this policy, the definition of a claim is:

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

This includes complaints leading to claims, notification of serious adverse events, incident reporting and issues generated by risk management processes.

The CCG recognises that there are other forms of litigation and legal matters that fall outside the definition of a claim adopted by this policy, such as actual or threatened judicial reviews, Human Resources related claims, Court Orders and cases considered by employment tribunals. These follow a different process from clinical negligence and personal injury claims covered by this policy. Claims for compensation for lost, damaged or stolen property belonging to staff will be handled internally through NHS Sheffield CCG’s Losses and Special Payments Policy.

2 NHS Resolution

Previously known as the NHS Litigation Authority (NHSLA), NHS Resolution indemnifies NHS bodies in respect of both clinical negligence and non-clinical risks and manages claims and litigation for both clinical and non-clinical claims. NHS clinical claims are managed via the Clinical Negligence Scheme for Trusts (CNST) and for non-clinical claims via the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES.). NHS Sheffield CCG pays a premium to NHS Resolution on an annual basis for this service. General guidance and information about NHS Resolution is contained on their website at <https://resolution.nhs.uk/about/>. The risk pooling schemes are detailed below.

2.1 Existing Liabilities Scheme (ELS)

These are claims relating to incidents that occurred before 31 March 1995 and are not applicable to NHS Sheffield CCG.

2.2 Clinical Negligence Scheme for Trusts (CNST)

The scheme handles all clinical negligence claims against NHS organisations where the incident in question took place on or after 1 April 1995 (or when the organisation joined the scheme if this is later). Although membership of the scheme is voluntary, the CCG is a member, and which assumes liabilities for the appointment of solicitors and the settlement of all claims, in full, which are made against the CCG.

Clinical Negligence claims may arise out of any incident where it is alleged that a service or individual clinician failed to provide adequate care, resulting in harm to a patient where the incident occurred on or after 1 April 1995. The CNST only need to be aware of claims that fall into certain categories.

The costs of the scheme are met by membership contributions. The projected claims costs are assessed in advance each year by professional actuaries. Contributions are then calculated to meet the total forecast expenditure for that year. Individual member contribution levels are influenced by a range of factors, including the type of organisation, the specialities it provides and the number of 'whole time equivalent' clinical staff it employs.

When a claim is made against a member of CNST, the NHS body remains the legal defendant. However, NHS Resolution takes over full responsibility for handling the claim and meeting the associated costs above the excess amount payable by the CCG. The scope of the scheme is set out in the CNST rules (available from the NHS Resolution website), while the CNST reporting guidelines set out how claims should be reported by trusts to NHS Resolution.

2.3 Risk Pooling Scheme for Trusts (RPST)

The Risk Pooling Schemes for Trusts is the collective name for two separate schemes covering non-clinical risks, the Liabilities to Third Parties Scheme (LTPS) and the Property Expenses Scheme (PES). Both schemes date from 1 April 1999 and cover begins from the date when the NHS body joined the scheme where that is later.

2.3.1 Liabilities to Third Parties Scheme (LTPS)

LTPS typically covers employers' and public liability claims from NHS staff, patients and members of the public. These range from straightforward slips and trips to serious workplace manual handling, bullying and stress claims. LTPS covers claims arising from breaches of the *Human Rights Act*, the *Data Protection Act* and the *Defective Premises Act*, as well as defamation, unlawful detention and professional negligence claims. LTPS also extends to cover the personal liabilities of directors. The LTPS does not cover any Human Resources related claims such as those for unfair dismissal or workplace discrimination. Personal injury cover is unlimited in value and there is no limit on the number of claims members may make in any membership year.

2.3.2 Property Expenses Scheme (PES)

PES covers "first party" losses for material damage to buildings and contents from a variety of causes, including fire, theft and water damage. PES also offers business interruption expense cover arising from property damage.

Both schemes date from 1 April 1999, and cover begins from that date, or from the date when the NHS organisation joined the scheme where that is later. NHS organisations may join either or both schemes.

LTPS and PES claims are subject to excesses, with members responsible for funding below-excess claims themselves.

Like CNST, LTPS and PES are funded by contributions from members and contributions are calculated on an annual basis using actuarial techniques.

3 Who is covered by NHS Resolution Indemnity Schemes?

NHS Resolution indemnity covers the actions of all staff in the course of their legitimate NHS employment. It also covers people in certain other categories whenever the NHS body owes a duty of care to the persons harmed eg, students on placement, charitable volunteers and people undergoing professional education and training.

4 Who Can Make a Claim

4.1 A legal claim may be made by anyone to whom the CCG owes a duty of care and who feels they have suffered an injury, loss or damage as a result of a breach of that duty of care. This may include staff (including students and temporary staff), visitors, patients/service users, contractors and members of the public.

Where the claim is on behalf of an individual without capacity, the claim might be brought on his/her behalf by someone with the legal status of representative.

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

The CCG might bring a claim in its own right under the provision of the Property Expenses Scheme (PES).

4.2 There are timescales within which a claim should be brought – the ‘limitation period’. The Limitation Act 1980 seeks to strike a balance between the competing interests of Claimants and Defendants and avoid the litigation of claims which are too old and where the evidence may no longer be available. In practice the commencement of a claim means the ‘issue’ of the Claim Form by the Court. For personal injury and clinical negligence claims the Claimant should issue their Claim Form through the Court within a period of 3 years of the date of incident which allegedly caused them harm or within 3 years of their ‘date of knowledge’ if this can be proven to be later. The exceptions to this are:

- **Children** – the 3 year period does not commence until they reach the age of majority at 18 years i.e.: their primary limitation period expires at age 21.
- **People with a ‘disability’** i.e. ‘of unsound mind’ who are incapable of managing their own affairs. Such people may bring an action at any time

whilst the disability exists. In view of their ongoing disability the claim is usually brought on their behalf by a 'Litigation Friend'.

- For claims for **deceased patients** being brought by their Personal Representative under the Law Reform (miscellaneous provisions) Act 1934 or the Fatal Accidents Act 1976 – the following applies:
 - If the person injured dies before the expiration of the 3 year period, the period applicable, as respects the cause of action surviving for the benefit of his estate by virtue of S.1 of the Law Reform (Miscellaneous Provisions) Act 1934, shall be 3 years from the date of death or the date of the personal representative's knowledge, whichever is the later.
 - The time limit for bringing an action on behalf of dependants under the Fatal Accidents Act 1976 for bereavement damages or a dependency claim is 3 years from the date of death, or from the date of knowledge of the person for whose benefit the action is brought, whichever is later.
 - However, an action for bereavement/dependency under the Fatal Accidents Act 1976 shall not be brought if the death occurred when the person injured could no longer maintain an action to recover damages in respect of the injury (Limitation Act 1980 S.12 (1)).

4.3 Date of knowledge is when the claimant first had knowledge that the damage was significant and attributable in whole or part to the act or omissions of the Defendant. Significant case law in recent years has led to the concepts of actual and constructive date of knowledge – i.e. when did the Claimant first obtain knowledge and when should they have first obtained knowledge. Even though the Defendant may seek to put up a 'limitation' defence – the court has the discretion to dis-apply the limitation period under Section 33 of the Limitation Act. Before doing so, the Court will consider the facts of the case, the reasons for the delay etc, and whether or not the Defendant will be prejudiced if the action goes ahead.

5 Notification of Claims

5.1 Action on receipt of a claim

Notification of claims can come in many forms and it is imperative that NHS Sheffield CCG staff are aware when these are received. Once the litigation process commences, tight timetables are imposed.

All staff, particularly those who receive, open and distribute incoming mail within the CCG should be aware that all such correspondence must be passed directly to the Associate Director of Corporate Services who will be responsible for handling claims on behalf of the CCG.

The Associate Director of Corporate Services will, as appropriate, submit the claim to NHS Resolution in accordance with the rules of the relevant scheme (CNST, PES,

LTPS). NHS Resolution may appoint a Panel Firm of Solicitors to act on behalf of the CCG in the legal management of the claim.

6 Triggers for invoking the claims procedure

Should a member of staff feel that the CCG may be subject to a potential claim they should contact the Associate Director of Corporate Services immediately.

The following events are regarded as potential claims against the CCG:

- 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;
- Receipt of a request for disclosure of records:
 - a) made by a solicitor which is not made for the purpose of a claim against another party;
 - b) made by a patient/relative who state that they intend making a complaint or claim against the CCG; or
 - c) made by a patient/relative who does not give a reason for the request; in which case every effort should be made to ascertain the reason, either by review of the records or by asking the patient (however refusal to give a motive does not remove the patient's right to receive a copy of the records);
- An adverse event which may generate substantial compensation
- Receipt of a serious complaint letter containing threats of legal action
- A verbal accusation of negligence/liability from a patient or relative

7 Negligence Claims

Claims received can relate to incidents occurring over a wide period of time. Claimants must make a claim within 3 years of the incident or within three years of their "date of knowledge", ie the date they discovered negligence may have occurred. For children, claims can be brought up to 3 years after their 18th birthday. Depending on the date of the incident, responsibility for the claims is as follows:

For liabilities that are covered, or partly covered by the NHS Litigation Authority (NHSLA) schemes the arrangements below will apply. This covers claims relating to incidents up to 31 March 2013, including those where the claim is made after this date.

7.1 Clinical negligence claims relating to PCT public health function.

The liability will be distributed between Public Health England (PHE) and NHS England (NHSE).

7.2 Clinical negligence claims relating to liabilities held by PCTs relating to contracts with the 'independent sector (IS)'

In most instances the responsibility for commissioning this activity has transferred to CCGs, but responsibility for funding claims arising from incidents under these contracts will transfer to NHSE. The Department of Health (DH) policy position is that the IS will secure its own indemnity cover, from NHS Resolution or another appropriate indemnifier where the current indemnities should expire in 2013/14.

7.3 Clinical negligence claims relating to liabilities held by PCTs relating to historic provider functions

Where these liabilities, including those 'incurred but not reported (IBNR) did not transfer to the provider sector the liability will transfer to NHSE

7.4 Property related claims (partially covered by NHS Resolution Property Expenses Scheme (PES)).

These liabilities should go to the new owner of the property, which in most cases will be NHS Property Services.

7.5 Liabilities to third parties scheme (LTPS). This is predominantly employer liability and public liabilities claims.

Employer liabilities for staff that remain employed in the system will be transferred to the new employer. For all other liabilities covered by the LTPS (including IBNR up to 31 March – unless the exception above applies), the liabilities will transfer to the DH.

7.6 Claims related to the CCG's statutory obligation under the Deprivation of Liberty Safeguards (DoLS) relating to the European Convention of Human Rights Article 5.

Where the CCG has not exercised its 'positive' obligation to intervene to protect people from deprivation of liberty by private persons or organisations, such as private providers of care as well as family and friends in the person's own home and also in private care homes and hospitals.

8 Clinical Negligence (CN) Claims

Potential Clinical Negligence Claims should be notified to NHS Sheffield CCG in a Letter Before Action (LBA). This is usually from a solicitor but may be from the claimant. This will state that the claimant is considering making a claim regarding treatment received which they allege was negligent. The LBA should include as much information as possible about the claimant and the treatment (dates, doctors involved, brief overview of allegations). At this stage the solicitor will usually be asking to see copies of the medical records. They must provide written consent from the claimant for the notes to be disclosed to the solicitor. This must state that the claimant (named) consents to the NHS Sheffield CCG disclosing their notes to a named solicitor. This is covered when solicitors submit the Law Society Protocol for

Obtaining Hospital records. If appropriate consent is not received, the records cannot be disclosed. Providing appropriate consent is obtained, a copy of the medical records must be disclosed within 40 days of receiving the LBA.

The claim will then be processed as follows:

- Record the claim on the CCG spreadsheet and open a file
- Correspondence will be held in chronological order in the file with the most recent on top
- Check patient details ie case note number and practitioner involved
- Check whether the same incident is being, or has been dealt with as an adverse incident or complaint. If so, a copy of the incident form or complaint file should be obtained as this may already contain statements from the relevant clinicians that can assist the claim review.
- Add appropriate reminder dates to for chasing reports/disclosing notes etc.

9 Claims Handling

9.1 All claims will be handled on behalf of NHS Sheffield CCG by the Associate Director of Corporate Services. Any correspondence received relating to a claim must be forwarded immediately.

9.2 When a claim is made against a CCG who is covered by NHS Resolution, the CCG remains the legal defendant but NHS Resolution takes over full responsibility for handling the claim and meeting the associated costs.

NHS Resolution reporting guidelines set out how claims should be reported.

9.3 When a claim is received it should be referred immediately to the Associate Director of Corporate Services who will ensure that the claim is notified to NHS Resolution.

9.4 NHS Resolution have a maximum of three months from the date of acknowledgement of the claim to investigate. No later than the end of that period NHS Resolution will reply, stating whether liability is denied and, if so, giving reasons for their denial of liability including any alternative version of events relied upon.

9.5 According to each individual case, the Associate Director of Corporate Services will need to gather information for the case, for NHS Resolution and the instructed solicitor. Time frames are usually reasonable and staff that have been requested to provide information should ensure that they do their utmost to keep to the deadlines.

9.6 Staff must not enter into any correspondence directly with the claimant, their solicitors or any other third party.

- 9.7 It will be the responsibility of the Associate Director of Corporate Services to complete all official insurance claim forms.
- 9.8 The Associate Director of Corporate Services will ensure that all claims are dealt with promptly and efficiently and in accordance with agreed procedures. Claims falling under NHS Resolution schemes will be dealt with in accordance with scheme rules which are available at:
- <http://www.nhs.uk/search/pages/Results.aspx?k=scheme%20rules>
- 9.9 During the course of defending a claim it may be necessary for legal documents to be signed. This will be undertaken by the Director of Finance unless otherwise required by law.
- 9.10 Authority to admit liability and/or settle a claim must be made in accordance with this policy and will be subject to the requirements of the NHS Litigation Authority. This includes authority to settle any claim.

Where NHS Resolution (or panel solicitors) are handling a claim, the CCG agreement is required before any admissions of liability are made. The Accountable Officer is responsible for agreeing any admission of liability / settlement of claim.

- 9.11 Summary claims information will be reported to the Governing Body to provide assurance that claims are being handled in line with the relevant guidance and policies.

10 Financial Management

Responsibility for the accounting and management of clinical negligence claims rests with NHS Resolution (although the CCG retains legal responsibility for such claims). In respect of other legal claims such as personal injury and property losses, the CCG must make financial provision for the policy excess, associated damages and legal costs. In order to ensure the completeness and accuracy of CCG accounts, the Associate Director of Corporate Services will liaise with the Director of Finance Officer on any claim lodged against the CCG.

11 Investigation and Root Cause Analysis

The majority of claims will originate from either a complaint or an Untoward Incident and will, as a consequence, have been investigated in accordance with the CCG's Complaints and Incident Reporting policies. The investigating manager may already have carried out a detailed investigation using Root Cause Analysis (RCA) and checklist. This information should be obtained as part of a claims investigation.

If a claim is received which has not previously been investigated as a complaint or incident, an investigation manager will be appointed who will carry out the investigation adopting a RCA approach. The purpose of conducting a RCA of claims is to identify the real causes of the claim – to establish legal causation. Root Cause

Analysis can also reveal underlying system or process failures and other contributory factors that may have had an impact on the claim.

12 Claims Handling Reports

The Governance Sub-committee will receive quarterly reports on:

- The number and aggregate value of any claims and details of individual claims
- The progress and likely outcome of these claims, including the expected settlement date
- The final outcome of the claims
- Any proposed remedial action arising out of a particular claim

13 Support mechanisms for staff, patients and carers

During or immediately after an incident has occurred it may be necessary to provide support for any staff involved. It will be the role of directors, deputy directors and managers to be alert to those factors which may necessitate support and provide the relevant resources for this to take place.

The welfare of staff involved in any serious untoward incident or litigation must be considered, particularly in relation to psychological trauma or stress. Any support offered must remain confidential to the individual and if individual counselling is felt to be necessary, then an appropriate referral will be made. Managers will need to consider referrals to the Occupational Health Service and Employee Assist .

It is also important for staff to be kept fully aware of the progress of an inquiry with which they have had clear associations. This will be the responsibility of the director /deputy director / operational manager undertaking the review, or chair of the inquiry team. In particular, staff involved should be kept aware of progress and when the report has been completed, the findings, recommendations and action to be taken should be relayed to them, giving them the opportunity to ask questions.

Where staff have been called to act as witnesses this should be notified to the Associate Director of Corporate Services who will arrange legal advice and support.

Importantly, support should also be given to patients and carers or members of the public involved in an incident. It will be for the manager, in whose area of responsibility the incident occurred, to provide that support and to ensure that any inquiry teams are made aware of any areas of concern or information not previously made available.

14 Communications and Dealing with the Media

At any stage a claim (or potential claim) may generate media interest. The nominated CCG lead will work closely with relevant managers, including the Deputy Director of Communications on any such claims. All staff within the CCG, in particular Governing Body Members and Senior Managers, have a role to play in

representing the organisation and communicating the corporate view with staff and the public. Information will not be shared with the media or with any other stakeholder by any agent acting on behalf of the CCG without the explicit written permission of the CCG. Examples of where an external body may need to be involved in any claim, incident or complaint is set out at **Appendix 2**.

It is essential to maintain absolute discretion in relation to all matters pertaining to potential legal action so as not to prejudice the outcome

Appendix 1 - Timescales

There are timescales relating to the period within which a claim should be brought – the **'limitation period'**. For personal injury and clinical negligence claims the Claimant should issue their Claim Form through the Court within a period of 3 years of the date of incident which allegedly caused them harm **or** within 3 years of their 'date of knowledge' if this can be proven to be later. The two main exceptions to this are: children (their 3 year period does not commence until they reach the age of 18), or people under a 'disability' ie: 'of unsound mind' who are incapable of managing their own affairs (such people may bring an action at any time whilst the disability exists).

There are a number of timescale **targets** which apply to the **claims management process**. The Associate Director of Corporate Services, on behalf of the CCG, will normally aim to meet these targets where applicable:

- Provision of copy medical records under the Data Protection Act 1998 (DPA), the Access to Health Records Act 1990 (applies to deceased patients only) and the Pre-action Protocol for the Resolution of Clinical Disputes – within **40 days** of receiving a properly authorised request or within 21 days for deceased patients if the record has been added to within the 40 days preceding the receipt of the request.
- Reporting a potential clinical negligence claim to NHS Resolution – within **2 months** of receiving an indication of a claim. The Associate Director of Corporate Services will need to obtain records, clinician's comments and produce a preliminary analysis prior to reporting.
- Reporting a potential employer/public liability claim to NHS Resolution – within **one week** of receiving an indication of claim. Report form and as much key documentation as possible to be sent.
- Acknowledging the claimant's solicitor's letter of claim – **21 days**
- Responding to the claimant's solicitor's letter of claim with a letter of response (with either an admission or denial of liability) – **3 months** after receipt of letter of claim.
- Acknowledging the service of formal proceedings (ie: the Claim Form, Particulars of Claim, Schedule of Damages) – **14 days** from receipt.
- Serving a Defence – **28 days** from receipt of proceedings. An extension may be applied for if, for example, the proceedings were incomplete or the claimant's solicitor has not complied with the Pre-action Protocol due to a limitation issue.

External Reporting Requirements

With any claim, incident or complaint, consideration should be given to the involvement of external bodies. The table below sets a list of external agencies and stakeholders who may need to be informed/involved on a case by case basis. Further details are available in the Incident Reporting Policy.

This list is not exhaustive, but will act as a guideline; there may be other external agencies which need to be contacted dependant the incident or issue to be reported/investigated. As with all incident and complaint reporting clear, legible and accurate documentation must be maintained.

Stakeholder	Requirement	Responsibility
Health and Safety Executive	Injuries, diseases, dangerous occurrences. Where a staff member or self-employed person working on the premises suffers an injury which results in them being unable to do their work for more than 3 days. Report within 10 days of incident	Line manager
NHS England / Improvement	All serious adverse incidents - category red. In particular those which may attract media attention.	Executive Director
National Patient Safety Agency	Adverse Patient Incidents –all reported via the NRLS by Dec. 2004. Category red incidents must be reported within 3 days	Associate Director of Corporate Services
Medicines and Healthcare products Regulatory Agency	Any incident involving a medical device.	Deputy Director Medicines Optimisation
Medicines Control Agency	Suspected adverse reactions to medicines	Deputy Director Medicines Optimisation
Environmental Health	Incidents involving pests, food hygiene, infections, diseases etc.	Associate Director of Corporate Services
NHS Property Services Ltd	Defects and failure relating to non-medical equipment, engineering plant, installed services, building fabric.	Associate Director of Corporate Services
NHS Resolution	All incidents leading to/ potentially leading to more than 10days sickness absence, fatal injuries, amputation, head injuries, likely HSE prosecution, potential legal implications.	Associate Director of Corporate Services
Police	Any incident that may break criminal law such as assault, theft, vandalism, unexpected death.	Any member of staff as appropriate/ relevant operational or senior manager/ Director/ Associate Director of Corporate Services
Other CCGs, NHS Trusts, Local Authority	Any incident that may have negative consequences for other organisations	Accountable Officer or appropriate Director

Appendix 3

NHS Sheffield CCG Equality Impact Assessment 2017

Equality Impact Assessment

Title of policy or service:	Claims Handling Policy and Procedure	
Name and role of officer/s completing the assessment:	Sue Laing, Corporate Services Risk and Governance Manager	
Date of assessment:	April 2021	
Type of EIA completed:	Initial EIA 'Screening' <input type="checkbox"/> or 'Full' EIA process <input checked="" type="checkbox"/>	
1. Outline		
Give a brief summary of your policy or service	To provide assurance to the CCG Governing Body that appropriate systems are in place for the handling of claims and monitoring of learning from the events giving rise to those claims.	
<ul style="list-style-type: none"> • Aims • Objectives • Links to other policies, including partners, national or regional 		

Identifying impact:

- **Positive Impact:** will actively promote or improve equality of opportunity;
- **Neutral Impact:** where there are no notable consequences for any group;
- **Negative Impact:** negative or adverse impact causes disadvantage or exclusion. If such an impact is identified, the EIA should ensure, that as far as possible, it is justified, eliminated, minimised or counter balanced by other measures. This may result in a 'full' EIA process.

2. Gathering of Information

This is the core of the analysis; what information do you have that might *impact on protected groups, with consideration of the General Equality Duty.*

(Please complete each area)	What key impact have you identified?			For impact identified (either positive an or negative) give details below:	
	Positive Impact	Neutral impact	Negative impact	How does this impact and what action, if any, do you need to take to address these issues?	What difference will this make?
Human rights	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Carers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Marriage and civil partnership (only eliminating discrimination)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Other relevant groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HR Policies only: Part or Fixed term staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

IMPORTANT NOTE: If any of the above results in '**negative**' impact, a 'full' EIA which covers a more in depth analysis on areas/groups impacted must be considered and may need to be carried out.

Having detailed the actions you need to take please transfer them to onto the action plan below.

3. Action plan				
Issues/impact identified	Actions required	How will you measure impact/progress	Timescale	Officer responsible
4. Monitoring, Review and Publication				
When will the proposal be reviewed and by whom?	Lead / Reviewing Officer:	Sue Laing	Date of next Review:	April 2022

Once completed, this form **must** be emailed to the Communications and Patient Engagement Team SHECCG.Comms@nhs.net

Signature:	
------------	--