

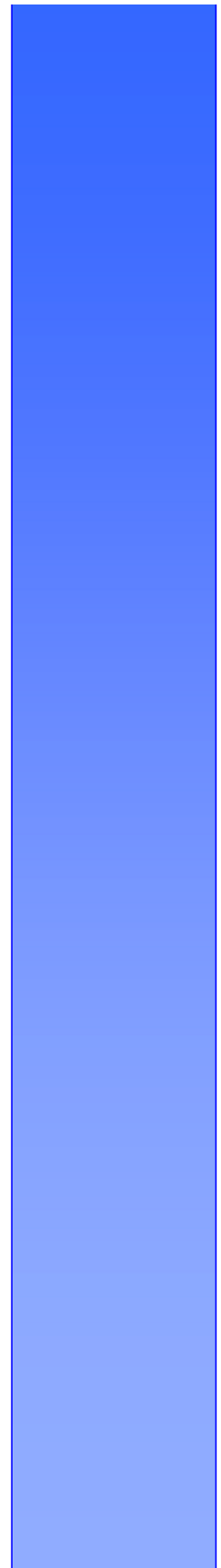
Claims Management Policy

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Appendix 1 CNST Claim Report Form

Appendix 2 LTPS Report Form

Appendix 3 NHSLA Disclosure List

1. INTRODUCTION

Litigation claims are a rapidly growing cost to the NHS. South Staffordshire Primary Care Trust recognises the importance of effective, timely investigations and responses to any financial loss or claim, which includes allegations of clinical negligence, personal injury and loss of, or damage to, property.

The PCT is responsible for claims of clinical negligence arising from events that occurred after its inception (1/10/06) and for those relating to the former Burntwood, Lichfield & Tamworth; Cannock Chase, East Staffordshire and South Western Staffordshire PCTs since their inception date.

For personal injury (employers liability) claims, in addition to incidents occurring after the PCT's inception, the PCT is also responsible, under the Transfer of Liabilities and as the successor body, for claims arising from an incident that occurred prior to the PCT's inception, except where that person's employment has transferred to a different NHS organisation.

2. AIMS/SCOPE

This Policy covers all types of potential claim against the PCT, both clinical and non-clinical. It relates to:

- the actions of all staff (including GPs employed by or working on behalf of the PCT and authorised volunteers)
- incidents relating to employer liability, public liability/third parties, property and equipment, which occur in or on all PCT premises.

It does not relate to:

- actions of staff employed by another organisation when using this PCT's premises
- the actions of GPs and others when working as Independent Contractors
- incidents relating to property, equipment and third parties, which occur in or on the premises of another organisation.

The PCT is not expected to have a large number of claims each year (when compared to a typical Acute Trust). This is mainly due to the nature of services provided. It is therefore vital that when claims do arise, there is a clear, effective policy in place to deal with them. This includes:

- Identifying sources of information which could lead to a claim
- Identify which staff are likely to be involved
- Clarify responsibility for reporting, both externally and internally (using the PCT's risk management processes).

3. RESPONSIBILITIES

Nominated Director

The Nominated Director is responsible for all claims and risk management issues, and will ensure that the Board and the relevant Sub-Committee are kept informed of relevant matters in this area. The Director will also ensure that any clinical governance issues identified as a result of claims investigations are

dealt with by the appropriate group or committee. The Director is also responsible for signing the declaration on the NHSLA Disclosure List.

Director of Finance

The Director of Finance is responsible for ensuring adequate reserves are identified to meet the PCT's liabilities in claims which fall below the excess levels set by the NHS Litigation Authority, and in line with the PCT's Standing Financial Instructions. The Director is also responsible for submitting the Losses and Special Payments Register to the Board.

Claims Manager

The Claims Manager is responsible for the efficient and effective day-to-day management of claims. The Claims Manager is also the central point for the reporting of all claims/potential claims made against the PCT and its staff, and for the co-ordination and onward reporting to external agencies on the appropriate forms (CNST/LTPS/PES). In conjunction with other key members of staff, the Claims Manager will also draw up a preliminary analysis of the claim (as outlined in Section 6).

All Staff

It is the responsibility of all staff to report any adverse incident in line with the PCT's Adverse Incident Reporting Policy. Staff should be aware that Incident Forms are a disclosable document in any subsequent legal action.

Any Letter of Claim, County Court or High Court Writ received by any member of staff must be forwarded to the Claims Manager immediately. Staff must not acknowledge or respond to the correspondence.

Clinicians

The Claims Manager, relevant Director or Professional Lead will inform any clinician involved of a potential clinical claim. Clinicians with direct responsibility will be asked to provide a preliminary report which should include the identification of any possible breach of duty of care by any member of their team and causation issues. The report should also state that it is made in response to actual or potential litigation. The information should be provided to the Claims Manager who will, in conjunction with the Nominated Director, assess whether the claim should be immediately reported, in accordance with NHSLA guidance. Should a decision be made to seek advice from the Trust's own solicitors prior to any external reporting, the legal costs incurred will be at a cost to the PCT and are not recoverable from the NHSLA. Staff should therefore agree in advance with the Nominated Director before seeking advice from Trust solicitors. Staff will be informed of the progress of any claim, and provided with copies of any formal response.

4. TYPES OF CLAIM

A claim is defined as a demand for compensation made following an adverse incident resulting in damage to property and/or personal injury.

a. Clinical Negligence

All claims relating to clinical negligence are managed and funded by the NHSLA under the Clinical Negligence Scheme for Trusts (CNST). The NHSLA should therefore be informed of any claim either when a formal Letter of Claim from solicitors is received, or when a significant risk has been established through either adverse incident reporting, complaints or disclosure of health records processes. A sample CNST Claim Form is shown at Appendix 1.

No admission of liability, breach of duty or financial compensation can be offered without the authorisation of the NHSLA.

b. Non-Clinical Claims

These include Employers Liability, Public Liability and Property Expenses and are covered by the Risk Pooling Scheme for Trusts (RPST). For reporting purposes, the Employers and Public Liability claims should be reported to the NHSLA following the Liabilities to Third Parties Scheme (LTPS) guidelines and report form. Any claims on property should follow the Property Expenses Scheme (PES) guidelines. Sample LTPS Report Form and NHSLA Disclosure List are enclosed at Appendix 2 & 3 respectively.

The PCT should immediately report any claim where the total cost of the case will approach or exceed the "Scheme" excess (this includes damages plus both claimant and Defendant legal costs).

The standard excesses applying under LTPS are:-

Employers Liability	-	£10,000
Public Liability	-	£ 3,000
Property/Buildings	-	£20,000

5. SOURCES/TRIGGERS

The adverse incident reporting and complaints process are the most likely sources of information relating to potential claims. The grading/risk rating used in both processes and in line with the Risk Management Strategy, will give an indication of the severity and level of investigation required – and therefore the urgency of an investigation and onward reporting.

An early warning may also be given by a request for access to or disclosure of health records. Links between information from the disclosure of records process and the Claims Manager will be established. A formal Letter of Claim may be received from solicitors.

6. PRELIMINARY ANALYSIS

Where an incident form or complaint exists, the resulting investigation will usually furnish sufficient information on which to form a judgement as to the likelihood of a claim being made.

Information from any request for disclosure of records may not reveal any immediate evidence of a potential claim, although clinical notes, discharge summaries and letters may allude to complications or an untoward event. In

line with the PCT's Disclosure of Health Records Policy, the Nominated Director scrutinises the PCT's health records before disclosure, which should highlight any breach of duty and causation issues. This process may also reveal whether there is a realistic prospect of a claim being made.

Any preliminary analysis should be structured using the following headings:-

Synopsis and Chronology	Brief outline of main events including details of the main parties involved
Care Management Problems	All events where care deviated beyond acceptable limits
Breach of Duty	Record those case management problems leading to harm, and make a direct response to specific allegations made in the request for records.
Causation	Harm that has directly led to loss of amenity pain and suffering. This may be difficult to determine in many cases without further investigation.
Quantum	This should be estimated by the claims manager on the basis of information known at the time, using the Judicial Studies Board Guidelines supplemented by advice from the NHSLA. It should represent a best guess of the probable cost to the defendant at the time of resolution of the case and should incorporate figures for both claimant and defence legal costs. Claims staff at the NHSLA will be pleased to advise by telephone.
Claimant's Funding	Public funding (ex Legal Aid), private, etc.
Risk Management Implications	What can be learned for the future out of the events in question?
Action plan	The next steps recommended, e.g. obtaining expert opinion on causation, obtaining a condition and prognosis report etc. This section should include assessment of litigation risk as: Low where there is no liability on the part of any party to the claim or the allegations of negligence are not causative of the outcome alleged (nominal 25% liability) Medium where the likelihood of the claimant's success is equivocal and there is need for further investigation (nominal 50% liability) High where the claim is viewed as a likely settler or where there has already been an adverse expert opinion, for example in an incident investigation (nominal 75% liability)

A condition and prognosis report should also be given by the clinician on the patient's current condition and give a view on prognosis, in particular whether as a result, further treatment or surgery is likely to be required. This information will help inform any assessment of Special or Future Losses.

7. TIMESCALES/REPORTING

Letters of Claim should be reported to the NHSLA within 24 hours of receipt and a letter sent to the Claimant's Solicitors advising them that the claim has been passed to the NHSLA.

Possible breaches of duty identified from any preliminary analysis of an incident (and graded 15 or above on the 5 x 5 risk matrix), with a large claim value i.e. over £250,000 should be reported to the NHSLA as soon as possible – preferably before a claim is received.

In complaints where the response on the facts indicates that an admission of liability is implied, or where a significant litigation risk (regardless of value) arising out of the disclosure of a health record is identified, should also be reported as soon as possible.

The NHSLA should receive the following documents:-

- A covering letter supported by a preliminary analysis
- A completed CNST/LTPS Claim Form and any relevant Disclosure List
- Copies of any solicitors/patient correspondence
- Copy of comments provided by staff as part of the preliminary analysis
- Any incident investigation report or response to a complaint by the Chief Executive

Any pre-action contact with a potential claimant should involve a timely exchange of information in line with the Civil Procedure Rules and the recommended pre-action protocol arising out of the Woolf report.

8. INVESTIGATION

This process is linked to the Incident Investigation Policy and utilises the training provided to key staff by the National Patient Safety Agency (NPSA) on Root Cause Analysis techniques.

The level of investigation will be determined by the grading of the "incident" or potential claim. The Nominated Director, in conjunction with the Locality Manager/ Head of Service and Claims Manager, will assess and confirm the type and depth of investigation required, including the identification of key staff.

9. DATA GATHERING/INFORMATION MANAGEMENT

The Claims Manager is responsible for updating the PCT database.

In addition to the electronic data, an individual file will be maintained for each claim, containing all relevant documents, statements, reports, reference to any relevant policies, etc. The files will be stored in a locked cupboard and access

limited.

Quarterly reports from the NHSLA on both CNST and RPST claims will also be filed in a locked cupboard.

10. REPORTING ARRANGEMENTS

The Nominated Director will report any claims and relevant updates to the confidential meeting of the PCT Board.

The Claims Manager will provide reports on an anonymised basis to the quarterly meeting of the Integrated Governance Committee.

11. LINKS TO OTHER POLICIES

Risk Management Strategy & Policy
Adverse Incident Reporting Policy
Policy for Handling Complaints
Disclosure of Health Records Policy
Incident Investigation Policy

C · N · S · T	CLAIM REPORT FORM	CATEGORY	
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CNST MEMBER		MEMBER NO:	
TRUST REFERENCE:		TRUST CONTACT:	

PATIENT DETAILS						
TITLE	FORENAME(S)				SURNAME	
Gender	Date of Birth	Age at Incident	Deceased Yes/No	Date of Death	Occupation	
Claimant's Solicitor Name		Solicitor's Postcode		Claimant Name		Relationship to Patient

TITLE	FORENAME(S)				SURNAME	
Gender	Date of Birth	Age at Incident	Deceased Yes/No	Date of Death	Occupation	
Claimant's Solicitor Name		Solicitor's Postcode		Claimant Name		Relationship to Patient

EMPLOYEE DETAILS			
	STATUS	SPECIALTY	%INVOLVEMENT
A			
B			
C			
D			

CASE DETAILS									
Hospital Name			Location Code		Incident Date		Notification Date		
Case Specialty	Cause Code(s)	Injury Code	Estimated Settlement Date (Financial Year or FUTR)						
			01/02	02/03	03/04	04/05	FUTR		
Other Party(s)							% Involvement		
CASE SYNOPSIS									
Estimate of Quantum		Estimate of Claimant Costs		Share %		Probability			
£		£			MIN	LOW	MED	HIGH	CERT
Defence Solicitor		Estimate of Defence Costs		Stage of Claim + Date					
		£							

NHSLA LTPS Scheme Claim Report form

Member Name	<input type="text"/>	Membership No.	#N/A
Scheme	<input type="text"/>	Schedule	<input type="text"/>
Incident Date	<input type="text"/>	Incident Time	<input type="text"/>
Members Reference	<input type="text"/>	Notification Date	NHSLA ONLY
Status	<input type="text"/>	Claims Handler	NHSLA ONLY
Damages Estimate	<input type="text"/>	Claimant Costs	<input type="text"/>
Probability	<input type="text"/>	Year of Settlement	<input type="text"/>
<u>Claimant Details</u>			
Title	<input type="text"/>	Forename	<input type="text"/>
Surname	<input type="text"/>		
Address	<input type="text"/>	Town	<input type="text"/>
Postcode	<input type="text"/>	Date of Birth	<input type="text"/>
Gender	<input type="text"/>		
Claimant Solicitor	<input type="text"/>	Solicitor Reference	<input type="text"/>
Cause	<input type="text"/>	Injury	<input type="text"/>
		Location	<input type="text"/>
Incident Description	<input type="text"/>		

To Whom Reported?

Any Witnesses?

Ave Weekly Earnings

Absence from Work
(state periods)

Signed

Print name

WORKPLACE CLAIMS

Enclosed

1. Accident Book Entry.
2. First Aider report.
3. Surgery record.
4. Foreman/supervisor accident report.
5. Safety representative's accident report.
6. RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) report to HSE.
7. Other Communications between defendants and HSE.
8. Minutes of Health and Safety Committee meetings(s) where accident/matter considered.
9. Report to DSS.
10. Documents listed above relative to any previous accident/matter identified by the claimant and relied upon as proof of negligence.
11. Earnings information where defendant is employer.

Documents produced to comply with requires of the Management of health and Safety at Work Regulations 1992-

1. Pre-accident Risk Assessment required by Regulation 3.
2. Post-accident Re-Assessment required by Regulation 3.
3. Accident Investigation Report prepared in implementing the requirements of Regulations 4, 6 and 9.
4. Health Surveillance Records in appropriate cases required by Regulation 5.
5. Documents relating to the employees health and safety training required by Regulation 11.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

**SECTION A – WORKPLACE (HEALTH SAFETY AND WELFARE)
REGULATIONS 1992**

Enclosed

1. Repair and maintenance records required by Regulation 5.
2. Housekeeping records to comply with the requirements of Regulation 9.
3. Hazard warning signs or notices to comply with Regulation 17 (Traffic Routes).

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

SECTION B – PROVISION AND USE OF WORK EQUIPMENT REGULATIONS 1998

Enclosed

1. Manufacturers' specifications and instructions in respect of relevant work equipment establishing its suitability to comply with Regulation 5.
2. Maintenance log/maintenance records required to comply with Regulation 6.
3. Documents providing information and instructions to employees to comply with Regulation 8.
4. Documents provided to the employee in respect of training for use to comply with Regulation 9.
5. Any notice, sign or document relied upon as a defence to alleged breaches of Regulations 14 to 18 dealing with controls and control systems.
6. Instruction/training documents issued to comply with the requirements of regulation 22 insofar as it deals with maintenance operations where the machinery is not shut down.
7. Copies of marking required to comply with Regulation 23.
8. Copies of warnings required to comply with Regulation 24.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

SECTION C – PERSONAL PROTECTIVE EQUIPMENT AT WORK REGULATIONS 1992

Enclosed

1. Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 6.
2. Documents relating to the maintenance and replacement of Personal Protective Equipment to comply with Regulation 7.
3. Record of maintenance procedures for Personal Protective Equipment of comply with Regulation 7.
4. Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7.
5. Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 9.
6. Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 10.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

**SECTION D – MANUAL HANDLING OPERATIONS
REGULATIONS 1992**

Enclosed

1. Manual Handling Risk Assessment carried out to comply with the requirements of Regulation 4(1)(b)(i).
2. Re-assessment carried out post-accident to comply with requirements of Regulation 4(1)(b)(i).
3. Documents showing the information provided to the employee to give general indications related to the load and precise indications on the weight of the load and the heaviest side of the load if the centre of gravity was not positioned centrally to comply with Regulation 4(1)(b)(iii).
4. Documents relating to training in respect of manual handling operations and training records.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

SECTION E – HEALTH AND SAFETY (DISPLAY SCREEN EQUIPMENT) REGULATIONS 1992

Enclosed

1. Analysis of work stations to assess and reduce risks carried out to comply with the requirements of Regulation 2.
2. Re-assessment of analysis of work stations to assess and reduce risks following development of symptoms by the claimant.
3. Documents detailing the provision of training including training records to comply with the requirements of Regulation 6.
4. Documents providing information to employees to comply with the requirements of Regulation 7.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY
SECTION F – CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH
REGULATIONS 1999

Enclosed

1. Risk assessment carried out to comply with the requirements of Regulation 6.
2. Reviewed risk assessment carried out to comply with the requirements of Regulation 6.
3. Copy labels from containers used for storage handling and disposal of carcinogenics to comply with the requirements of Regulation 7(2A)(1).
4. Warnings signs identifying designation of areas and installations, which may be contaminated by carcinogenics to comply with the requirements of Regulation 7(2A)(h).
5. Documents relating to the assessment of the Personal Protective Equipment to comply with Regulation 7(3A).
6. Record of maintenance procedures for Personal Protective Equipment to comply with Regulation 7(3A).
7. Records of tests and examinations of Personal Protective Equipment to comply with Regulation 7(3A).
8. Documents providing information, instruction and training in relation to the Personal Protective Equipment to comply with Regulation 7(3A).
9. Instructions for use of Personal Protective Equipment to include the manufacturers' instructions to comply with Regulation 7(3A).
10. Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard to comply with the requirements of Regulation 7.
11. Maintenance examination and test of control measures records to comply with Regulation 9.
12. Monitoring surveillance records to comply with the requirements of Regulation 11.
13. Documents detailing information, instruction and training including training records for employees to comply with the requirements of Regulation 12.
14. Labels and Health & Safety data sheets supplied to the employers to comply with the CHIP Regulations.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

SECTION G – CONSTRUCTION (DESIGN MANAGEMENT)(AMENDMENT) REGULATIONS 2000

Enclosed

1. Notification of a project form HSE F10) to comply with the requirements of Regulation 7.
2. Health and Safety Plan to comply with requirements of Regulation 15.
3. Health and Safety file to comply with the requirements of Regulations 12 and 14.
4. Information and training records provided to comply with the requirements of Regulation 17.
5. Records of advice from and views of persons at work to comply with the requirements of Regulation 18.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

SECTION H – PRESSURE SYSTEMS AND TRANSPORTABLE GAS CONTAINER REGULATIONS 1989

Enclosed

1. Information and specimen markings provided to comply with the requirements of Regulation 5.
2. Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7.
3. Copy of the written scheme of examination required to comply with the requirements of Regulation 8.
4. Examination records required to comply with the requirements of Regulation 9.
5. Instructions provided for the use of operator to comply with Regulation 11.
6. Records kept to comply with the requirements of Regulation 12.
7. Records kept to comply with the requirements of Regulation 22.

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS
APPLY**

**SECTION I – LIFTING OPERATIONS AND LIFTING EQUIPMENT
REGULATION 1998**

Enclosed

1. Record kept to comply with the requirements of Regulation 6.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

**SECTION J – THE NOISE AT WORK
REGULATION 1989**

Enclosed

1. Any risk assessment records required to comply with the requirements of Regulations 4 and 5.
2. Manufacturers' literature in respect of all ear protection made available to claimant to comply with the requirements of Regulation 8.
3. All documents provided to the employee for the provision of information to comply with Regulation 11.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

**SECTION K – CONSTRUCTION (HEAD PROTECTION)
REGULATION 1989**

Enclosed

1. Pre-accident assessment of head protections required to comply with Regulation 3(4).
2. Post-accident re-assessment required to comply with Regulation 3(5).

**WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS
APPLY**

**SECTION L – THE CONSTRUCTION (GENERAL PROVISIONS)
REGULATION 1961**

Enclosed

1. Report prepared following the inspections and examinations of excavations etc. to comply with the requirements of Regulation 9.

WORKPLACE CLAIMS – DISCLOSURE WHERE SPECIFIC REGULATIONS APPLY

**SECTION M – GAS CONTAINERS
REGULATIONS 1989**

Enclosed

1. Information and specimen markings provided to comply with the requirements of Regulation 5.
 2. Written statements specifying the safe operating limits of a system to comply with the requirements of Regulation 7.
 3. Copy of written scheme of examination required to comply with the requirements of Regulation 8.
 4. Examination records required to comply with the requirements of Regulation 9.
 5. Instructions provided for the use of operator to comply with Regulation 11.
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DECLARATION (To be signed by Chief Executive/Nominated Director)

I _____ state that I have carried out a reasonable and proportionate search to locate all of the documents which I am required to disclose.

I certify that I understand the duty of disclosure and to the best of my knowledge I have carried out that duty.

Signed _____ Date _____

Position _____

South Staffordshire Primary Care Trust