

**REPORT TO MERTON CLINICAL COMMISSIONING GROUP
GOVERNING BODY**

Date of Meeting: 20 November 2014

Agenda No: 6.2.

Attachment: 06

<p>Title of Document: Claims Management Policy</p>	<p>Purpose of Report: For Approval</p>
<p>Report Author: David Cotter, Head of Corporate Affairs, SECSU</p>	<p>Lead Director: Lynn Street, Director of Quality</p>
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<p>Executive Summary:</p> <p>Claims management and monitoring is an integral part of a healthcare organisations approach to providing overall governance throughout the organisation. The CCG takes seriously any claims raised, and seeks to ensure their satisfactory resolution. The CCG aims to ensure that any claim or potential claim will be investigated objectively and thoroughly to determine the facts and identify any risks that need to be managed in order to address claims issues in an efficient and effective way. It is keen to learn about areas where improvement can be made and views claims as a key source of information from stakeholders.</p> <p>This policy details the arrangements to be followed in the event of a claim against the CCG.</p>	
<p>Key sections for particular note (paragraph/page), areas of concern etc:</p> <p>Merton CCG is insured through the NHS Litigation Authority and is a member of the following NHSLA risk pooling schemes:</p> <ul style="list-style-type: none"> • Clinical Negligence Scheme for Trusts (CNST) • Liability to Third Parties Scheme (LTPS) • Property Expenses Scheme (PES) <p>See Section 2.1 (page 13) for further details.</p> <p>This Policy follows the guidelines of the NHS Litigation Authority and Civil Law Procedure Rules.</p>	
<p>Recommendation(s):</p> <p>The Governing Body is asked to APPROVE the Policy</p>	

Committees which have previously discussed/agreed the report:

Executive Management Team June 2014

Audit and Governance Committee September 2014

Financial Implications:

Membership of the NHSLA schemes limits the CCGs financial exposure to claims (see Section 2.9, page 17 for further details).

Implications for CCG Governing Body:

The NHSLA schemes provide indemnity for legitimate activities.

How has the Patient voice been considered in development of this paper:

The Policy is the local application of national NHSLA and Civil Law Procedure Rules.

Other Implications: (including patient and public involvement/Legal/Governance/Risk/Diversity/ Staffing)

This Policy significantly reduces the CCGs risk of financial exposure in the event of a successful claim.

Equality Assessment:

The document provides a process to ensure that all claims are processed in a timely fashion and fair manner. The Policy describes the statutory timescales and framework for all claims. Adherence to the policy will be monitored and any non-compliance fully investigated.

See Appendix 8 (page 41) for further details.

Information Privacy Issues:

None - This Policy follows the guidelines of the NHS Litigation Authority and Civil Law Procedure Rules.

Communication Plan: (including any implications under the Freedom of Information Act or NHS Constitution)

This Policy is being made publically available at Governing Body and once approved will be made available to all staff and placed on the CCG web site.

CLAIMS MANAGEMENT POLICY

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CLAIMS MANAGEMENT POLICY

CCG Policy Reference: Merton CCG/SLCSU/GOV/023

This policy replaces or supersedes Policy Ref: New Policy

THIS POLICY WILL BE APPROVED BY THE GOVERNING BODY, AND WILL HAVE EFFECT AS IF INCORPORATED INTO THE CONSTITUTION AS PART OF THE SCHEME OF DELEGATION

Target Audience	Governing Body, Audit and Governance Committee, Chief Officer, Chief Finance Officer, Directors, all staff employed by, or working for, the CCG and the South East Commissioning Support Unit (SECSU) Corporate Affairs Team.
Brief Description (max 50 words)	This policy details the arrangements to be followed in the event of a claim against the CCG. These arrangements follow the guidelines of the NHS Litigation Authority and Civil Law Procedure Rules.
Action Required	Following approval at the Governing Body meeting, The Chief Officer will ensure that this Policy is rolled out and that the requirements of this policy are raised at all team meetings.

Approved:

Review date:

Document Control	
Title:	Claims Management Policy
Original Author(s):	Ben Vinter / David Cotter
Owner:	Chief Finance Officer
Reviewed by:	Chief Finance Officer/ Director of Quality
Quality Assured by:	Deputy Director of Governance (SECSU)
File Location:	To be completed upon approval
Approval Body:	MCCG Governing Body
Approval Date:	To be completed upon approval

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Document Information:

Title /Version Number/(Date)	CLAIMS MANAGEMENT POLICY
Document Status (for information/ action etc.)and timescale	For implementation (**/**/201*)
Accountable Executive	Chief Officer
Responsible Post holder/Policy Owner	Chief Finance Officer
Date Approved	To be completed upon approval
Approved By	CCG Governing Body
Publication Date	To be completed upon approval
Review Date	(30/11/2017)
Author	Ben Vinter/ David Cotter
Stakeholders engaged in development or review	Not applicable
Equality Analysis	<p>Equality Analysis</p> <p>This Policy is applicable to the Governing Body, every member of staff within the CCG and those who work on behalf of the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates Merton CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners. The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.</p>
Contact details for further information	secsu.governance@nhs.net

Amendment History

This Policy is substantially based on a Policy developed by NHS North East Essex CCG and this is gratefully acknowledged.

Version	Date	Reviewer Name(s)	Comments
0.1	8/02/2013	Ben Vinter	1 st Pre consultation draft
0.2	18/02/2013	Ben Vinter	2 nd Pre consultation draft
0.3	01/03/2013	Ben Vinter	Updated to final draft CSU policy
0.4	11/03/2013	David Cotter	Updated following input from CCG CO / Director feedback
0.5	02/07/2013	F Ojutalayo	Updated following input from PAG
0.6	30/8/13	Jitendra Patel	Localisation update

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0.7	14/01/14	Wasia Shahain	E&D Update
0.8	13/3/14	David Cotter	Localisation Update
0.9	01.07.2014	Louise Morgan	Updated following EMT review in June 2014
1.0	07/11/14	David Cotter	Updated following presentation at the September 2014 Audit and Governance Committee.

This policy progresses the following Authorisation Domains and Equality Delivery System (tick all relevant boxes).

Clear and Credible Plan		Commissioning processes	
Collaborative Arrangements		Leadership Capacity and Capability	
Clinical Focus and Added Value		Equality Delivery System	
Engagement with Patients/Communities	x	NHS Constitution Ref:	

Associated Policy Documents

Reference	Title
	<ul style="list-style-type: none"> • Risk Management Strategy • Incident reporting policies • Complaints Policy and Procedure • Fraud Policy and Response Plan • “Whistle Blowing” Policy • Access to Health Records Policy • Being Open principles

Glossary

Term	Definition
Non-Clinical Claim	A demand for compensation made following an adverse incident resulting in damage to property and/or personal injury. [<i>NHS Litigation Authority Non-Clinical Claims Reporting Guidelines, April 2008</i>]
Clinical Claim	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 the Trust. [<i>NHS Litigation Authority Clinical Negligence Reporting Guidelines 5th Edition, 2008</i>]
Document definitions	As above

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Policy Overview:

1. This policy details the arrangements to be followed in the event of a claim against the CCG. These arrangements follow the guidelines of the NHS Litigation Authority and Civil Law Procedure Rules.
2. The South East Commissioning Support Unit (SECSU) supports the CCG in managing claims against the CCG.
3. When a letter of claim is received by the CCG it must be sent to the SECSU Head of Corporate Affairs **immediately** it is received as the letter has to be forwarded to the NHSLA within 24 hours and acknowledged within 14 days for clinical claims and 21 days for non-clinical claims.
4. The remaining paperwork and any further information that may be requested by the NHSLA or the investigator should be submitted **within 30 days** of the letter of claim.
5. For personal injury and property claims, the claim must be declined or accepted (this will be decided by NHSLA) **within 90 days** from the date of the CCG's original acknowledgement letter.
6. For clinical negligence claims the 90 days starts from the original date of the letter of claim from the claimant's solicitors or if a solicitor has not been engaged, the claimant, hence the need for urgency.
7. If the CCG fails to respond within the time allowed, it will be penalised and may be prevented from continuing to defend the claim.

Section 1: Introduction

1.1 Introduction

- 1.1.1 Claims management and monitoring is an integral part of a healthcare organisations approach to providing overall governance throughout the organisation. The CCG takes seriously any claims raised, and seeks to ensure their satisfactory resolution. The CCG aims to ensure that any claim or potential claim will be investigated objectively and thoroughly to determine the facts and identify any risks that need to be managed in order to address claims issues in an efficient and effective way. It is keen to learn about areas where improvement can be made and views claims as a key source of information from stakeholders.
- 1.1.2 This policy details the arrangements to be followed in the event of a claim against the CCG, these arrangements follow the guidelines of the NHS Litigation Authority and Civil Law Procedure Rules.
- 1.1.3 Legal claims for the former provider functions of the CCG that were open prior to 1st April 2011 and all commissioning related claims are managed by the

SECSU corporate affairs team. After 1st April 2011 most of the provider services of the CCG (then PCT) were transferred to providers under the Department of Health's transforming community services initiative and all new legal claims against the provider services after this time will be handled by the relevant provider.

1.2 Policy Statement

- 1.2.1 It is the duty of each NHS body to establish and keep in place arrangements for the purpose of monitoring and improving the quality of health and social care provided by and for that body. The CCG is committed to this policy and the implementation of efficient and effective claims management.
- 1.2.2 The CCG recognises and accepts its responsibility to provide a safe and healthy workplace and environment for their employees, patients/service users and visitors. They also recognise the potential for claims to be made against them, alleging clinical negligence and personal injury, and accept this needs to be handled sensitively and speedily. The CCG undertake to deal with claims as quickly as practicable and in a cost effective manner. It will also endeavour to learn from any issues/risks that are highlighted by individual claims or claims trends.
- 1.2.3 This policy applies to those members of staff that are employed by the CCG and for whom the CCG have legal responsibility, However, it is recognised that primary care practitioners are also part of the organisation and as such this policy is offered for use by them to adapt to their own practices and organisations as appropriate. The SECSU head of Corporate Affairs is available to offer help and support to primary care practitioners who wish to use and implement this policy.

1.3 Purpose

- 1.3.1 The purpose of this policy is to give an overview of the type of claims that may be brought against the CCG, the roles and responsibilities of key individuals and groups within the organisations in relation to claims management, definitions of key terms, the different types of claim and what is covered by the NHS Litigation Authority and the general claims management process. This document is supported by procedures that detail exactly how claims must be handled.

1.4 Duties and Accountability

- 1.4.1 **Chief Officer:** The chief officer has overall accountability for risk management within the CCG, including the management of legal claims. Responsibility for specific duties in relation to claims management are delegated to the Director of Quality (CCG) and the Chief Finance Officer (CCG) supported by the SECSU Head of Corporate Affairs.

1.4.2 Chief Finance Officer (CFO): Responsible for ensuring that there are arrangements in place for the management of claims and that procedures are developed and implemented. The CFO is the chief officer's nominated deputy for legal claims and has authority to sign documents in relation to legal claims on behalf of the chief officer unless another individual within the organisations is deemed more appropriate.

1.4.3 The CFO is also responsible for advising on the appropriate financial settlement of claims and for maintaining a losses and special payments register in which write off action is recorded. The CFO must also ensure compliance with the Secretary of State for Health Directions to NHS Bodies on Counter Fraud measures.

1.4.4 The Head of Corporate Affairs (SECSU): Is the claims contact for the CCG and oversees the day to day management of claims relating to public and employer's liability and property expenses. They liaise closely with the partner organisation risk management teams where applicable and staff within the CCG and with the NHS Litigation Authority to support the CCG to investigate claims.

1.4.5 Responsibilities include:

- ensuring the claims management process is followed correctly for each claim, following the NHSLA guidelines. This will involve close liaison with managers and clinicians across the CCG in order to gather claims information and carry out investigation;
- providing advice and support to staff that may be involved with a claim, either in terms of investigation, providing witness statements or being involved in the claim incident;
- advising staff on matters relating to liability/legal cover;
- ensuring that financial information in relation to legal claims is shared with the finance department;
- ensuring that all information relating to claims is logged and recorded appropriately;
- Liaising with partner organisations
- Monitoring the effectiveness of the claims management process and providing claims management update reports as appropriate to the Governing Body and its committees.

1.4.6 All staff: all staff within the CCG have a responsibility for ensuring that the potential for any claim is minimised and that appropriate clinical and nonclinical risk assessments have been carried out. Line managers should be informed of any areas of concern to staff so that prompt remedial action can be taken.

1.4.7 All staff are responsible for reporting accidents, incidents, serious incidents and any matter that has the potential to develop into a legal claim under the incident reporting arrangements of the CCG (please refer to individual incident reporting policies of the CCG). This is to enable early investigation and

remedial action to be undertaken and ensures the CCG have a record of the event should a claim be submitted at a later date.

1.4.8 In the event of **any member of staff** becoming aware of any matter which could potentially result in a claim against a CCG these must be reported to line managers who must immediately report them to the SECSU corporate affairs team.

1.4.9 All staff have a duty to co-operate with the claims investigation process.

1.4.10 Audit and Governance Committee: the Audit and Governance Committee has responsibility for ensuring that robust integrated governance arrangements are in place and operating effectively. The remit of the committee includes risk management. The committee is a formal subcommittee of the Governing Body.

1.5 Definitions

1.5.1 See also Appendix 1

1.5.2 **Non-Clinical Claim:** is defined as ‘a demand for compensation made following an adverse incident resulting in damage to property and/or personal injury’ [*NHS Litigation Authority Non-Clinical Claims Reporting Guidelines, April 2008*]

1.5.3 **Clinical Claim:** is defined as ‘allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury or any clinical incident which carries significant litigation risk for the Trust’ [*NHS Litigation Authority Clinical Negligence Reporting Guidelines 5th Edition, 2008*]

1.6 Related Documents

1.6.1 The Claims Management Policy complements other risk management policies, procedures and guidelines used by the CCG to manage risks effectively. The main policies are named below:

- Risk Management Strategy
- Incident reporting policies
- Complaints Policy and Procedure
- Fraud Policy and Response Plan
- “Whistle Blowing” Policy
- Access to Health Records Policy
- Information Governance Policies
- Health and Safety Policies

1.7 Equality and Diversity

- 1.7.1 All public bodies have statutory duties under the Equality Act 2010 to set out arrangements to assess and consult on how their policies and functions impact on the protected characteristics, in effect to undertake equality impact assessments on all policies/guidelines and practices.
- 1.7.2 The CCG is committed to providing services that meet the equality and diversity needs of staff and service users within the framework of the Equality Act (2010) and to tackling all types of discrimination where they arise. Current equality and diversity legislation includes disability, gender reassignment, age, race, sexual orientation, religion and belief, sex, maternity and pregnancy and marriage and civil partnership. It is the responsibility of managers and staff to ensure that they act on this policy in a manner that meets the needs of people from these groups. It is always best to check with individual staff/service users what their needs are, but needs may include providing information in an accessible format, considering mobility and communication issues, being aware of sensitive and cultural issues
- 1.7.3 This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This Policy is applicable to the Governing Body, every member of staff within the CCG irrespective of their age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion or belief, marriage or civil partnership, and those who work on behalf of the CCG.

1.8 Approach to Claims Management – Being Open

- 1.8.1 The CCG acknowledge that:
- It is rarely the case that NHS staff set out to deliberately harm either themselves or others;
 - Staff are usually doing their best to carry out their work in a safe and effective manner in order to benefit patients;
 - Adverse events which lead to claims often occur due to system errors rather than due to an error by an individual alone;
 - Claims against the CCG may be withdrawn following further investigation and/or successful letters of response prepared with the assistance of staff;
 - Being involved in a case which is being investigated as a possible claim can be a stressful experience for anyone involved and every effort will be made to keep staff informed of the progress of a claim throughout.
- 1.8.2 The CCG encourages staff to be open and honest with patients/service users, their families and carers and their colleagues when there has been an unexpected outcome and expects apologies, explanations and expressions of sympathy to be made in good faith. An apology or an admission that something has gone wrong is not an admission of negligence or breach of statutory duty. The NHSLA has produced guidance in relation to apologies

and explanations which are detailed in a letter from their Chief Executive in May 2009 (see Appendix 2); also refer to the CCG Being Open policies.

- 1.8.3 Staff should not indicate to patients or their families or carers that they believe the CCG to be liable in a matter or that they consider that compensation is due to them. For the CCG to be liable and for compensation to be due there must be a breach of our duty of care to the patient which has directly caused compensable damage.
- 1.8.4 Exceptionally, some claims may be considered false and could be deemed to be fraudulent. Details of any concerns associated with a suspected false claim will be passed to the counter fraud specialist.

Section 2: General issues on claims handling

2.1 NHSLA indemnity schemes

- 2.1.1 Within the NHS today claims are managed centrally by the NHS Litigation Authority, a Special Health Authority set up to administer the risk pooling schemes. There are currently three risk pooling schemes which are detailed below. Merton CCG belongs to all three schemes (see Appendix 9).
- 2.1.2 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. Discounts are available to those trusts that achieve the relevant NHSLA Risk Management Standards and those with a good claims history.
- 2.1.3 **Clinical Negligence Scheme for Trusts (CNST):** When a claim is made against a member of the CNST scheme, the member NHS body remains the legal defendant. However, the NHSLA takes over full responsibility for handling the claim and meeting the associated costs. The scope of the scheme is set out in the scheme rules (available from NHSLA website www.nhsla.com or the policy author), while the scheme reporting guidelines (see Procedures for the Handling of Clinical Claims) set out how claims should be reported by scheme members to the NHSLA.
- 2.1.4 **Existing Liabilities Scheme (ELS).** The Existing Liabilities Scheme covers clinical negligence claims made against the NHS in England where the incident in question took place before April 1995. **It is not a membership scheme**, as it is funded centrally by the Department of Health. Claims under the ELS are often made against NHS bodies which no longer exist, because of subsequent restructuring within the NHS. The legal defendant in such ELS claims will be the legal "successor body" to the now defunct NHS body.

- 2.1.5 **Risk Pooling Scheme for Trusts (RPST)**. Two separate schemes covering non-clinical risks, **the Liabilities to Third Parties Scheme (LTPS)** and the **Property Expenses Scheme (PES)** are known collectively as the **Risk Pooling Schemes for Trusts (RPST)**.
- 2.1.6 Both schemes date from 1st April 1999, and cover begins from that date, or from the date when the NHS body joined the scheme where that is later. LTPS 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 Human Rights Act, the Data Protection Act and the Defective Premises Act. There is also cover for defamation, professional negligence by employees and liabilities of directors.
- 2.1.7 PES provides cover for "first party" losses such as theft or damage to property. Detailed information on the scope of the schemes is set out in the LTPS and PES rules (Available from the NHSLA website www.nhsla.com or policy author), while the RPST reporting guidelines (see the Procedures for the Handling of Non-Clinical Claims) set out how members should report claims.
- 2.1.8 LTPS / PES claims are subject to excesses, with member bodies responsible for handling and funding below-excess claims themselves. The NHSLA will handle these claims on behalf of scheme members for a handling fee.
- 2.1.9 The NHSLA produces quarterly reports for member organisations detailing the number of CNST and LTPS claims and their value.
- 2.1.10 Following consultation with Chief Executives early in 2004, the NHSLA produces a fact sheet providing figures broken down by member, on the number of CNST and LTPS claims made during the financial year and the costs of the claims both in regard of damages and legal fees. This move had been made as a direct response to comply with the Freedom of Information Act 2000.

2.2 Who may make a claim?

- 2.2.1 A legal claim can be made by anyone to whom the CCG owe 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 can include: staff (including students and temporary staff), visitors, patients/services users, contractors and members of the public.

2.3 Who is covered by the NHSLA indemnity schemes?

- 2.3.1 NHSLA 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 e.g. locums, medical academic staff with honorary contracts, students on placement, those conducting clinical trials, charitable volunteers and people undergoing professional education, training and examinations.

2.4 Triggers for invoking the claims procedure

2.4.1 The CCG should consider activating the claims procedure in the following circumstances:

- A. a request for a copy of medical records is received;
- B. an adverse incident which could lead to a claim for compensation;
- C. a complaint which could lead to a claim for compensation;
- D. a human rights issue
- E. An issue involving media attention
- F. receipt of a letter of claim
- G. other matters identified through the risk management process

2.4.2 It is therefore important that all staff understand the need to report such triggers to their line manager and the SECSU Head of Corporate Affairs at the earliest opportunity. The SECSU Head of Corporate Affairs will, in discussion with the relevant CCG director, decide whether to inform the NHSLA.

2.4.3 If a manager suspects that a claim may materialise they should refer to the CCG Policies and Procedures for handling clinical or non-clinical incidents. In summary the manager should:

- Investigate the matter in line with the CCG Incident Investigation Guidelines
- note the sequence of events
- note the facts only
- collect any relevant documents, i.e. notes, emails, medical/health records, accident/incident forms, protocols or guidelines in use at the time (See Appendix 6)
- keep and isolate all relevant equipment for inspection
- liaise with the corporate risk and assurance manager on next steps

If the potential claim materialises into a claim, refer to the flow chart in Appendix 4 and other relevant information in this protocol.

2.5 Record Keeping

2.5.1 All claims, both formal and informal will be recorded by the SECSU Head of Corporate Affairs. A claim file (both electronic and paper) will be opened for formal claims and detailed file notes on the progress of the claim will be maintained. Claims information will be indexed and paginated as appropriate to keep it in order to aid an efficient and effective investigation and claims management process.

2.6 Confidentiality

2.6.1 Any information gathered for a claim investigation will be treated with appropriate confidentiality and information will be disclosed only in accordance with relevant legal protocols and legislation such as the Data Protection Act 1998 and the Access to Health Records Act 1990.

2.6.2 Information gathered in relation to a legal claim will contain person identifiable information (such as date of birth, address, NI numbers and possibly NHS numbers etc.) along with information relating to the particulars of the claim incident (this can be sensitive) and any accompanying information (such as earnings information, medical reports and records, witness statements and incident report forms). This information must be kept secure and confidential at all times and must not be left unsecured on desks etc.

2.6.3 Claims file notes will be kept in a secure, locked filing cabinet with access limited to specific members of the corporate affairs team only and electronic files are protected with limited access to named individuals. Any person identifiable information that must be shared with relevant parties (i.e. the NHSLA, panel solicitors, claimant's solicitors) will be sent via first class Royal Mail recorded delivery or where possible via the NHSLA electronic document transfer system which is encrypted.

2.6.4 CCG Staff involved in the investigation of claims and the SECSU corporate affairs team staff that have a role in the handling of claims are bound by the CCG code of confidentiality as set out in employment contracts and terms and conditions.

2.6.5 Advice on the appropriate and legal disclosure of information can be sought from the records management leads in each CCG (see contacts) and from the SECSU Head of Corporate Affairs.

2.7 Signing legal defence documents

2.7.1 During the course of defending a claim it will be necessary for some documents, including defence documents to be signed on behalf of the CCG, responsibilities are as follows:

- a. Statements of truth, disclosure statements and other defence documents (e.g. response to part 12 questions) – the chief officer or

any director shall sign documents on behalf of the CCG unless the law requires otherwise

2.8 Admissions of liability

2.8.1 Authority to admit liability and/or settle a claim must be made in accordance with this policy and the financial limits outlined below and will be subject to the requirements of the NHS Litigation Authority. This includes authority to settle any claim. Where the NHSLA (or panel solicitors) is handling a claim, the CCG agreement is required before any admissions of liability are made.

2.8.2 The following delegated limits apply to the authorisation to make such admissions and/or settle claims:

A Chief Officer - up to £1,000,000 (non-pay expenditure);

B Board / Governing Body - claims with an estimated value in excess of up to £1,000,000

In the event of an urgent decision being needed between meetings a decision can be made under Standing Orders, 'Emergency Powers and urgent decisions' i.e. by the Chair and Chief Officer after having consulted with at least two non-officer members. The exercise of such powers by the Chief Officer and Chair shall be reported to the next formal meeting of the Board in public session for formal ratification.

2.9 Payments and finance

2.9.1 Indemnity and excess levels: the NHSLA indemnity schemes are subject to 'excess' payments i.e. payments up to an agreed, set level which member organisations must cover themselves in full, with the rest of the claim costs up to an agreed and set level being covered by the NHSLA. The levels of indemnity and excess are different for each scheme and are as follows:

Scheme	Limit of Indemnity	Excess
Clinical Negligence	Any one occurrence – unlimited	Each & every claim – Nil
Employers Liability	Any one occurrence – unlimited	Each & every claim - £10,000
Public Liability	Any one occurrence – unlimited	Each & every claim - £3,000
Products Liability	Any one occurrence – unlimited	Each & every claim - £3,000

Professional Liability	Any one occurrence – unlimited	Each & every claim - £3,000
Property Damage	£250,000	Each & every buildings claim - £20,000 Each & every contents claim - £5,000

2.9.2 For each and every claim that involves a payment the usual practice is for member organisations to make the initial payments of damages and claimant costs etc. in full and then for the NHSLA to reimburse the organisation with the amount that the organisation has paid above the excess. This should be made clear when making any returns for the losses and special payments register.

2.9.3 **Losses and special payments register and financial reporting:** in accordance with Financial Standing Orders the CCG must maintain a losses and special payments register in which condemnations, losses and special payments are recorded and accounted for. Each time a payment is made with regard to a legal claim (damages, claimant legal costs, costs incurred as part of a claim investigation); this must be informed to the finance department via an email to the Chief Finance Officer

It is good practice to pass on this information as and when the payments occur.

2.9.4 **Legal expenses:** most legal expenses arising from claims will be met by the NHSLA, however from time to time the CCG may have to incur some legal expenses in its own right. In such instances the following delegated limits apply:

- a. Chief Officer/ Chief Finance Officer – up to up to £150,000
- b. Governing Body – in excess of £150,000

2.9.5 **Novel, contentious or repercussive payments:** All claims involving such expenditure will be referred to the NHSLA for approval prior to payment. This includes claims involving features which if not correctly handled, might set a precedent for other prospective NHS litigation. In all such cases the SECSU Head of Corporate Affairs will seek advice from the NHSLA.

2.10 Claims records retention and archiving

2.10.1 Claims records and files will be held for 10 years after the claim has been closed or become inactive, this is in accordance with the NHS Records Retention and Disposal Schedule.

2.11 Media interest

2.11.1 At any stage a claim (or potential claim) may generate media interest. The SECSU Head of Corporate Affairs will work closely with the SECSU Head of Communications, the NHSLA and any other relevant directors from the CCG on all such claims. They will agree a handling strategy to check what information can be released to the media and other stakeholders and the head of communications will agree all draft statements with the chief officer.

2.11.2 When court hearings are likely to generate media interest, the SECSU Head of Corporate Affairs will notify the SECSU Head of Communications and agree a communications strategy and draft press statements in advance of the court hearing. These will be agreed and signed off by the Chief Officer of the CCG.

2.12 External reporting

2.12.1 With any claim, incident or complaint consideration should be given to involving external bodies on a case by case basis. In Appendix 3 there is a list of external agencies and stakeholders who may need to be informed/ involved in a claim. Further details will be available in the CCG incident reporting policy.

Section 3: The Claims Management Process

3.1 The claims management process

3.1.1 The claimant **must** notify the CCG in writing and before any legal action is taken of the claimant's intention to claim. The notification **must** give the CCG sufficient information to identify the alleged accident/incident that gave rise to the claim. Because of the tight deadlines for responding to a letter of claim, the SECSU Head of Corporate Affairs **must be informed immediately by phone**.

3.1.2 Managers **must** ensure that any letter indicating that a person is claiming against the CCG (letter of claim) is forwarded **immediately** to the SECSU Head of Corporate Affairs. The SECSU Head of Corporate Affairs will immediately notify the National Health Services Litigation Authority (NHSLA) otherwise the NHSLA could choose not to manage the claim. Letters must not be forwarded to any other department as this may cause a delay in the process. The director or service manager concerned will identify a link person at directorate/service level to coordinate collection of any information or intelligence required by the SECSU Head of Corporate Affairs or NHSLA. The SECSU Head of Corporate Affairs will notify the CCG Chief Finance Officer of the notification of the claim as soon as possible and whether the claim is likely to present a financial risk for the CCG.

3.1.3 For personal injury and property claims, the claim must be declined or accepted (this will be decided by NHSLA) within 90 days from the date of the CCG's original

acknowledgement letter. For clinical negligence claims the 90 days starts from the original date of the letter of claim from the claimant's solicitors or if a solicitor has not been engaged, the claimant, hence the need for urgency.

- 3.1.4 **Penalty** – If the CCG fails to respond within the time allowed, it will be penalised and may be prevented from continuing to defend the claim.
- 3.1.5 The SECSU Head of Corporate Affairs is responsible for co-ordinating the management of all claims for the CCG. This includes liaising with risk management leads, staff and managers in the CCG to complete claims investigations and making arrangements for the gathering and retrieval of all relevant documents and records and liaison with the NHSLA case managers, panel solicitors and local NHSLA claims inspectors.
- 3.1.6 Any member of staff receiving notification of a claim against any of the CCG must inform their line manager and the SECSU Head of Corporate Affairs as soon as possible; normally the latter will be via their line manager.
- 3.1.7 The SECSU Head of Corporate Affairs will arrange for any claims under CNST, LTPS or PES to be managed and reported according to the requirements of the relevant NHSLA reporting guidelines and the CCG Procedures for Handling Clinical Claims and the Procedure for Handling Non-clinical Claims which should be read in conjunction with it.

3.2 Flowchart Guidance on What to do if you receive a Notification of a Personal Injury or Property Claim or a Clinical Negligence Claim

– see Appendix 4

- 3.2.1 It is important that managers (i.e. those who report to executive directors) have a system in place for ensuring checks are made (particularly whilst they are on leave or sick) for any potential or actual letters of claim (see Appendix 5 for an example of a letter of claim) so that the SECSU Head of Corporate Affairs will be notified. It is vital that letters of claim are dealt with immediately, making the role of administrative and clerical staff potentially very important.
- 3.2.2 Managers and executive directors are also responsible for ensuring that the system is set up and is implemented effectively.
- 3.2.3 If there is insufficient information on the letter of claim or equivalent (remember, a letter of claim does not necessarily need to come from the solicitors – the individual can write), then the CCG has 21 days from the date when they received the letter to request further information.
- 3.2.4 Please note that sometimes the claimant's solicitors do not address the letter of claim to a particular person in the CCG. Therefore a system is needed to ensure that these letters do not get sent to another department, but are immediately sent electronically (Email or fax) to the SECSU Head of Corporate Affairs. It is

important that contact is also made immediately by phone to ensure the information has been received.

- 3.2.5 For **personal injury and property claims** the defendant, i.e. the CCG, has **90 days** in which to decide if the claim can be declined or accepted. Therefore it is important that the SECSU Head of Corporate Affairs has all the relevant paperwork within **30 days** (see Appendix 6 for example list of documents which will be required). The insurers (the NHSLA) will then have sufficient time to decide if a defence can be made.
- 3.2.6 For **clinical negligence claims**, the investigator (see Appendix 4 flow chart) must ensure that all the relevant paperwork is sent to the SECSU Head of Corporate Affairs **within 30 days** to determine if the claim is to be admitted. The CCG then has **90 days from the date of the original letter of claim** to admit or defend the claim.
- 3.2.7 For **clinical negligence claims**, the letter of claim should make reference to all relevant documents, including health records, and if possible enclose copies of any documents not likely to already be in possession of the CCG (e.g. any relevant general practitioner records etc.)
- 3.2.8 For **any other claims**, please refer to your line manager or the SECSU Head of Corporate Affairs.

3.3 Liaison with third parties

- 3.3.1 The SECSU Head of Corporate Affairs is the lead contact for legal claims for the CCG and will be responsible for maintaining close links and liaison with third parties such as the NHS Litigation Authority, claimant solicitors and panel solicitors. These links will be established either on receipt of a new claim against the CCG or when the claims process is triggered and will be maintained throughout the time that the claim remains active and will be commensurate with the level of investigation required by each claim on a case by case basis.

3.4 Claims monitoring, analysis and reports

- 3.4.1 Monitoring of claims will take place on a twice yearly and annual basis and will be carried out by the SECSU Head of Corporate Affairs who will produce detailed reports for the Governing Body and, as appropriate, Governing Body committees. The reports will contain detailed information on:
- (i) the number and type of claims received;
 - (ii) progress with the claim so far;
 - (iii) claims trends and risk management issues identified during the management of the claim;
 - (iv) costs and payments information;

- (v) recommendations for action to avoid similar claims issues arising again and to learn from claims incidents;
- (vi) learning from the management of claims
- (vii) Benchmarking data where this is available

3.4.2 Commissioning and overall claims information will be reported to the Audit and Governance Committee as the committee with overall responsibility for the management of claims.

3.5 Learning from experience

3.5.1 The CCG recognises the importance of learning from claims and sharing that learning across the three CCG. In order to facilitate this, update reports will include information on lessons learned across the CCG in relation to claims with risk/governance leads asked to feedback learning so it can be shared.

3.5.2 It will be the responsibility of the SECSU Head of Corporate Affairs to follow up on recommendations contained in the update reports and to make links with other areas of risk management including incident and complaints management and the inclusion of issues onto risk registers where applicable.

3.6 Claims Made By the CCG

3.6.1 From time to time the CCG may wish to make a claim on its own account against its insurances for loss or damage, including the Property Expenses Scheme, or against the insurance of another organisation. If an employee believes that the CCG should make such a claim they should **immediately** contact their line manager and, normally via their line manager, the SECSU Head of Corporate Affairs for further advice. If the CCG decides to make a claim this will be managed centrally by the SECSU Governance Team who will advise all CCG colleagues involved of what is required of them by way of providing evidence in support of the claim.

Section 4: Document Consultation, Approval & Ratification

4.1 Consultation

4.1.1 This document has been produced by the SECSU on behalf of its customer CCGs. In preparing the document for official ratification each CCG will consult with the stakeholders listed below and add their comments to the document as appropriate:

- Counter Fraud Specialist.
- Complaints & Patient Experience Manager

- Chief Finance Officer

4.2 Document Approval & Ratification

- 4.2.1 The CCG Audit and Governance Committee is the committee with delegated authority for the review of this document. The committee has carried out full and proper consultation and has considered the content of the document in terms of current best practice, guidelines, legislation and mandatory and statutory requirements before formally supporting the Policy to the CCG Governing Body. In considering the document for approval the committee also took into account the results and recommendations of the Equality Impact Assessment.
- 4.2.2 This policy was formally approved by the CCG Governing Body on **[MCCG to Complete]**

4.3 Document Development

- 4.3.1 The Audit and Governance Committee and the SECSU Head of Corporate Affairs are responsible for the development, review, implementation, performance management and distribution of this Claims Management Policy in accordance with the procedures set out in this document and the 'Policy for the Development and Management of Approved Documents'

4.4 Version Control & Review

- 4.4.1 Version control of this document is the responsibility of the author in conjunction with the SECSU Corporate Affairs team. The author must ensure that timely reviews are completed and informed to the SECSU corporate affairs team who will in turn maintain a register of approved documents and issue index numbers.
- 4.4.2. This Claims Management Policy will be reviewed every three years by the audit and governance committee or as and when significant changes make earlier review necessary.

Section 5: Training, Distribution & Implementation

5.1 Training

- 5.1.1 There are no specific training requirements related directly to this policy and accompanying procedures for staff in general, as they are meant to be used as a guide by those that have responsibility for managing legal claims.

However managers with responsibility for staff are required to read and understand this policy in order that they can support their staff in the event of a claim and any subsequent investigation. If help and support is needed, staff/managers can contact the SECSU Head of Corporate Affairs.

5.2 Distribution

- 5.2.1 This policy and accompanying procedures are available for all staff to access via the CCG intranet and web site. Staff without computer network access should contact their line managers for information on how to access policies.
- 5.2.2 All staff will be notified of a new or reviewed policy via the monthly staff briefing.
- 5.2.3 This document will be included in the CCG Publication Schemes in compliance with the Freedom of Information Act 2000.

5.3 Implementation and Monitoring

- 5.3.1 The SECSU Head of Corporate Affairs is responsible for the implementation of this policy and the accompanying procedures and will do this in the following ways:
 - a. the policy and the accompanying procedures will be followed whenever the claims procedure is triggered and in the routine monitoring and analysis of claims;
 - b. Detailed, contemporaneous file notes will be kept of each and every claim with actions, contacts with relevant people (NHSLA, panel solicitors etc.) and decisions noted as and when they occur.
- 5.3.2 The effective implementation of this policy will be monitored through the production of update reports to the Audit and Governance Committee. The reports will give an overview of each claim, the status of the claim in terms of whether liability has been admitted or repudiated, learning issues identified and any problems that have been encountered that have adversely affected the investigation process and meeting of timescales. The reports also monitor claims payments and any patterns in the type of claims received. The reports are produced by the SECSU corporate affairs team.

References

Concerns, Complaints and Claims Policy and Procedure, RM07, NHS Litigation Authority, January 2008
CCG Claims Management Policy and Procedures
Civil Procedure Rules Pre-action Protocol for Personal Injury Claims

NHS Litigation Authority, www.nhsla.com
NHSLA Clinical Negligence Reporting Guidelines Fifth Edition

Useful Contacts

- SECSU Head of Corporate Affairs: David Cotter
- SECSU Records management advice: David Stone
- Local Counter Fraud Specialist: Baker Tilley LLP
- NHS Litigation Authority
2nd Floor, 151, Buckingham Palace Road,
London. SW1W 9SZ
Tel: 020 7811 2700
www.nhsla.com

APPENDIX 1

Definitions

A1 Clinical Negligence

A1.1 Clinical negligence claims are a breach of duty of care by members of the health care professions (employed by NHS bodies or by others) consequent on decisions or judgements made by members of those professionals, acting in their professional capacity in the course of employment, and which are admitted as negligent by their employer or are determined as such through the legal process.

A2 Common Law Tort of Negligence

A2.1 A tort is a 'civil wrong doing' (as opposed to a criminal wrong doing) for which the remedy is a common-law action for damages. The common law tort of 'negligence' can give rise to legal action for damages in the civil courts (though it could also be a criminal act too) – which alleges that the CCG failed to take reasonable care of those who might foreseeably be affected by its acts or omissions.

A2.2 For negligence to be proved it would have to be shown that the CCG owed a duty of care to the injured party; that the duty of care was breached; and that injury resulted as a direct consequence of that breach and that loss was suffered as a result of the injury.

A3 Compensation Recovery Unit (CRU)

A3.1 The CRU works with insurance companies, solicitors and the Department of Work and Pensions to recover:

- Amounts of social security benefits paid as a result of an accident, injury or disease, where a compensation payment has been made. This is known as the Compensation Recovery Scheme;
- Costs incurred by NHS hospitals for treatment for injuries from road traffic accidents. This is known as Recovery of NHS Charges,

A4 Contributory Negligence

A4.1 Contributory negligence is when it is alleged or found that the person making a claim for negligence contributed to the negligence that caused their injury.

A5 Duty of Care

A5.1 The common law rule is that we all owe a duty to each other to take reasonable care so as not to cause foreseeable injury to other people or their property. A duty of care is broken by negligent conduct. Whether conduct is negligent is a matter of fact established by evidence.

A6 Employment Claims

A6.1 Employment claims are those made by staff for breaches of employment law e.g. unfair dismissal, discrimination, unequal pay etc.

A7 Employers Liability

A7.1 Employers Liability claims are those for damages made by an employee who has suffered injury(s) whilst acting in the course of their employment and arising from the employer's failure in its statutory duty to provide a safe place of work and operate a safe system of work.

A8. Ex-Gratia Claims/Payments

A8.1 Ex-Gratia claims are payments that the CCG is not obliged to make or for which there is no statutory cover or legal liability. An example is a payment of compensation for financial loss resulting from an act or failure of the CCG (or its servants) which does not give rise to a legal liability or the payment of compensation claims or damages. Such payments must be clearly related to and arise from the services which the CCG is authorised or required to provide. Other examples include payments made to meet hardship caused to persons by official failure or delay.

A8.2 Ex-gratia payments are not reimbursable under the NHSLA liability schemes.

A9 Miscellaneous Claims

A9.1 These may include:

- a. Directors and Officers – claims for damages made by any person or organisation alleging wrongful acts by a board member or other officer of the CCG where the person was acting in good faith and in the course of their employment.
- b. Professional Indemnity/Income Generation – claims for compensation and costs and expenses arising from a breach of professional duty, errors and omissions including libel and slander etc.
- c. Criminal injuries – claims for compensation made for bodily injury that was not as a result of negligence or whereby the perpetrator is unable to be held liable.

A10 Part 36 Offers

A10.1 Offers made in accordance with Part 36 of the Civil Procedure Rules. Part 36 are 'offers to settle'. Part 36 sets out a formal way to conduct negotiations in order to settle a claim before it reaches court. A party can make an offer to settle in any way they see fit, but Part 36 offers are 'without prejudice save as to costs'. This means that any Part 36 offers cannot be communicated to the trial judge until after the outcome of the case has been decided, and only the issues of costs remains.

A10.2 Part 36 offers must be in writing and have a deadline of 21 days for response. More than one offer can be made, but if a party wants to change its offer within the 21 days it must have the permission of the court. Acceptance of an offer must be in writing and is then binding on both parties. Unless otherwise agreed monies must be paid within 14 days of the date of acceptance. If an offer is not accepted the case goes to court.

A10.3 The aim of Part 36 offers is to compel the other party, whether claimant or defendant, to bring a matter to a swift conclusion by making a realistic offer of settlement. Both claimants and defendants can make Part 36 offers.

Property and Material Damage

A11.1 Property expenses claims are those for compensation made by the CCG for accidental loss, damage or destruction of premises owned or occupied by the CCG, including items of equipment owned by the CCG, together with any resulting consequential losses. These claims include other property (equipment) related risks.

A12 Public Liability

A12.1 Public Liability claims are those for damages made by a third party (e.g. patient, service user, visitor, member of the public) to whom the CCG owes a duty of care and who has suffered loss, damage or bodily injury(s) (but not due to clinical treatment) as a result of the CCG breach of duty. Their claims extend to damages arising from defective goods and equipment produced and supplied by the CCG.

A13 Vehicle Claims

A13.1 Vehicle claims are claims for accidents involving CCG vehicles including lease cars. These will be dealt with via the motor insurance company and not by the schemes provided by the NHS Litigation Authority.

A14 Vicarious Liability

A14.1 Vicarious liability means the responsibility of one person for the 'torts' (civil wrong doings) committed by another. There is a common law rule which imposes vicarious liability on employers in respect of torts (civil wrong doings) committed by employees in the course of their employment, i.e. the CCG are vicariously liable for the acts or omissions of its employees when they are acting in the course of their employment.

APPENDIX 2

[Letter to all NHS Chief Executives and Finance Directors]

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 NHSLA 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 NHSLA 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/

Formal Admissions

In keeping with our financial and case management responsibilities, the NHSLA 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 NHSLA 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 Bown
Director of Policy and Communications
Medical Protection Society

Dr Jim Rodger
Head of Professional Services
Medical and Dental Defence Union of Scotland

Dr Peter Carter
Chief Executive and General Secretary
Royal College of Nursing

Martin Fletcher Chief Executive

National Patient Safety Agency

Dr. Hamish Meldrum Chairman of Council
British Medical Association

The GMC fully supports this advice from the NHSLA. If something goes wrong, patients deserve an apology and a full explanation. In Good Medical Practice we say 'if a patient under your care has suffered harm or distress, you must act immediately to put matters right, if that is possible. You should offer an apology and explain fully and promptly to the patient what has happened and the likely short-term and long-term effects.'

Finlay Scott
Chief Executive
General Medical Council

APPENDIX 3

External Reporting Requirements

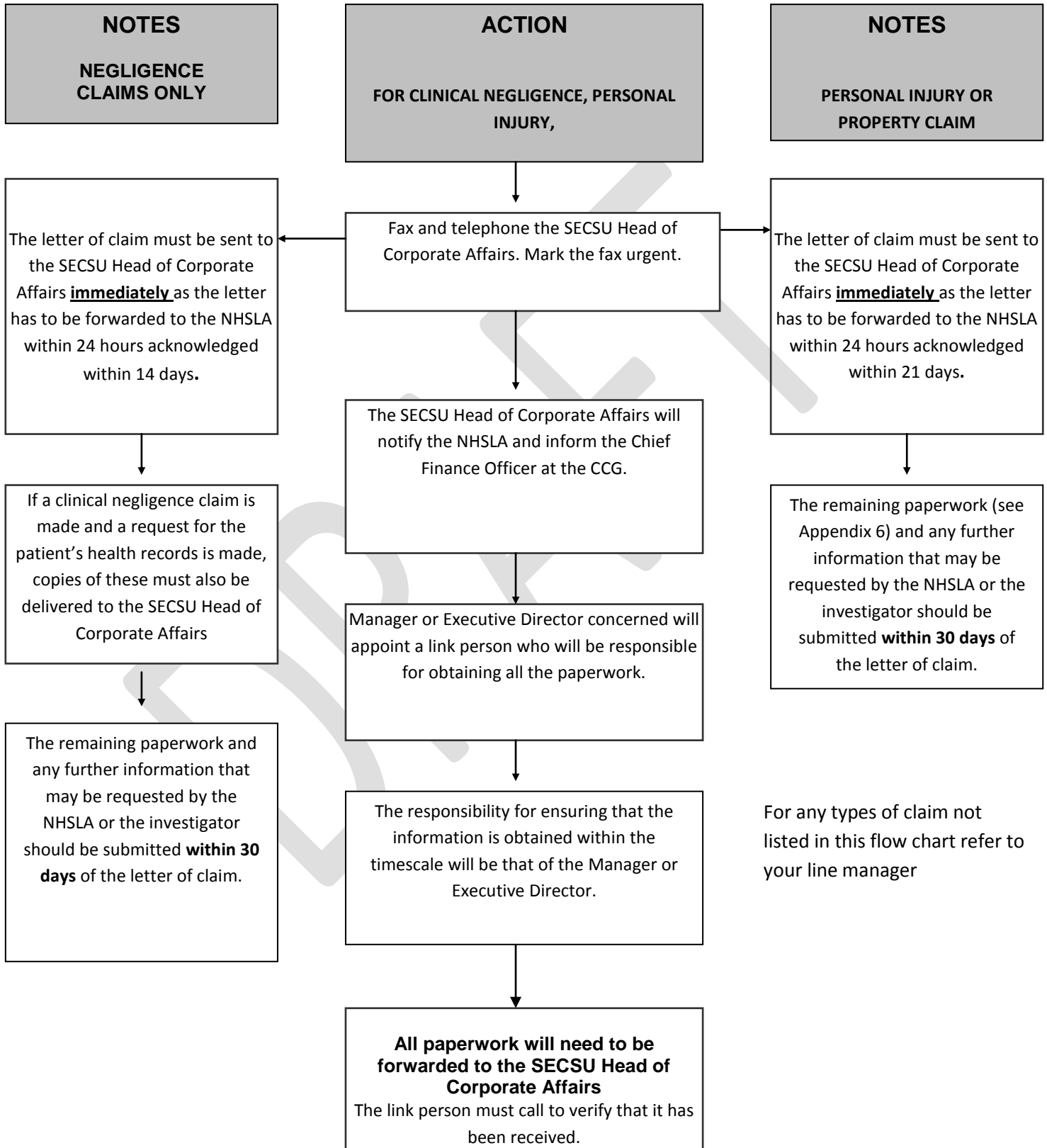
With any claim, incident or complaint consideration of involving external bodies should be made. Below is a list of external agencies and stakeholders who may need to be informed/ involved on a case by case basis. Further details are available in the incident reporting policies. This list is not exhaustive but will act as a guideline, there may be other external agencies which need to be contacted depending upon 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 & Safety Executive	Injuries, diseases, dangerous occurrences. Where a staff member or self-employed person working on the premises suffers on injury which results in them being unable to do their work for more than 3 days. Report within 10 days of incident	Health and Safety lead
NHS England	All serious adverse incidents – category red. In particular those which may attract media attention.	Clinical Governance lead
National Patient Safety Agency	Adverse Patient Incidents –all reported via the NRLS by Dec. 2004. Category red incidents must be reported within 3 days	Clinical Governance lead
Medicines & Healthcare products Regulatory Agency	Any incident involving a medical device	Clinical Governance lead
Medicines Control Agency	Suspected adverse reactions to medicines	Pharmaceutical Advisors.
Environmental Health	Incidents involving pests, food hygiene, Infections, diseases etc.	Health and Safety lead
NHS Estates	Defects and failure relating to nonmedical equipment, engineering plant, installed services, building fabric.	Estates lead
DoH Investigations and Inquiries Unit	All serious adverse incidents – category red. In particular those which may attract media attention.	Chief officer or appropriate Director.

NHS Litigation Authority	All incidents leading to/ potentially leading to more than 10 days sickness absence, fatal injuries, amputation, head injuries, likely HSE prosecution, potential legal implications.	Health and Safety lead
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/ Risk management Lead
Other CCG, NHS Trusts, Local Authority	Any incident that may have negative consequences for other organisations	Chief officer or appropriate Director.

APPENDIX 4

What to do if you receive a Notification of a Personal Injury, Property or Clinical Negligence Claim



APPENDIX 5

Example of a Letter of Claim

To: South London CCG (Defendant)

Re:

Claimant's full name

Claimant's full address

Claimant's National Insurance Number

Claimant's Date of Birth

Claimant's Clock or Works Number

Claimant's employer (name and address)

Dear Sirs

We are instructed by the above named to claim damages in connection with an

(accident at work/road traffic accident/tripping accident) on (day, month, and year)

at ***(place of accident which must be sufficiently detailed to establish location)***

The circumstances of the accident are: -

(brief outline)

The reason why we are alleging fault is: -

(simple explanation e.g. defective machine, broken ground)

A description of the claimant's injuries is as follows: -

(brief outline)

The claimant is employed as ***(occupation)*** and has had the following time off work

(dates of absence). Her/ His appropriate weekly income is ***(insert if known)***.

If you are the claimant's employers, please provide us with any earnings details that will enable us to calculate his/her financial loss.-

We are obtaining a police report and will let you have a copy of the same upon your undertaking to meet the fee.

We have also sent a letter of claim to **(name and address)** and a copy of that letter is attached. We understand their insurers are **(name and claims number if known)**.

At this stage of our enquiries we would expect the documents contained in parts **(insert appropriate parts of standard disclosure list)** to be relevant to this action.

A copy of this letter is attached for you to send to your insurers. Please also note that failure to forward this letter to them might prejudice your insurance cover and /or the conduct of any subsequent legal proceedings.

Finally we expect an acknowledgement of this letter by yourselves or your insurers, within 21 days.

Yours faithfully

APPENDIX 6

Workplace Claims - Information Required

- (i) Accident book entry/accident/incident form
- (ii) First-aider report
- (iii) Surgery record
- (iv) Manager / Supervisor accident report
- (v) Safety Representatives accident report
- (vi) Reporting of Injuries, Diseases, Dangerous Occurrences to Health & Safety Executive
- (vii) Other communications between defendants and Health & Safety Executive
- (viii) Minutes of Health & Safety Committee meeting(s) where accident / matter considered
- (ix) Report to DSS
- (x) Documents listed above relative to any previous accident / matter identified by the claimant and relied upon as proof of negligence
- (xi) Earnings information where defendant is employer

Documents required to comply with the Management of Health and Safety at Work Regulations 1992:

- (i) Pre-accident Risk Assessment
- (ii) Post-accident Re-assessment
- (iii) Accident Investigation Report prepared in implementing the requirement
- (iv) Health Surveillance Records in appropriate class required
- (v) Information provided to employees under Regulation 8
- (vi) Documents relating to the employee's Health & Safety Training required by regulation.

APPENDIX 7 – Checklist for Approval of Policies and Organisational Documents

To be completed by Policy Owner and attached to any document which guides practice or organisational approach 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?	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	Rationale		
	Are reasons for development of the document stated?	Yes	
3.	Development Process		
	Are people involved in the development identified?	Yes	
	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	Yes	
	Is there evidence of consultation with stakeholders and users?	Yes	Where appropriate
4.	Content		
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Yes	
	Are key references cited?	Yes	
	Are the references cited in full?	Yes	
	Are supporting documents referenced?	Yes	
6.	Approval		
	Does the document identify which CCG committee/group will approve it?	Yes	
	If appropriate have third party organisations approved the	Yes	Not appropriate

	document? (i.e. Staff Side bodies for HR matters/ partners for joint documents)		
7.	Dissemination and Implementation		
	Is there an outline/plan to identify how this will be done?	Yes	
	Does the plan include the necessary training/support to ensure compliance?	Yes	

	Title of document being reviewed:	Yes/No/Unsure	Comments
8.	Document Control		
	Does the document identify where it will be held?	Yes	
	Have archiving arrangements for superseded documents been addressed?	No	Not relevant – new policy
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?	Yes	
	Is there a plan to review or audit compliance with the document?	Yes	
10.	Review Date		
	Is the review date identified?	Yes	
	Is the frequency of review identified? If so is it acceptable?	Yes	
11.	Overall Responsibility for the Document		
	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the documentation?	Yes	
12	Equality Impact Assessment (EIA)		
	Has an equality analysis been undertaken in preparation for this policy?	Yes	
	Has the Accountable Executive undertaken a review, and signed off	Yes	Review undertaken by EMT - Mitigating action not required

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

	any mitigating actions to reduce any impact on protected groups?		
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Accountable Executive Approval			
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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.			
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Name		Date	
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Signature			
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Sub-Committee /Governing Body Chair Approval			
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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.			
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Name		Date	
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Signature			
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APPENDIX 8: Equality Impact Assessment

This is a checklist to ensure relevant equality and equity aspects of Policies, protocols or guidance have been addressed either in the main body of the document or in a separate equality & equity impact assessment (EEIA)/ equality analysis. It is not a substitute for EEIA/ equality analysis which is normally required unless it can be shown that a proposal has no capacity to influence equality. The checklist is to enable the Policy lead and the relevant committee to see whether the EEIA has covered the ground and to give assurance that the proposals will not only be legal but also fair and equitable and lead to reduced health inequality.

	Challenge questions	Yes/No DK/NA	Comments
1	Does the document set out the health care needs of the groups intended to benefit from the proposal, including any differences in need in terms of the legally protected or other characteristics (such as socioeconomic position)	NA	
2	Does the document set out any known existing inequality in access, quality, experience and outcome of care for populations relevant to the proposal (i.e. as defined in 1. and in relation to the existing health or care service)?	NA	
3	Are there any particular public concerns about equality about the Policy area than need to be addressed?	NA	
4	Has the Policy described any gaps in knowledge about 1 -3, and any action taken to fill gaps (or recommendations for action)	NA	
5	Does the document set out risks to equity of access, quality, experience and outcomes including risk of direct or indirect discrimination, and risk to good relations between people of different protected characteristics*?	NA	
6	Does the document describe any specific opportunities to promote equality and human rights, good relations between people of different protected characteristics, to enhance participation, etc.?	Yes	The document provides a process to ensure that all claims are processed in a timely fashion and fair manner.
7	Does the document describe how the proposal, Policy etc. will address the identified inequalities?	NA	
8	Does the document make recommendations to mitigate risks and enhance the opportunities to promote equality and equity?	NA	
9	Does the document describe how monitoring and reporting will take place to assure equality and equity in the future including to stakeholders? [audit and monitoring table may be used]	Yes	The Policy describes the statutory timescales and framework for all claims. Adherence to the policy will be monitored and any non-compliance fully investigated.

* Race/ ethnicity, gender (including gender reassignment) age, religion or belief, disability, sexual orientation, marriage or civil partnership, pregnancy and maternity. This will include groups such as refugees and asylum seekers, new migrants, Gypsy and Traveller communities; and people with long term conditions, hearing or visual impairments, mental health problems or learning disability

APPENDIX 9: NHSLA Joining Letter



Litigation Authority

2nd Floor
151 Buckingham Palace
Road
London
SW1W
9SZ

DX: 6611000
Victoria 91 SW

Tel: 020 7811 2700
Direct Dial: [REDACTED]

Eleanor Brown, Chief Officer
Merton Clinical Commissioning Group

24th June 2013

Dear Eleanor,

I write to welcome you as a new member of the NHS Litigation Authority's indemnity schemes.

I enclose a welcome pack containing what I hope will be useful information about the NHS LA and our schemes.

Our schemes cover the clinical liabilities of the NHS and providers of NHS care and non-clinical legal liabilities of the NHS in England, as well as covering damage to NHS property assets.

All NHS organisations in England are eligible to join all our schemes, and from 1 April 2013 independent providers of NHS care may join our clinical liability scheme, CNST.

The NHS LA is part of the NHS. As a special health authority we operate our schemes on a not-for-profit basis funded by contributions from our members. Unlike insurers, none of the contributions we collect are set aside for profit. Our schemes are genuine risk pools operated for the benefit of our members.

You can find out more about who we are and what we do in section 1 of your welcome pack.

Your organisation has joined the following NHS LA schemes:

The **Clinical Negligence Scheme for Trusts (CNST)** will cover your legal liability to NHS patients arising from negligent care, treatment and diagnosis. CNST cover is unlimited in value.

The **Liabilities to Third Parties Scheme (LTPS)** covers non-clinical liabilities, typically employers' and public liability, together with non-clinical professional indemnity and the personal liabilities of your executives and staff in the course of their employment. Cover in respect of personal injury is unlimited in value, but an excess applies to employers' and public liability claims (please see section 4 – "Excesses and Claims Payments" in your welcome pack).

The **Property Expenses Scheme (PES)** covers first-party buildings and contents damage, capped at £1m per claim. Like LTPS, excesses apply to the buildings and contents cover (again, please see section 4 – "Excess and Claims Payments" in your welcome pack).

A summary of the cover for each scheme is in sections 2 and 3 of your welcome pack. Cover extends to the standard NHS contract. In the event that you are seeking cover for activities which fall outside the standard NHS contract, please notify the NHS LA immediately at [REDACTED] so we can confirm cover.

Your period of cover will begin on 1 April 2013 for three years and thereafter is renewable annually. By becoming a member you are agreeing to comply with the scheme regulations, [membership rules](#) and [reporting guidelines](#).

Our remit is to pay justified claims fairly and promptly and to robustly defend claims without merit. We also contribute to making NHS care safer by sharing learning from claims.

Below are the contact details for your dedicated client managers at the NHS LA for claims related matters. These individuals will work closely with you to resolve your claims and to understand the particular issues affecting your organisation. Other NHS LA contacts can be found in your welcome pack.

- For CNST claims:

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

- For LTPS & PES claims:

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

This is a controlled document. Whilst this document may be printed, the electronic version posted on the intranet is the controlled copy. Any printed copies of the document are not controlled.

You should not hesitate to contact your client managers if you have any queries. I very much look forward to working with you.

Yours sincerely



Catherine Dixon
Chief Executive

catherine.dixon@nhs.uk