# POLICY FOR HANDLING OF CLINICAL NEGLIGENCE CLAIMS

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<th>Date</th>
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<tr>
<td>Oct 07</td>
<td>Updated in line with NHSLA Standards</td>
<td>Michaela Morris, Dir. Of Nursing &amp; Operations</td>
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<td>Oct 09</td>
<td>General update and review.</td>
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<td>June 10</td>
<td>General update and review reflecting changes:</td>
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<td>1 Trust structure.</td>
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<td>2 New reporting arrangements to Trust Board.</td>
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<td>3 Training.</td>
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<tr>
<td>Dec 10</td>
<td>General update &amp; review reflecting changes to Trust Structure</td>
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<tr>
<td>February</td>
<td>Minor changes.</td>
<td>Risk Scrutiny Committee (Chair’s action)</td>
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Compiled by: Manai Lall, Claims and Coroners Manager

Ratified by: Trust Board

First ratified: January 2003

Reviewed: February 2014
February 2017, or earlier if required

Next Review Date: February 2017, or earlier if required

Target Audience: All Trust Staff

Equality Impact Assessment Carried Out By: Manai Lall, Claims and Coroners Manager

Contact Name for Comments: Manai Lall, Claims and Coroners Manager
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INTRODUCTION

The Trust is committed to the effective and timely investigation and response to any allegation of clinical negligence. In managing claims, the Trust aims to achieve an equitable outcome for all parties concerned, to take appropriate corrective action, facilitate wider organisational learning and to reduce the risk of future litigation.

PURPOSE & SCOPE

The purpose of this policy is to detail the structure and framework for the management of clinical negligence claims at Ashford & St Peter’s Hospitals NHS Foundation Trust (the Trust). The policy takes account of statutory requirements and guidance and defines the claims process, the roles and responsibilities of staff within the Trust and relationships with claimants and third parties such as the National Health Service Litigation Authority (NHSLA) and Solicitors.

The policy also addresses the possible link between an adverse verdict at a Coroner’s Inquest and a clinical negligence claim and details the actions that will be taken in the event of the Trust instructing Solicitors to represent the organisation at Inquest.

The policy should be read in conjunction with the NHS Litigation Authority’s Clinical Negligence Reporting Guidelines which may be downloaded from www.nhsla.com.
3.1 NHSLA SCHEMES RELEVANT TO THE TRUST

The Trust is a member of the NHS Litigation Authority (NHSLA) Clinical Negligence Scheme for Trusts (CNST).

The NHSLA is a special health authority and part of the NHS. The CNST is administered by the NHSLA and provide indemnity to members and their employees in respect of clinical claims arising from events which occurred on or after 1 April 1995 as detailed below:

- Clinical Negligence Scheme for Trusts (CNST) for an incident from 1 April 1995.

3.2 DEFINITION OF A CLAIM

The NHSLA “Clinical Negligence Reporting Guidelines” define a claim as:

Allegations of clinical negligence and/or a demand for compensation made following an adverse clinical incident resulting in personal injury. Any clinical incident which carries significant litigation risk for the Trust.

The NHSLA has stated:

“This includes complaints leading to claims, notification of serious adverse events, incident reports generated by risk management processes (any of which represent a significant litigation risk), and requests for the disclosure of medical records. Defining an incident as a ‘claim’ in the absence of a demand for compensation does NOT of itself imply that the NHSLA accepts that compensation will ultimately be paid. It simply means that a preliminary analysis should be carried out and the matter may need to be reported”.

3.3 TRIGGERS FOR INVOKING THE CLAIMS PROCEDURE

The following will act as triggers for undertaking an initial claims investigation (Preliminary Analysis) with possible formal report to the NHSLA in accordance with the NHSLA Reporting Guidelines:

- Reports generated by the Trust’s internal risk management processes which indicate a significant litigation risk.
- An incident likely to generate substantial compensation (e.g. cerebral palsy claims).
- Publicly or media-sensitive cases.
- Serious professional misconduct.
A letter from a complainant, patient or carer requesting compensation (Litigants in Person).

An adverse verdict following a Coroner’s Inquest.

A letter from a Solicitor:
1. Requesting disclosure of medical records for the purposes of investigating a medical negligence claim.
2. Letter of Claim.
3. Making a formal “Part 36 Offer”.
4. Court proceedings issued against the Trust.

3.4 NHSLA CLINICAL NEGLIGENCE SCHEME FOR TRUSTS (CNST)

In the management of clinical negligence claims, the Trust will comply with the Pre-Action Protocol for the Resolution of Clinical Disputes (1998) and the NHSLA Clinical Negligence Scheme for Trusts Reporting Guidelines fifth edition.

3.5 LIMITATION

A claimant will usually have a period of three years from the date of incident or date of knowledge of the incident in which to issue a claim for negligence. In the case of a paediatric claim, the three year limitation period will commence on the patient’s eighteenth birthday. Limitation will not normally apply to a person incapable of managing and administering their own affairs. Additionally, the Court has discretion to waive the limitation period in some circumstances.

3.6 TIMESCALES FOR EXCHANGE OF INFORMATION

In exchanging information, the Trust will comply with the requirements of the Pre Action Protocol for the Resolution of Clinical Disputes (1998) and the NHSLA (CNST) Reporting Guidelines (2008). Appendix 1 summarises the Trust’s responsibilities and timescales for action.

3.7 CONFIDENTIALITY

3.7.1 MANAGEMENT OF INFORMATION

Information, records and disclosure will be managed in accordance with the Trust’s Records Management Policy and relevant guidance and legislation on receipt of the appropriate authority from the patient, the executor of an estate or the Court.

Reports and correspondence which do not have as their sole or dominant purpose actual or prospective litigation are likely to be discloseable. This will include Incident Reports and Investigations, complaint Investigations and statements from clinicians.

The Claims and Coroners Manager is responsible for ensuring that all relevant records and information relating to a claim are available and protected. Records to be protected will normally include the medical records file, X-rays and scans, pathology specimens and electronic recordings. Supplementary documents (i.e. incident and complaint investigations) will also be protected.
The Claims and Coroners Manager is responsible for maintaining claims information via the Trust’s integrated risk management database (Datix). Standard templates for claims documentation are available for use on the Datix system.

3.7.2 BEING OPEN AND HONEST

The Trust recognises that following an Incident, the patient/family may consider pursuing a medical negligence claim against the Trust. At this time, requests for disclosure of information will be managed in accordance with relevant guidance and legislation. (Please see Section 3.7.1 – Management of Information).

However, documents generated in response to an intimation of a Clinical Negligence claim (i.e. their sole purpose is litigation) will be considered privileged and the Trust will not share these with the claimant or their representative – unless required to do so by the Pre Action Protocol for the Resolution of Clinical Disputes or ordered to do so by the Courts. In the event that a claimant is acting as a “Litigant in Person” the Claims and Coroners Manager will advise the claimant, in writing, of this limitation.

3.8 SUPPORTING STAFF

The process of investigation and the procedural issues relating to a claim can be very time consuming for staff involved. In addition, the progress of a claim can be slow and lengthy. In some cases will take years rather than months to conclude. The Trust acknowledges that staff may find the process stressful and recognises the importance of the claims management process being treated with sensitivity and staff being appropriately supported.

The Trust's "Management and reduction of Stress Policy" details the processes in place to support staff at times of stress.

Trust Managers and Senior Clinical Staff will have a responsibility for ensuring that their staff are appropriately supported and, where necessary, should seek guidance from the Human Resources Department.

In addition, the Claims and Coroners Manager will be available to support staff explaining and discussing the claims management process on an individual basis. This will include keeping involved staff informed of the progress of the claim.

3.9 TRAINING & AWARENESS

On request, the Claims and Coroners Manager will provide training on the management of Clinical Negligence Claims within the Trust.

An awareness of the Claims Management process and the relationships with the Trusts wider risk management processes will be given to all new staff as part of Trust Induction Programme.

4 DUTIES WITHIN THE ORGANISATION

4.1 TRUST BOARD AND EXECUTIVE RESPONSIBILITIES
The Chief Executive has overall responsibility for clinical negligence claims within the Trust. The designated Board members (Chief Nurse & Medical Director) will keep the Chief Executive advised of relevant issues.

The Trust Board will receive an annual clinical claims review which will detail by Division:

- Reported claims (number)
- Settled claims (number, value + code by adverse event)

This report will also detail the Trust’s compliance with NHSLA reporting Standards. The report will also indicate where a new or settled claim has previously been reported / investigated as an Incident or Complaint and will summarise any changes in practice or learning as a result of a settled claim.

4.2 DAY TO DAY MANAGEMENT OF CLINICAL NEGLIGENCE CLAIMS

4.2.1 SENIOR MANAGEMENT

Responsibility for the management of clinical claims is delegated to the **Claims and Coroners Manager**. The Claims and Coroners Manager will ensure compliance with the NHSLA (CNST) Reporting Guidelines (2008) and the Pre Action Protocol for the Resolution of Clinical Disputes (1998) including Trust timescales for action and will be responsible for the initial investigation of any intimation of a claim.

The **Claims and Coroners Manager** will report directly to the Chief Nurse and will be supported by an administrative assistant.

The **Claims and Coroners Manager** will have experience and/or training in clinical negligence and will be the Trust’s nominated representative responsible for liaison with all third parties in clinical negligence claim matters. This will include the NHSLA, Trust Solicitors, claimants Solicitors and the Coroner (see also section 7).

The Chief Nurse will ensure that appropriate advice can be obtained in the absence of the **Claims and Coroners Manager**.

All staff have a responsibility to assist with the investigation and progress of claims as required and the **Claims and Coroners Manager** will provide training/ support for both individuals and groups as requested.

Senior Clinicians and Trust Managers are responsible for ensuring that their staff are appropriately supported and provide a positive contribution to the litigation process.

Divisional Directors for the relevant Specialty are responsible for ensuring risk management reviews and implementation of any recommended change in practice arising from a settled claim investigation. Risk management issues should be considered at “local” governance committees and reported at the Trust Governance Committee. Reports will include the detail and monitoring arrangements of action plans as necessary.

4.2.2 DIVISIONAL DIRECTORS – LEAD CONSULTANTS
In terms of individual claims, Consultant staff with overall responsibility for the patient’s care will have a significant involvement in the clinical claims process. Specific areas of responsibility will include:

- Authorising disclosure of medical records.
- Provision of initial comments on care management and identifying any issues of liability for the Trust.
- Consideration of risk management issues and implementation of any appropriate changes in practice.
- Responding to specific questions raised (Head of Customer Affairs / Trust’s Solicitors / NHSLA).
- Reviewing and responding to Expert reports.
- Reviewing and responding to specific allegations of negligence following receipt of a Letter of Claim or when proceedings are issued.
- Provision of witness statements.
- Attendance at case conferences with Counsel and Trial hearings.

4.2.3 INVESTIGATING MANAGER

The Claims and Coroners Manager will be responsible for the initial investigation of all intimations of a clinical negligence claim.

In so doing, the Claims and Coroners Manager will:

- Open a management file.
- Take all relevant documents into safe keeping.
- Review the medical records and other relevant documentation such as incident reports and investigations and complaint correspondence.
- Advise relevant staff and the Divisional Director of the intimation of a medical negligence claim and request comments / statements.
- Seek authority for disclosure of medical records and disclose as appropriate.
- Assess the litigation risk and draft a Preliminary Report (Please see Appendix 2).

5 RISK MANAGEMENT – LINKS WITH INCIDENT AND COMPLAINTS MANAGEMENT

Appropriate risk management action is key to reducing adverse incidents and the resulting claims that may follow.

The Claims and Coroners Manager will liaise with the Quality and Complaints Departments, keeping under review the potential for specific incidents and complaints to become a claim.
The **Claims and Coroners Manager** will also liaise with representatives of the Maternity Service, including the Associate Director – Midwifery and the Clinical Governance Manager to ensure a strategic approach to the management of adverse maternity incidents that might lead to a claim. (Please see Process flow chart at Appendix 4).

The **Claims and Coroners Manager** will liaise with the investigating officer in the investigation of a designated Serious Untoward Incident; assessing the potential of an incident to become a claim.

In the event that an incident or complaint is assessed as having the potential to become a claim, the investigation will be discussed with the Claims and Coroners Manager. This is the responsibility of the relevant manager.

On receipt of an intimation of a claim, the **Claims and Coroners Manager** will refer to the Trust’s Risk Management Database to establish whether incident and/or complaint documentation has already been created. In the event that a complaint investigation is already progressing, the complaints team will be advised of the change in circumstance and, in the event that proceedings have been issued or served, the complaints investigation will cease following the Trust’s letter of response to concerns raised. This reflects statutory guidance on Complaints management. All intimations of a claim will be investigated.

The **Claims and Coroners Manager** will assess risk management issues associated with each new claim and document this assessment in the NHSLA Preliminary Report. When instructed on a case, Risk management issues will also be assessed and documented within Advisory Reports by the Trust’s Solicitors.

Divisional Directors, lead Consultants and the relevant Trust Manager are responsible for risk management review of individual claims. Appropriate actions arising from claims investigations will be the responsibility of the Clinical Director and/or Trust Manager for the relevant Specialty(s).

Where identified, risk management information will be held on individual cases. Following settlement of a case any changes in practice as a result of the assessment of risk will be reported to the Patient Safety & Risk Committee.

In addition, as required, actions taken and changes in practice as a result of individual claims, will be reported to the NHSLA.

6 **ROOT CAUSE ANALYSIS (RCA)**

The National Patient Safety Agency (NPSA) promotes the practice of Root Cause Analysis (RCA) to ensure that appropriate investigation methods are applied to find the actual causes of incidents.
RCA is the recommended investigation process for all healthcare organisations to enable them to identify the contributory factors that led to an incident occurring. It is important to establish the root causes of an incident in order to avoid early judgement or attribution.

Incident Report templates and RCA tools can be found on Ashford and St Peter’s Hospitals ‘TrustNet’. In addition, the National Patient Safety Agency (NPSA) provides an electronic ‘toolkit’. This is an interactive resource to help guide staff through the RCA process and can be found on the NPSA website address - [www.npsa.nhs.uk/rcatoolkit](http://www.npsa.nhs.uk/rcatoolkit)

The principles of RCA will be applied to each claim investigation. The level of application will vary according to the circumstance of the individual claim and will be reflected in the Preliminary Analysis for each case and reported to the NHSLA.

7 CORONER’S INVESTIGATIONS

The Coroners and Claims Manager will be the Trust’s nominated representative in liaising with the Coroner’s Office and responsible for ensuring appropriate disclosure of relevant information to the Coroner including medical records, staff statements, incident reports and investigations and complaint investigations.

The Claims and Coroners Manager will actively assess the risk of a Coroner’s case becoming a claim, reporting, if necessary, to the NHSLA in accordance with the CNST Reporting Guidelines (2008).

The Claims and Coroners Manager will keep the Medical Director, relevant Divisional Director and the Chief Nurse informed of the risk associated with a Coroner’s investigation. This will include the risk to the Trust’s reputation and the risk of a medical negligence claim.

On conclusion of a Coroner's investigation, the outcome of will be reported to the Chief Nurse and Director of Patient Safety.

8 LEGAL ADVICE

The Board will ensure that, where legal advice is required, but is not obtained under the direct instruction of the NHSLA (such as support for Coroners cases and investigation of serious incidents and complaints), advice is obtained from Solicitors who have appropriate expertise in clinical negligence claims. This responsibility will be delegated to the Head of Customer Affairs who will instruct an NHSLA panel listed firm. The costs of such instruction will not be recoverable from the NHSLA.

In all reported clinical negligence cases the Trust will work in collaboration with the NHSLA. Any legal instruction will be the responsibility of the NHSLA who will also assume responsibility for the associated costs. (Please see Section 11).
9 MEDIA MANAGEMENT

The Claims and Coroners Manager will advise the Head of Communications of any medical negligence claim where there is a considered risk of adverse media publicity.

In the event of media interest in a reported case, the Claims and Coroners Manager will advise the NHSLA and seek advice regarding the release of press statements.

Where Court Hearings are assessed as being likely to generate media interest, the NHSLA will agree with the Trust a press release or position to be adopted prior to the event.

10 MP INVOLVEMENT

The Claims and Coroners Manager will advise the NHSLA of any interest/involvement of a claimant’s M.P.

11 FINANCIAL INFORMATION

The responsibility for managing and settling clinical negligence claims transferred from the Trust to the NHSLA on 1 April 2002. The Trust has no authority to settle any claim. Where a claim is settled without referral to and agreement with the NHSLA then the Trust will be liable for the payment. For any clinical negligence claims not covered by the NHSLA (which should be the exception), approval to negotiate settlement shall be given by the Chief Executive and Director of Finance and information.

The Trust has indemnity via the Clinical Negligence Scheme for Trusts (CNST) administered via the NHSLA. This scheme provides a ‘pay as you go’ system. Insurance premiums are issued annually.

Occasionally, having made a complaint, a complainant will request compensation in the form of an ‘ex gratia’ settlement. Such settlements are not based upon legal liability and, in the event that the Trust makes such a payment, are not reimbursable under the CNST by the NHSLA. All requests for compensation associated with clinical care will be assessed by the Claims and Coroners Manager and, where appropriate, reported to the NHSLA in accordance with NHSLA reporting guidelines. (Please see Guidelines for Managers on receipt of a request for financial compensation from a Complainant (Remedy).

Financial responsibility for claims managed via the CNST is retained by the NHSLA, therefore, key management decisions concerning admissions made and monetary compensation are subject to authorisation from the NHSLA.

Any clinical negligence claim settled by the Trust outside of the NHSLA arrangements (which should be exception) shall be recorded in the Trust’s Losses and Special Payments Register. A summary of this register, which shall be subject to audit, will be presented to the Audit Committee twice in each financial year.
The Department of Health requires a summary of the Trust's Losses and Special Payments Register to be submitted as part of the Trust's annual accounts summarisation schedules. On the basis of this the Department of Health may ask for documentation on a sample of cases.

12 GOVERNANCE & REPORTING

Claims information will be recorded and retained on the Trust's integrated risk management database – ‘DATIX’.

This database will be interrogated to provide quarterly reports on the status of clinical negligence claims as follows:

- Divisional Directors / Governance Leads
- Patient Safety & Risk Committee

An annual report summarising claims activity will be submitted to Part II of the Trust Board. This report will include a summary of compliance with NHSLA reporting standards.

Additional information will be provided as requested to support the analysis of trends in associated with Incidents and Complaints.

The Claims and Coroners Manager will be responsible for ensuring the accurate recording and updating of claims data on the integrated database and the drafting of Claims related reports.

Analysis of claims data will be both qualitative and quantitative and include details of any trends identified in claims management to inform Divisions, Trust Governance Committees and the Trust Board.

Policy documentation in relation to clinical negligence claims will be considered and ratified by the Trust Executive Committee.

13 LEARNING FROM EXPERIENCE

When a claim is received, the Claims and Coroners Manager will make an initial assessment of the claim with relevant healthcare professional/s and consider whether there are risk management issues or any lessons that can be learned from the claim at this early stage.

As the claim progresses, and particularly after receiving an independent medical report, risk management issues may be highlighted which require further discussion with the relevant Divisional Director, healthcare professional/s, Trust Risk Manager and Divisional Governance Manager.
In the event that an organisation wide risk becomes apparent, this will be discussed with the Medical Director, Chief Nurse and Trust Risk Manager and disseminated through the organisation via email.

On settlement of a Claim, the Claims and Coroners Manager will advise the relevant Divisional Director and healthcare professional/s. The Divisional Director and/or healthcare professional will be asked to review any risk management issues within the local governance group reporting back to the Head of Customer Affairs on the outcome of the discussions and any relevant learning or actions taken. This learning will be reported quarterly to the Patient Safety & Risk Committee. In addition, individual cases will be reported via the Trust’s Risk Management Newsletter “Lessons Learned”.

14 DISSEMINATION & IMPLEMENTATION

This policy will be made available on the Trust’s Intranet and internet sites.

15 MONITORING COMPLIANCE

The Claims and Coroners Manager will monitor the Trust’s compliance with this policy.

The achievement of key timescales (Appendix 1) will be monitored on an on-going basis recording information on individual claims files, spreadsheets held within the Claims Department and on the Trust’s integrated Risk Management database.

Gaps in compliance will be reviewed by the Claims and Coroners Manager and discussed, as necessary, at the Department’s quarterly performance meeting. The Claims and Coroners Manager will be responsible for taking action as required.

At the end of each financial year, the Claims and Coroners Manager will audit and report on compliance with the following key timescales (see Appendix 1) in the Board annual review:

- Disclosure of Records.
- Preliminary Analysis of Case.
- Reporting of Letters of Claim.
- Reporting of Part 36 Offers.
- Reporting of Legal Proceedings.

16 REVIEW

This policy will be reviewed if Statutory Requirements / Best Practice Guidelines change or no longer than 3 years after the previous review.

17 ARCHIVING ARRANGEMENTS
This policy will be archived in hard copy by the Quality Department and any request for retrieval should be made to the Quality Department.

18 REFERENCES & WEBSITES


NHS Litigation Authority – www.nhsla.com

Department of Constitutional Affairs (DCA) – www.dca.gov.uk

National Patient Safety Agency (NPSA) – www.npsa.nhs.uk

19 EQUALITY IMPACT ASSESSMENT SUMMARY

Name: Manai Lall, Claims and Coroners Manager

Policy/Service: Policy for Handling of Clinical Claims

Background

- Description of the aims of the policy
- Context in which the policy operates
- Who was involved in the Equality Impact Assessment

The purpose of this policy is to detail the structure and framework for the management of clinical negligence claims at Ashford & St Peter’s Hospitals NHS Foundation Trust (the Trust). The policy takes account of statutory requirements and guidance and defines the claims process, the roles and responsibilities of staff within the Trust and relationships with claimant and third parties such as the National Health Service Litigation Authority (NHSLA), Solicitors.
The policy also addresses the possible link between an adverse verdict at a Coroner’s Inquest and a medical negligence claim and details the actions that will be taken in the event of the Trust instructing Solicitors to represent the organisation at Inquest.

The policy should be read in conjunction with the NHS Litigation Authority’s Clinical Negligence Reporting Guidelines which may be downloaded from www.nhsla.com.

Methodology

- A brief account of how the likely effects of the policy was assessed (to include race and ethnic origin, disability, gender, culture, religion or belief, sexual orientation, age)
- The data sources and any other information used
- The consultation that was carried out (who, why and how?)

The policy equally effects any individual who wishes to bring a clinical negligence claim against the Trust and does not discriminate between individuals.

The policy sets out the Trust’s process for managing clinical negligence claims in accordance with Statutory Regulation and National Guidelines.

Key Findings

- Describe the results of the assessment
- Identify if there is adverse or a potentially adverse impacts for any equalities groups

No adverse or potentially adverse impacts have been assessed for any equalities groups.

Conclusion

- Provide a summary of the overall conclusions

This is an internal policy that describes the Trust’s approach to the management of clinical negligence claims in accordance with Statutory Regulations and Guidelines.

Recommendations

- State recommended changes to the proposed policy as a result of the impact assessment
- Where it has not been possible to amend the policy, provide the detail of any actions that have been identified
- Describe the plans for reviewing the assessment

No changes are recommended.

Guidance on Equalities Groups

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<th>Religion or belief (include dress, individual needs)</th>
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<tr>
<td>Volume 3</td>
<td>Section 2</td>
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<td>Management</td>
<td>First Ratified Jan 2003</td>
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<td>Issue 7</td>
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<td><strong>Information on services and employment, and ease of access to services and employment</strong></td>
<td><strong>Requirements and spiritual needs for consideration</strong></td>
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<td><strong>Disability</strong> (consider communication issues, access to employment and services, whether individual care needs are being met and whether the policy promotes the involvement of disabled people)</td>
<td><strong>Sexual orientation including lesbian, gay and bisexual people</strong> (consider whether the policy/service promotes a culture of openness and takes account of individual needs)</td>
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<td><strong>Gender</strong> (consider care needs and employment issues, identify and remove or justify terms which are gender specific)</td>
<td><strong>Age</strong> (consider any barriers to accessing services or employment, identify and remove or justify terms which could be ageist, for example, using titles of senior or junior)</td>
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<td><strong>Culture</strong> (consider dietary requirements, family relationships and individual care needs)</td>
<td><strong>Social class</strong> (consider ability to access services and information, for example, is information provided in plain English?)</td>
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APPENDIX 1

TIMESCALES FOR ACTION – TRUST RESPONSIBILITIES

Disclosure of Records
- Copy records provided within 40 days of receipt of the request.

Preliminary Analysis of Case
- Complete Preliminary Analysis within 40 working days of receipt of request for copy records.

Report Claims with a Significant litigation risk to the NHSLA
- This will include
  a) Incidents reported (e.g. a major obstetric mishap), graded red/serious and investigated under the healthcare governance arrangements. Those revealing a possible breach of duty leading to a potential large value claim (i.e. damages of over £250,000) must be reported as soon as possible, usually before a claim is made.
  b) Claims arising from a complaints investigation where the response on the facts, indicated that an admission of liability has been implied.
  c) Requests for disclosure of records where the preliminary analysis indicated the possibility of a claim with a significant litigation risk, regardless of value.
  d) Letters of Claim as the first indication of any action.

Letters of Claim
- Letters of Claim reported to the NHSLA / Trust Solicitors* within 24 hours of receipt.
- Acknowledge receipt of letter within 14 days.

Part 36 Offers
- On receipt – immediate notification to NHSLA / Trust Solicitors* by telephone followed up by letter.
- Acknowledge receipt of letter within 7 days.

Legal Proceedings
- On receipt – immediately notify NHSLA / Trust Solicitors* by telephone and follow up by letter.
- Acknowledge receipt of papers within 7 days.
- In the event that Trust Solicitors are instructed, notification will be to the Trust Solicitors.
APPENDIX 2 Clinical negligence Claims Process

Flow chart

Pre-action letter
Request for medical records received from solicitor

- Records copied and sent to solicitor if completed documentation is received
- Files opened on Datix complaints, internal investigations and/or coroners inquests searched
- Consultant contacted for a statement: other senior clinicians, e.g. matron, where applicable
- Preliminary analysis undertaken

If no contact after 6-12 months, solicitors are contacted e. status of claims

- Files closed and archived if not progressing
- Formal letter of claims is received from solicitor, detailing all the allegations. Sometimes, this is the first indication of a claim. If so, then file opened/preliminary analysis
- All relevant information collated
- Await formal letter of claim

Consultants contacted for detailed response to allegations

- Sent to NHSLA with all relevant information

Sent to NHSLA with all relevant information

- NHSLA obtained expert witness statement

Consultant contacted for a statement: other senior clinicians, e.g. matron, where applicable

Solicitors received: request for medical records

Sent to NHSLA with all relevant information

- NHSLA informed of formal claim

Sent to NHSLA with all relevant information

- NHSLA review case: decision made whether to settle or defend

Trust solicitors will be instructed if case is being defended

Defence drafted by Trust solicitors, signed by the Trust and sent to NHSLA

Followed-up within the Trust: appropriate reporting/learning from experience

Settlement agreed. It is most unusual for clinical claims to go to court)

On-going mediation/negotiation with claimant’s solicitors

1. An incident or outcome likely to generate substantial compensation
2. Actual or potential publicity or media involvement obstetric and paediatrics
3. Obstetrics and paediatrics
4. Fat incidents
5. Misdiagnosis or life threatening illness
6. Potential/actual group action
7. Serial offenders

Head of Communications maybe involved, if required