



GIG  
CYMRU  
NHS  
WALES

Iechyd Cyhoeddus  
Cymru  
Public Health  
Wales

**Reference Number:** PHW16

**Version Number:** V3

**Date of Next review:** January 2020

## CLAIMS MANAGEMENT POLICY

### Policy Statement

This policy describes the arrangements for managing clinical negligence and personal injury claims made against Public Health Wales.

Public Health Wales has a legal duty of care towards service users, staff and members of the general public, who come in to contact with the services it provides. People who consider they have suffered harm from a breach of this duty can make a claim for damages against Public Health Wales.

Wherever possible Public Health Wales will strive to avoid the need for legal action to be taken, by providing safe and high quality services.

Where legal action is unavoidable, Public Health Wales will aim to deal with all claims equitably, fairly and as quickly as possible, dealing with each claim on its own merit and seeking expert advice as appropriate.

For a claim to be successful, a claimant must prove that there was a breach in the duty of care owed to the claimant; that the breach of duty caused, or contributed materially to, the damage in question and that there were lawfully recoverable consequences and effects of the damage.

If a claim is successful, then the injured party has a right to compensation for that damage, the amount of which is assessed in accordance with the principles of common law and statute.

This policy has been produced to satisfy the requirements of Section 8 of the Putting things Right – Guidance on dealing with concerns about the NHS and ensure that Public Health Wales manages claims in accordance with the Pre-Action Protocols laid down by the Civil Procedure Rules 1998.

Wherever possible, service users will be offered the opportunity for concerns to be dealt with under the Putting things Right Regulations.

### Policy Commitment

Public Health Wales will adopt a common and standardised approach to deal with all negligence claims.

This policy aims to ensure that appropriate structures and reporting mechanisms are in place to enable claims to be investigated and managed in a proactive and timely manner.

Every effort will be made to resolve and settle a claim prior to the issuing of court proceedings. Where formal legal action is unavoidable, Public Health Wales will ensure that it conducts its defence in a fair and timely manner, ensuring that legal costs are incurred appropriately and proportionately.

An escalation procedure will be developed and maintained to support the timely investigation and resolution of claims and ensure compliance with the timescales prescribed by the Civil Procedure Rules.

Where liability is admitted, Public Health Wales will seek to negotiate settlement in the shortest possible time.

The importance of learning lessons from claims is widely acknowledged. Lessons learned from claims can be a valuable tool to help enhance the quality and safety of services provided. Public Health Wales will ensure that there are mechanisms and processes in place to support learning from claims.

The Quality, Safety and Improvement Committee and Board will receive regular reports on any key issues relating to claims as required.

### **Supporting Procedures and Written Control Documents**

In line with the requirements of the Welsh Risk Pool, a claims management procedure has been developed to support implementation of this policy. The claims management procedure includes information on the following areas:

- Detailed information on the claims management process, including:
  - ❖ Timescales for the exchange of relevant information with claimants in accordance with the Civil Procedure Rules 1998.
  - ❖ The timescales and process for dealing with low value personal injury claims (claims under £25,000) via the e-claims government portal
  - ❖ Claims escalation process
  - ❖ Litigants in person
  - ❖ Out-of-court Settlements
  - ❖ Court proceedings
  - ❖ Monitoring and auditing arrangements
  - ❖ Welsh Risk Pool Claims reimbursement process and Claims review process
  - ❖ Internal reporting arrangements

**Other related documents are:** Putting things Right policy, Incident reporting policy and procedure, Health and Safety policy, Risk Management policy

**Scope**

This policy has been produced for the management of Clinical negligence, Personal injury and Losses and compensation claims.

It is applicable to all staff who may be involved in the investigation of a claim for negligence.

This policy does not apply to those cases which fall under the 'Reporting damage or loss to personal property policy.'

<b>Equality, Language and Health Assessment</b>	<b>Welsh and Impact</b>	An Equality & Health Impact Assessment has been completed. The impact of this policy is largely positive. The positive effect could be enhanced with a document which is aimed at service users. This option will be explored with the Welsh Government who are currently reviewing the 'Putting things Right' leaflet.  The screening process identified potential for some negative impacts, for example, for service users whose first language is not English. This could be explored with the Welsh Government as part of the developmental work on 'Putting things Right.'
<b>Approved by</b>	Public Health Wales Board	
<b>Approval Date</b>	26 January 2017	
<b>Review Date</b>	January 2020	
<b>Date of Publication:</b>	24 February 2017	
<b>Group with authority to approve supporting procedures</b>	Executive Team	
<b>Accountable Executive Director/Director</b>	Rhiannon Beaumont-Wood, Director for Quality, Nursing and Allied Health Professionals	
<b>Author</b>	Sharon Atkins, Claims Manager	

**Disclaimer**

**If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or [Corporate Governance](#).**

**Summary of reviews/amendments**

<b>Version number</b>	<b>Date of Review</b>	<b>Date of Approval</b>	<b>Date published</b>	<b>Summary of Amendments</b>
V1	20.11.15	21.03.13	21.03.16	New policy introduced to

				replace the Velindre NHS Trust Claims policy.
V2	10.10.14	21.01.15	02.02.15	Policy reviewed to reflect changes in management structures
V3	22.07.16	26.01.17		Reviewed to ensure compliance with the requirements of the Welsh Risk Pool Services. Additional information on lessons learned and links between claims, concerns, incidents and other risk information added to policy.

# Claims Management Policy

## Contents Page

<b>1</b>	<b>DEFINITIONS .....</b>	<b>6</b>
<b>2</b>	<b>TIME LIMITS.....</b>	<b>6</b>
<b>3</b>	<b>ROLES AND RESPONSIBILITIES.....</b>	<b>6</b>
<b>4</b>	<b>DELEGATED FINANCIAL LIMITS.....</b>	<b>9</b>
<b>5</b>	<b>USE OF LEGAL ADVISORS .....</b>	<b>10</b>
<b>6</b>	<b>REPORTING TO THE QUALITY, SAFETY AND IMPROVEMENT COMMITTEE .....</b>	<b>11</b>
<b>7</b>	<b>NATIONAL REPORTING AND LEARNING SYSTEM .....</b>	<b>12</b>
<b>8</b>	<b>REPORTING TO WELSH RISK POOL SERVICES .....</b>	<b>12</b>
<b>9</b>	<b>REPORTING TO THE WELSH GOVERNMENT .....</b>	<b>13</b>
<b>10</b>	<b>CLAIMS OF DOUBTFUL MERIT .....</b>	<b>13</b>
<b>11</b>	<b>CLAIMS MANAGEMENT PROCEDURE.....</b>	<b>13</b>
<b>12</b>	<b>DATABASES .....</b>	<b>14</b>
<b>13</b>	<b>LINKS BETWEEN CLAIMS, CONCERNS, INCIDENTS AND OTHER RISK INFORMATION .....</b>	<b>14</b>
<b>14</b>	<b>LEARNING FROM CLAIMS.....</b>	<b>15</b>
<b>15</b>	<b>MONITORING AND AUDITING.....</b>	<b>16</b>
<b>16</b>	<b>REFERENCES.....</b>	<b>16</b>

# 1 Definitions

The various Welsh Health Circulars provide definitions for clinical negligence and personal injury as follows:

## 1.1 Clinical Negligence

"A breach of duty of care by members of the health care professions employed by NHS bodies or by others consequent on decisions or judgments made by members of those professions acting in their professional capacity in the course of employment, and which are admitted as negligent by the employer or are determined as such through the legal process."

## 1.2 Personal Injury

"Any disease or impairment of a person's physical or mental condition."

# 2 Time limits

The Limitation Act 1980 requires that claims be made within three years of the date of the incident or three years from the date a claimant became aware that he/she had suffered from an episode of negligence. With minors, the three-year limitation period becomes effective once they have reached the age of 18. However, there are no time limits for people with a disability who cannot manage their own affairs. Claims exceeding the three-year limitation period can, however, still be brought against Public Health Wales at the discretion of the Court.

# 3 Roles and responsibilities

## 3.1 Chief Executive

The Chief Executive has overall responsibility for claims management and for keeping the Board informed of major developments and significant issues. The Chief Executive will ensure that there are sufficient resources to support claims management.

## 3.2 Director of Quality, Nursing and Allied Health Professionals

The Director of Quality, Nursing and Allied Health Professionals is the Executive Lead for claims and has delegated responsibility for issues relating to clinical negligence and personal injury claims. The Director is

responsible for authorising decision in relation to liability and for authorising expenditure, in line with the scheme of delegation (please refer to Section 4.1). The Director will ensure the effective management of claims and will keep the Quality, Safety and Improvement Committee and Board informed of major developments.

### **3.3 Executive Team**

The Executive Team have delegated accountability and responsibility within their service areas for adherence to and for the implementation of this policy. They must ensure that there are appropriate structures and processes in place to facilitate the investigation of claims and ensure that lessons learned from claims are identified, documented, addressed, implemented and audited.

### **3.4 Divisional Directors**

Divisional Directors are responsible for establishing structures to ensure that claims are appropriately investigated within the Division. This includes establishing reporting and monitoring arrangements with a focus on lessons learnt.

### **3.5 Senior Investigation Manager**

Public Health Wales has designated the Governance and General Manager for the Directorate of Quality, Nursing and Allied Health Professionals with responsibility for the handling and consideration of concerns and incidents. The Governance and General Manager is responsible for overseeing and implementing processes to ensure compliance with the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011.

### **3.6 Concerns/investigation leads**

Each programme/team/service area has appointed a lead investigation manager (where appropriate). The lead concerns/ investigation managers are responsible for the handling and investigation of concerns and incidents.

### **3.7 Role of the Claims Manager**

In line with Section 8 of the 'Putting things right guidance' (please refer to section 21), Public Health Wales will appoint a suitably qualified and experienced claims manager, who has access to ongoing training in the area of negligence compensation claims.

In order to fulfil the requirements of Section 8 PTR Guidance, Public Health Wales will ensure that the Claims Manager has sufficient seniority or that the organisational structure is sufficient to ensure that this occurs. The Claims Manager will have direct access to the Chief Executive, Executive Lead for claims and the Executive Team as necessary to achieve the objectives for effective claims management.

The Claims Manager is responsible for the day to day management of claims, for instructing solicitors and for managing the legal process through to completion. The Claims Manager will authorise decisions in relation to the extension of the limitation period, following consideration of legal advice. The Claims Manager will ensure that all members of staff and/or their line managers involved in a claim are kept informed of the progress and outcome of the claim.

The Claims Manager will work closely with the Senior Investigations Manager to identify incidents and claims which could be considered under the 'Putting things Right' Redress Scheme (please refer to Section 16).

### **3.8 Involvement of frontline staff**

All members of staff are encouraged to report incidents and accidents, including those that may lead to claims for compensation, in line with Public Health Wales' promotion of a fair, blame free culture. When reporting incidents, a detailed description of the incident should be provided, along with information on the potential claimant, witness statements/contact details of relevant members of staff involved or witness to the incident and any other relevant documentation should also be submitted.

The co-operation of all staff involved in the incident leading to a claim is crucial. Public Health Wales will ensure that such staff are encouraged to support the Claims Manager and any duly appointed legal advisors, in the handling of the claim. All members of staff have a duty to fully and openly co-operate in the assessment, examination and investigation of any legal claims and must comply with this policy and the claims management procedure.

Public Health Wales will support an escalation procedure to be contained in the claims management procedure to secure this objective. This is to ensure that all members of staff acknowledge the importance of the claims management process and will provide all necessary support to achieve the objectives set out in this policy and ensure that claims are managed in accordance with the pre-action protocol for claims.



Once notification of a potential claim has been reported, the Claims Manager will establish an objective account of the original incident at the earliest available opportunity, taking advice from colleagues where appropriate.

Unless there are exceptional circumstances, any member of staff asked to do so should provide the Claims Manager or legal advisor with written comments or formal written or oral testimony and information regarding the investigation of the relevant claim in a timely manner.

Public Health Wales recognises that providing a statement and giving evidence can be a stressful experience and will ensure that full support and guidance is provided to members of staff who are asked to give evidence on behalf of Public Health Wales.

Public Health Wales will take full responsibility for managing and where appropriate settling claims in clinical negligence cases meeting all financial obligations and will not seek to recover any costs from health professionals save in very exceptional cases, where the health professional was legally found to be acting outside of his/her remit.

## **4 Delegated financial limits**

Public Health Wales has formal delegated responsibility from the Welsh Government for the management and settlement of clinical negligence and personal injury claims valued under £1,000,000. Public Health Wales continues to exercise this discretion subject to satisfaction with the minimum requirements:

- That it adopts a clear policy for the handling of claims which satisfies the requirements of Section 8 of Putting things Right – Guidance on dealing with concerns about the NHS and any subsequent agreed requirements from the Welsh Risk Pool Services;
- That these requirements form the basis of the procedure for the day to day management of claims;
- That the appropriate Welsh Risk Pool Services form is completed for every settlement authorised by Public Health Wales within the delegated limit and that Public Health Wales can demonstrate that remedial action has been taken.

### **4.1 Internal delegated limits**

The levels of delegated authority within Public Health Wales are detailed in the table below.

For significant claims (over the Chief Executive's delegated limits) where settlement is advised, Public Health Wales Board will agree the range of value, which the Chief Executive or Director of Quality, Nursing and Allied Health Professionals has discretion to negotiate. All settlements within the negotiated range will be reported to the next available meeting of Public Health Wales Board.

<b>Approving individual losses and special payment claims in accordance with Welsh Government guidance:</b>	<b>Delegated authority</b>
Up to £1,000 (disbursements only )	Claims Manager
Up to £100,000	Director of Quality, Nursing and Allied Health Professionals
Up to £500,000	Chief Executive
Up to £1 million	Board
Over £1 million	Welsh Government
<b>Notes:</b> These limits relate to damages and/or costs payable	

#### 4.1.1 Chairperson's action

There may, occasionally, be circumstances where it is not practicable to call a meeting of the Board. In these circumstances, Chair's action may be taken in line with Public Health Wales' Standing Orders. The Board Secretary must ensure that any such action is formally recorded and reported to the next meeting of the Board for consideration and ratification.

## 5 Use of legal advisors

Public Health Wales will use legal advisors in the defence or settlement of clinical negligence and personal injury claims. Public Health Wales has access to legal advice via the 'National Procurement Services – Legal Services by solicitor's framework.'

The management of clinical negligence claims remains the responsibility of Legal & Risk Services-Shared Services Partnership. Public Health Wales

will also instruct Legal and Risk Services, in the first instance, for advice in relation to defending or settling personal injury claims.

Where external legal advice is sought, Public Health Wales will direct its solicitors in respect of liability admission, defence, settlement and general tactics. Public Health Wales will however, always take due account of qualified legal advice in making such decisions. Legal advice will cover:

- Liability and causation;
- An assessment of the strength of the available defence and probability of success;
- The likely valuation of quantum of damages including best and worst case scenarios and
- The likely costs of defending the compensation claim.

The final decision to settle a claim or to continue with its defence should be taken by the Board or appropriate Director in line with the scheme of delegation.

## **6 Reporting to the Quality, Safety and Improvement Committee**

The Board has delegated responsibility to the Quality, Safety and Improvement Committee for issues relating to clinical negligence and personal injury. The Quality, Safety and Improvement Committee will provide assurance to the Board that lessons are learned from patient safety incidents, complaints and claims.

The Quality, Safety and Improvement Committee will receive and review quarterly reports on the management and status of claims against Public Health Wales.

In line with format specified by Section 8 of Putting things Right – Guidance, the claims report will include the following information:

- The number and aggregate value of claims and details of any major individual compensation claims;
- Key issues and/or major developments affecting Public Health Wales;
- Progress and likely outcome of ongoing claims including expected settlement dates;
- Final outcome of the compensation claim;
- Any proposed remedial action arising out of particular compensation claims.
- Relevant trends i.e. divisional trends.

The Director of Quality, Nursing and Allied Health Professionals is responsible for keeping the Board informed of significant issues in relation to claims and will provide updates for the Board, as necessary.

An Annual Claims Report will be produced and received at the Quality, Safety and Improvement Committee.

Divisional Directors, members of the Executive Team and Managers will attend Committee meetings for claims which fall within their portfolio, to help determine any action necessary.

## **7 National Reporting and Learning System**

If a claim has been identified as a patient safety incident but during the course of investigation, it is identified that it was not previously reported through the incident reporting process, Public Health Wales will ensure that the incident is reported as a 'retrospective incident.' A retrospective report will be submitted via the National Reporting and Learning System.

## **8 Reporting to Welsh Risk Pool Services**

The Welsh Risk Pool Services (WRPS) is a risk pooling scheme run for the benefit of members of NHS Wales and it is funded by the Welsh Government.

Public Health Wales is assessed annually against the WRPS Standard for concerns and compensation management. The Claims Manager is the lead officer for the section of the standard relating to claims and is responsible for self-assessment against these standards.

Public Health Wales will comply with the various rules and procedures of the WRPS.

The Claims Manager will report details of claims settled with a quantum of under £25,000 (excluding claims dealt with under 'putting things right' regulations) to the WRPS using an Appendix T form or such other format as may be required by the WRPS.

Public Health Wales may apply to the WRPS Advisory Board for reimbursement for compensation claims where the total expenditure exceeds £25,000. An Appendix U form, Costs Schedule, Appendix S Checklist, or such other format as required by the WRPS and evidence to support lessons learned must be submitted to the WRPS.

Public Health Wales acknowledges that the WRPS will periodically undertake a review of claims managed by Public Health Wales and will

ensure the co-operation of its members of staff with such reviews through the development of a formal claims review procedure to be contained in the Claims Management Procedure.

## **9 Reporting to the Welsh Government**

### **9.1 Novel, contentious or repercussive Claims**

The Claims Manager will report all claims which are “novel, contentious or repercussive” to the Welsh Government in advance of settlement. Any required approvals will be obtained at relevant stages.

These may include claims involving some unusual and new features which if not correctly handled, might set an unfortunate precedent for other NHS litigation, or which appear to represent test cases for a potential class action, or cases although not formally part of a class action appear to be very similar in kind to concurrent claims against other NHS bodies. In such cases, the Claims Manager will contact the Welsh Government for advice regarding management.

### **9.2 Claims Exceeding the Delegated Authority**

The Claims Manager will ensure that any claims with damages estimated to exceed Public Health Wales’ delegated authority of £1,000,000 are reported to the Welsh Government either by Public Health Wales’ legal advisors or by the Claims Manager and that prior approval is obtained in advance of the claim being settled.

## **10 Claims of doubtful merit**

Public Health Wales will not settle claims of doubtful merit, however small, purely on a ‘nuisance’ value basis. Similarly, claims will not be inappropriately defended.

The decision to settle a claim will always be based upon an assessment of Public Health Wales’ legal liability and the risks and costs associated with the defence of that claim, including the prospects of recovering those costs in the event that the defence is successful.

## **11 Claims management procedure**

A claims management procedure has been developed which supports and embraces the objectives contained in this policy and Section 8 of the ‘Putting Things Right’ guidance.

The claims management procedure sets out the processes for the day to day practical management of claims and associated matters.

The Board has delegated authority for the approval of the Claims Management procedure to the Executive Team.

## 12 Databases

Public Health Wales will maintain the following databases:

- Datix –The system contains a claims management database and contains information prescribed in the compensation claims management procedure.

Public Health Wales' finance team maintains a database for recording payments made in settlement of clinical negligence and personal injury compensation claims and information relating to reimbursements received from the WRPS. All clinical negligence and personal injury claims will be entered onto both databases by an authorised member of staff. Other losses and special payment details will be similarly input.

Public Health Wales will ensure that patient and staff confidentiality is maintained.

## 13 Links between claims, concerns, incidents and other risk information

Public Health Wales recognises the need for close connections between complaints, incidents, claims and other risk related information. It appreciates the need for close and co-operative working between these functions and will ensure that appropriate linkages are in place to facilitate this objective.

A ['Putting things right'](#) (PTR) policy has been developed to provide a single mechanism to deal with incidents, concerns and claims to and meet the requirements of the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011.

In line with the regulations, Public Health Wales has appointed a Senior Investigations Manager to oversee the investigation into incidents and concerns and the management of concerns.

The Senior Investigations Manager will be supported by lead investigation managers from the various programme/service/team areas. The Senior Investigations Manager will liaise with the Claims Manager where the incident or concern has potential to result in a claim.

Lessons learned will be identified as part of the investigation process. The relevant Divisional Director has responsibility for liaising with appropriate staff and for ensuring that any identified and agreed actions are implemented, monitored and evaluated in order to improve the services provided and seek to avoid such errors recurring.

The Senior Investigations Manager, Claims Manager and Concerns/Investigation leads within divisions will work together to identify concerns which involve potential breaches of the legal duty of care. This will facilitate the management and resolution of potential claims identified through the 'putting things right' process. Where appropriate, the Claims Manager will offer the 'Putting things Right' redress scheme as an alternative to legal action.

The Service User Experience and Learning Panel (please refer to section 10.3) will be the appropriate forum for each service lead with responsibility for concerns, investigations and claims to meet on a regular basis to ensure the identification of any trends and remedial action that may be required. Appropriate and relevant staff will then implement any recommendations arising from complaints, claims and investigations.

Members of the panel provide reports on lessons learned and service improvements arising from concerns, claims and incidents to enable the panel to assess and monitor the outcome and ensure that learning is shared across the organisation.

The Executive Team will receive this information as part of the 'Putting Things Right' Quarterly report.

## **14 Learning from Claims**

Public Health Wales recognises the importance of learning lessons from claims, concerns and incidents and for ensuring that remedial actions are implemented and monitored where admissions of liability have been made or where failings have been identified. Each Director has responsibility for liaising with appropriate staff and ensuring that any identified and agreed actions are implemented and monitored.

Public Health Wales has developed a structure to support learning from claims, concerns and incidents and will ensure that a process to support the learning and monitoring of the implementation of lessons, evaluation of the efficacy of lessons learned and auditing of each component is in place.

The Claims Manager and relevant Divisional Director will work together to identify the potential for learning lessons from claims. Where the claim relates to clinical negligence, the relevant Divisional Director will involve

the appropriate personnel i.e. clinicians to assist in the identification of any lessons. The claims manager will complete an Appendix S (WRPS document) for every claim exceeding the excess of £25,000, with support from the relevant Director and staff. This will be used as the basis for learning, monitoring and evaluating the efficacy of the lessons learned from claims.

## **15 Monitoring and auditing**

Internal Audit will undertake a review of a sample of claims where reimbursement was sought from the Welsh Risk Pool Services (WRPS) on an annual basis to monitor compliance with the WRPS reimbursement rules.

The effectiveness of the policy will be reviewed on an annual basis by internal and external audit undertaken by the WRPS, in relation to claims management and the compliance with the WRPS reimbursement rules.

The Quality, Safety and Improvement Committee will monitor the claims performance through receipt of the WRPS Audit Performance report.

The Claims Manager will also provide an annual claims report which will include audit compliance and performance and identify themes and trends for the period of the report.

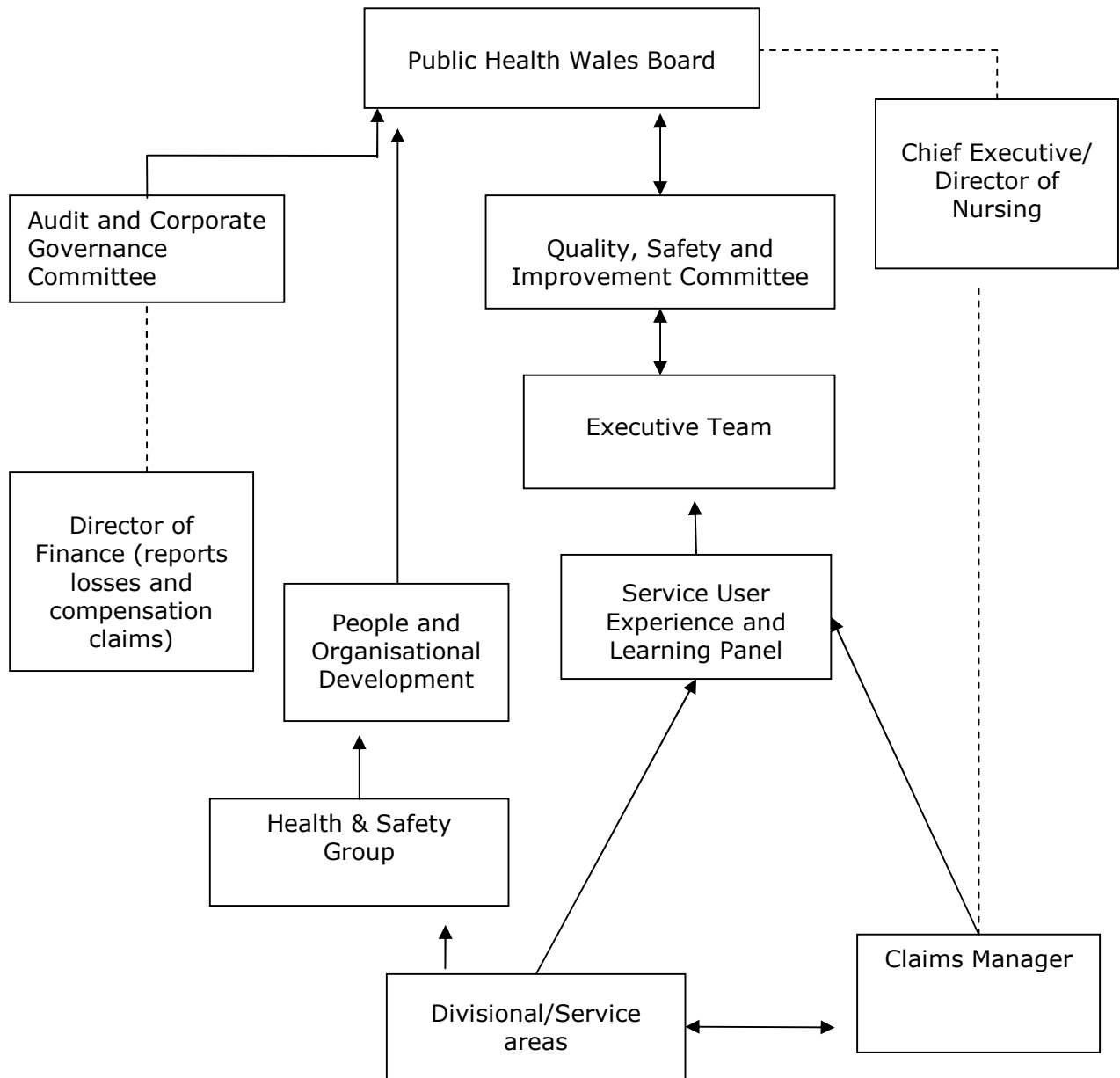
## **16 References**

- The Civil Procedure Rules 1998
- WHC(98)8 -NHS Indemnity – Arrangements for Handling Clinical Negligence Claims against NHS Staff
- WHC(99)128 – Handling Clinical Negligence Claims: Pre-Action Protocol
- The Welsh Risk Pool Services Reimbursement Procedure and other Procedures
- NHS (Complaints, Concerns & Redress Arrangements) (Wales) (Regulations 2011)
- Putting things right – Guidance on dealing with concerns about the NHS from 1 April 2011 (Version 3: November 2013)
- Public Health Wales’ Standing Orders and Standing Financial Instructions



**Reporting framework**

**Appendix 1**



**Note**

- Solid line indicates management/Committee Group reporting line.
- Dotted line indicates individual reporting.