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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.

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 clinical negligence and personal injury 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.

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:

- Claims Management Procedure
- Putting Things Right Policy
- Incident Management Procedure
- Redress Procedure
- Complaints procedure
- Health and Safety Policy & Procedure
- Risk Management Policy & Procedure

Scope

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

The scope of this policy covers all staff employed by Public Health Wales, involved in the management of or response to a claim received about the services provided by the Trust

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

Equality, Welsh Language and Health Impact Assessment	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.
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Group with authority to approve supporting procedures	Executive Team
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<p style="text-align: center;"><u>Disclaimer</u></p> <p>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.</p>	

Summary of reviews/amendments

Version number	Date of Review	Date of Approval	Date published	Summary of Amendments
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.
V4	21.02.22			Policy updates to reflect changes to management structure & Welsh Risk Pool arrangements & legislation updates

Contents Page

1 INTRODUCTION	6
2 DEFINITIONS	6
3 AIMS	7
4 ROLES AND RESPONSIBILITIES	7
5 WELSH GOVERNMENT AND WELSH RISK POOL	10
6 DELEGATED FINANCIAL LIMITS	11
7 REPORTING TO THE QUALITY, SAFETY AND IMPROVEMENT	12
COMMITTEE	12
8 CLAIMS MANAGEMENT PROCEDURE	13
9 MONITORING AND AUDITING	13
10 TRAINING	14
11 CLAIMS REPORTING FRAMEWORK	14

1 Introduction

Public Health Wales has a legal duty of care towards its service users, members of the general public and its staff.

In accordance with the principles of Being Open, Duty of Candour and the Putting Things Right Arrangements, Public Health Wales will, in the majority of cases, have investigated any concerns and clinical incidents at the earliest opportunity and involved the patient or their next of kin/ representative in the investigation process, providing the necessary support throughout.

Where appropriate, any failings in care, resulting in a qualifying liability will have been resolved under the NHS Redress Scheme and access to legal advice provided.

Where cases are not suitable for the NHS Redress scheme or where service users do not wish to access this, these cases will be dealt with as a formal claim under the Civil Procedure Rules 1998.

People who feel they have suffered harm from a breach of this duty are able to make a claim for compensation against Public Health Wales and are usually supported in this process by a legal representative who will liaise on the Service user's behalf with the Trust.

For a claim to be successful, a claimant must prove:

- that he/she/they were owed a duty of care;
- that the duty was breached;
- that the breach of duty caused, or contributed materially to, the damage in question; and
- that there were consequences and effects of the damage.

2 Definitions

2.1 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."

2.2 Personal Injury

“Any disease or impairment of a person’s physical or mental condition.”

2.3 Redress

An apology, remedial treatment and/or financial compensation

3. Aims

This policy is an integral part of the Risk Management Strategy and Policy and is intrinsically linked to its systems for managing and learning from nationally reportable incidents and concerns. The aim of this policy is to ensure that Public Health Wales will manage all claims made against it fairly and as speedily as possible, dealing with each claim on its own merits and seeking legal and expert advice as appropriate.

4. Roles and responsibilities

4.1 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.

4.2 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 decisions in relation to admissions of liability and for authorising expenditure, in line with the scheme of delegation as set out in the Claims Management procedure. The Director will ensure the effective management of claims and will keep the Quality, Safety and Improvement Committee and Board informed of major developments.

4.3 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.

4.4 Divisional Directors & Heads of Programme

Divisional Directors and Heads of Programme are responsible for establishing structures to ensure that claims are appropriately investigated within the Division/Service area. This includes establishing reporting and monitoring arrangements with a focus on lessons learnt. They must also ensure they engage with the Legal Services Manager to support investigations into claims in their respective Division. In addition, they will be responsible for ensuring that any identified failings which arise during the investigation of a claim are addressed and any lessons learned shared across the organisation. They will be responsible for producing and monitoring action plans.

4.5 Assistant Director of Quality, Nursing & Allied Health Professionals

The Assistant Director of Quality, Nursing & Allied Health Professionals and the Legal Services Manager are accountable for the management of claims for ensuring compliance with this policy and the Claims Management Procedure including compliance with delegated authority limits and for securing the most cost-effective resolution of claims. The Trust acknowledges the importance of the claims management process within its organisation and will ensure that the process and the appointed Legal Services Manager have sufficient seniority and profile as required by the WRP standard 5 - Concerns and Compensation Claims Management.

4.6 Senior Investigation Manager

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

4.7 Claims Investigation Leads

The Legal Services Manager is the lead investigation manager for all clinical negligence and personal injury claims.

4.8 Role of the Legal Services Manager

In order to fulfil the requirements of Section 8 PTR Guidance, Public Health Wales will ensure that the Legal Services Manager has sufficient seniority or that the

organisational structure is sufficient to ensure that this occurs. The Legal Services 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 Legal Services Manager is responsible for the day to day management of claims, as set out in the Claims Management Procedure.

The Legal Services Manager will work closely with the Head of Putting Things Right to identify incidents and claims which could be considered under the 'Putting things Right' Redress Scheme. The Redress process is set out in Public Health Wales' Redress Procedure.

4.9 Legal Advisers

Public Health Wales will use legal advisors in the defence or settlement of clinical negligence and personal injury claims. Small to moderate value claims of moderate complexity can be managed in-house by the Legal Services Team. All other claims will be managed by Legal & Risk Services from NHS Wales Shared Services Partnership (NWSSP).

The procedure for instructing and liaising with Legal & Risk Services is set out in the Claims Management Procedure.

4.10 Managers and Staff involved with claims

Managers and Staff involved with claims will be kept informed of the progress and outcome of all individual cases via the Legal Services Manager.

4.11 All members of staff

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 Legal Services 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.

All members of staff must report incidents and accidents on Datix, 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 must 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 uploaded to the Datix incident record.

Unless there are exceptional circumstances, any member of staff asked to do so should provide the Legal Services 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.

5 Welsh Government and Welsh Risk Pool

The Welsh Government funds the Welsh Risk Pool (WRP) by a top slicing arrangement.

The Welsh Risk Pool refunds all claims in excess of £25,000.

Public Health Wales is assessed against the WRP Standard for Concerns and Compensation Claims Management.

In order to be reimbursed by the WRP, the Trust is required to submit a Claims Management Report (CMR) to WRP. The Chief Executive is responsible for signing this together with one other Executive Director. The Chief Executive has nominated the Deputy Chief Executive for the purposes of signing the CMR during periods of absence. This document identifies lessons learnt from claims which will be fed into the appropriate committees for monitoring and cascading throughout the organisation.

Any risks identified as a result of claims will be fed into the appropriate Risk Register.

The Legal Services 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 as set out under the [Welsh Risk Pool Reimbursement Procedure](#).

6 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.

6.1 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.

Approving individual losses and special payment claims in accordance with Welsh Government guidance:	Delegated authority
Up to £2,000 (disbursements only)	Legal Services Manager
Up to £5,000	Head of Putting Things Right
Up to £30,000	Assistant Director of Quality, Nursing & Allied Health Professionals

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
Notes: These limits relate to damages and/or costs payable	

6.2 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.

7 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 claims. The Executive Team receive quarterly claims reports. The Quality and Safety Committee is authorised to receive claims information and reports on behalf of Public Health Wales Board. The Committee is supported in the process by the Engagement & Experience Network.

The Executive Team will receive, review and recommend action as necessary on a quarterly progress report on the management and status of claims against Public Health Wales. This will be further scrutinised by the Quality and Safety Committee. The chair of the Quality and Safety Committee will provide an update at the following Board meeting of any significant issues. The minutes of the Quality & Safety Committee will be provided to the Board for information purposes.

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.

In addition, the Quality and Safety Committee and Audit Committee will receive an Annual Report and include information on:

- Public Health Wales' claims profile and claims management record
- Key issues and/or major developments affecting the Board
- Number of claims
- Aggregate value of claims in progress
- Details of any major claims
- Progress and likely outcome of ongoing claims including expected settlement dates
- Value of claims settled and final outcomes
- Relevant trends
- Information regarding remedial action as appropriate

In the interim, the Director of Quality, Nursing and AHPs/Chief Executive will ensure that the Board is kept informed of any significant and major developments through the preparation of a briefing note by the Legal Services Manager.

The Legal Services Manager will provide a quarterly report on the management and status of claims to relevant Leads and Finance Department which will include the quantum valuations of any claims.

The Legal Services Manager will provide such ad-hoc reports as required by services areas/programmes.

8 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.

9 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.

10 Training

Training on Claims Management is available to clinical and non clinical staff. This is also undertaken in line with the training on Putting Things Right and Duty of Candour processes.

11 Claims Reporting Framework

The flowchart found [here](#) sets out the claims reporting framework in Public Health Wales.