

POLICY FOR THE MANAGEMENT OF LITIGATION and CLAIMS

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1.0 *Introduction*

- 1.1 This policy deals with the management of claims made against the Southern Health and Social Care Trust (hereafter referred to as 'The Trust') in respect of its responsibility and actions as
- a provider of services to patients and clients,
 - an employer of staff
 - an owner/occupier of premises, and
 - the vicarious actions of its staff in undertaking their duties for the Trust.
- 1.2 The Trust is committed to ensuring that robust governance arrangements are in place in the operation of its business and wishes to ensure that there is consistency in dealing with claims across the organisation.
- 1.3 This document has been developed in accordance with the Trust's key principles for policy development.
- 1.4 This policy has been developed in consultation with internal stakeholders.
- 1.5 The principles of this policy apply to the management of all forms of claims and litigation across the Trust regardless of which Directorate is charged with responsibility for administering those claims.

2.0 *Definitions*

- 2.1 For clarity of the purpose and scope of this policy, the following definitions are provided:
- 2.1.1 **Contact:** includes any direct services provided by health and social care staff and also indirect services, for example screening services.
- 2.1.2 **Claim:** a claim can be made by or on behalf of any person who has been affected by the Trust, its services, or the actions or omissions of its staff, and can result where there is any diversion from an expected process or outcome that causes difficulty, pain, suffering, or other negative affect upon any person.
- 2.1.3 **Professional (clinical) Negligence:** includes claims against care or services directly provided by all professional staff currently or previously employed in the Trust, as well as those "non-professionally qualified" staff providing direct care and services to clients, for example Nursing Assistants applying

dressings or monitoring care; staff providing personal care or other services in users' homes; residential care staff; and all social services staff.

- 2.1.4 **Employer Liability:** where a member of staff makes a claim for injury or damage against the Trust (in contrast from Employment Law as below).
- 2.1.5 **Occupier and Public Liability:** where a claim is made that due to the fabric of the Trust's premises or a failure in non-clinical safety systems, injury or damage has resulted.
- 2.1.6 **Employment Law:** a claim made by a Trust staff member, potential employee or former employee in relation to terms and conditions or contract of employment.

3.0 Purpose and Aims

- 3.1 The Trust aims to provide high quality, accessible and safe care and services to its resident population. The Trust recognise that the vast majority of its staff are motivated to do their best for service users. Whilst claims are not common place, it is recognised that things can or may go wrong or not as planned.

The purpose and aims of this policy are as follows:

- 3.1.1 Learn from the claims experience and transfer that learning across all services in order to contribute to the agenda of continual improvement.
- 3.1.2 Provide a satisfactory outcome for claimants and staff and, where possible, restore and increase public confidence in the Trust and the services provided.
- 3.1.3 Minimise costs to the Trust, including legal costs.
- 3.1.4 Comply with DHSSPSNI circulars, directives, and guidance regarding management of claims and other appropriate guidance or standards.

4.0 Policy Statement

- 4.1 With the implementation of this policy, the Trust will:
 - 4.1.1 Foster a culture where claims are actively and expeditiously managed.
 - 4.1.2 Facilitate claimants and staff in reaching a satisfactory outcome.
 - 4.1.3 Minimise expenditure.

4.1.4 Facilitate learning and opportunities arising from litigation through sound integrated governance systems existing at all levels throughout the organisation.

5.0 Scope of the Policy

5.1 This policy applies to all staff of the Trust and refers to all services and activities undertaken by the Trust.

6.0 Responsibilities

6.1 Responsibility of the Chief Executive

The Trust's Chief Executive, as "*Accountable Officer*", has overall responsibility for ensuring that the aims of this policy are met.

6.2 The Chief Executive is responsible for ensuring periodic review of the Trust Adverse Incident Reporting system and associated processes.

6.3 Responsibility of the Litigation Manager

The Trust will appoint a designated, suitable experienced and qualified, Senior Trust Manager who will have overall responsibility for "claims management" and be responsible for:

6.3.1 Claims management.

6.3.2 Discovery in litigation.

6.3.3 Liaison with HM Coroner.

6.3.4 Accepting service of and ensure compliance with Court Orders.

The Litigation Manager will promote this policy and will assist other Trust Managers and staff to ensure that the Trust meets its obligations under this policy.

6.4 Responsibility of Senior Management

All Trust Directors, Assistant Directors, Service Heads and Senior Managers have responsibility for claims arising within the areas of their remit and control, ensuring that resulting action plans are implemented and monitored as part of integrated governance requirements, and that information required in relation to effecting this policy is provided promptly and completely.

6.5 Responsibility of Trust Staff

All Trust staff have a responsibility to adhere to the principles and aims of this policy and to comply with any direction in pursuit of the aims of this policy.

7.0 *Legislative Compliance, Relevant Policies, Procedures and Guidance*

- 7.1 This policy must be read in conjunction with the Standing Financial Instructions of the Trust and any Trust procedures developed in relation to the management of claims.
- 7.2 Staff must take cognisance of relevant professional standards and guidance and other Department of Health, Social Services and Public Safety publications including, but not exclusively or exhaustively the following:
 - 7.2.1 Controls Assurance Standards, Risk Management Criterion 5
 - 7.2.2 The Coroner's Rules (NI)
 - 7.2.3 DHSSPSNI Circular HSS (F) 20/98
 - 7.2.4 DHSSPSNI Circular HSS (F) 20/2002
 - 7.2.5 DHSSPSNI Circular HSS (F) 67/2006

8.0 *Equality and Human Rights Considerations*

- 8.1 This policy has been screened for equality implications as required by Section 75, Schedule 9, of the Northern Ireland Act, 1998. Equality Commission for Northern Ireland Guidance states that the purpose of screening is to identify those policies which are likely to have a significant impact on equality of opportunity so that greatest resources can be targeted at them.
- 8.2 Using the Equality Commission's screening criteria, no significant equality implications have been identified. This policy will therefore not be subject to an equality impact assessment.
- 8.3 This policy has been considered under the terms of the Human Rights Act, 1998, and was deemed to be compatible with the European Convention Rights contained in that Act.
- 8.4 This policy will be included in the Trust's register of screening documentation and maintained for inspection whilst it remains in force.
- 8.5 This document can be made available on request in alternative formats, for example Braille, disc, audio cassette and in other languages to meet the needs of those who are not fluent in English.

9.0 Policy Approval

- 9.1 During development, this policy was considered in draft form by legacy Trust governance/litigation staff and circulated for consultation to Directors/Assistant Directors.
- 9.2 This policy was presented in final draft and approved by the Trust Board at its meeting on 30th October 2007.

10.0 Policy Implementation, Training and Education

- 10.1 Following approval by the Trust Board, this policy was circulated to all Trust staff by the Senior Manager-Patient & Client Safety, Medical Directorate on ***[insert date]***.
- 10.2 The Litigation Manager will provide any necessary training with regard to this policy.
- 10.3 A copy of this policy was placed on the Trust's intranet on ***[insert date]***.
- 10.4 All Trust managers must ensure that their staff have access to this policy, understand its content and are aware of its aims and purpose immediately upon its release.
- 10.5 All Trust staff must comply with this policy.

11.0 Review of Policy

- 11.1 The Trust is committed to ensuring that all policies are kept under review to ensure that they remain compliant with relevant legislation.
- 11.2 This policy will be reviewed by the Senior Manager-Patient & Client Safety, Medical Directorate in December 2008 or earlier if further guidance is issued. That review will be noted on a subsequent version of this policy, even where there are no substantive changes made or required.

12.0 Sources of Advice and Further Information

- 12.1 Further advice and information regarding this document can be obtained from the Litigation Manager.