GWASANAETHAU AMBIWLANS CYMRU
YMDDIRIEDOLAETH GIG

WELSH AMBULANCE SERVICES NHS TRUST

CLAIMS MANAGEMENT POLICY

Clinical Negligence, Personal Injury, Losses and Compensation Claims

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<th>Date</th>
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**APPENDICES**

1. References
2. Responsibility and Accountability Framework
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CLAIMS MANAGEMENT POLICY

1. POLICY STATEMENT

1.1 This document describes the Policy of the Welsh Ambulance Services NHS Trust for the management of negligence claims made against the Trust in accordance with the requirements of Welsh Health Circular (97)17.

1.2 Both the human costs of things going wrong and the financial costs of providing redress are powerful incentives for effective risk management. It is acknowledged that funds that are spent on addressing and compensating could otherwise contribute to the continuous improvements of healthcare services and working environments. Therefore, this Policy forms an integral part of the Trust’s Risk Management Strategy and is intrinsically linked into the Trust’s systems for managing and learning from adverse incidents and complaints.

1.3 The Trust aims to deal with all claims made against it proactively, in an equitable, efficient and timely manner. In accordance with the Woolf Reforms, the Trust will deal with each case on its own merits, taking advice from its legal advisors and others, as appropriate.

1.4 The Trust will adopt a common and standardised approach in dealing with litigation claims for both clinical negligence and personal injury. The Trust aims to gather all evidence as quickly as possible and, where liability is admitted, will seek to negotiate settlement in the shortest possible time.

1.5 The Trust will make every effort to resolve a claim before the issue of court proceedings and will explore the option of alternative dispute resolution methods when appropriate. However, where formal legal action is unavoidable, the Trust will ensure that it conducts its defence in a fair and timely manner, ensuring that legal costs are incurred appropriately and proportionately.

1.6 The Trust acknowledges the importance of the claims management process within its organisation and will ensure that the process and the appointed Claims Manager has sufficient seniority and profile as required by WHC(97)17. The Trust Board and relevant nominated committees will support and promote these objectives including the provision of support through an approved escalation procedure set out in the Trust’s Claims Management Procedure.

1.7 The Trust will comply with the Pre-Action Protocols laid down by the Civil Procedure Rules in dealing with all legal claims ensuring a constructive and open approach to claims that reduces delays and costs and the need for formal legal proceedings.
1.8 The Trust is committed to learning lessons from claims to ensure the continued improvement in standards of patient and staff safety and services. The Claims Manager will support Directors, key managers and staff in this process through the provision of claims information, which will assist in ensuring that lessons are learned and appropriate corrective and/ or preventive action is taken and implemented in an effective manner.

2. INTRODUCTION

2.1 This Policy has been produced in accordance with the references contained in Appendix 1 for the management of the following:

- clinical/medical negligence claims;
- personal injury claims;
- losses and compensation claims.

2.2 The Trust has a legal duty of care towards those it treats, together with members of the general public and its staff. People who consider they have suffered harm from a breach of this duty can make a claim for compensation and damages against the Trust.

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

- that he/she was 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.

2.4 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 the Trust at the discretion of the Court.

2.5 The management and settlement of claims is often an expensive, lengthy and complex process and was examined by Lord Woolf so that improvements could be achieved in the overall civil justice system.

2.6 This policy and associated procedures have been developed to mirror the objectives of openness and timeliness stressed by Lord Woolf in the introduction of the reforms to the civil justice system introduced in April 1999.
3. DEFINITIONS

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

3.1 Clinical/ Medical 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.”

3.2 Personal Injury

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

3.3 Losses and Special Payments

“Bad debts, losses, damage to/or loss of personal belongings through no fault of the individual.”

3.4 Staff

“Staff” shall includes by definition all members of the staff directly employed by the Trust but also volunteers and first responders acting on behalf of the Trust undertaking its core activities.

4. RESPONSIBILITIES

4.1 The Chief Executive is the Board member responsible for issues relating to clinical negligence and personal injury and for keeping the Trust Board informed of major developments.

4.2 All Executive Directors have a delegated accountability and responsibility within their directorates for the implementation and adherence to this policy.

4.3 A sub-group of the Board (‘the Sub-Group’), to include the Chief Executive, one other Executive Director, the Corporate Secretary and the Claims Manager will meet, as required, to determine action in respect of significant claims valued in excess of the Chief Executive’s delegated limits.

4.4 The Claims Manager is accountable to the Chief Executive for the management of claims for ensuring compliance with policy, including compliance with
4.5 All members of staff are encouraged to report adverse incidents, including those that may lead to claims for compensation, in line with the Trust’s promotion of a just blame free culture. Staff also have a duty towards the Trust in the investigation and, where appropriate, defence of all claims and will assist all claims staff, as necessary during the claims management process.

4.6 The Trust's organisation structure chart is set out in Appendix 2.

4.7 Approval of this strategic Claims Management Policy will rest with the Trust Board although the approval of subsequent Claims Management Procedures setting out the detailed operational arrangements for complying with this Policy will be delegated by the Trust Board to the Executive Management Group.

5. DELEGATED LIMITS

Delegation of Out of Court Settlement

5.1 The Trust acknowledges that the Welsh Assembly Government has delegated its responsibility for the settlement of claims to a limit of £1 million to Trust and that the Trust continues to exercise this discretion subject to satisfaction with minimum requirements:

- That it adopts a clear policy for the handling of claims which satisfies the requirements of WHC(97)17
- That the requirements of WHC(97)17 form the basis of the procedure for the day to day management of claims
- That either an Annex B checklist is completed for every settlement authorised by the Trust above £1000 but within the delegated limit or the Trust can demonstrate that remedial action has been taken and an action plan implemented.

Internal Delegated Limits

5.2 The Trust has formal delegated responsibility from the Welsh Assembly Government for the management of clinical negligence and personal injury claims valued up to £1,000,000.

5.3 The levels of delegated authority within the Trust are those contained within the Trust’s Scheme of Delegation. Details are attached in Appendix 3.

5.4 For significant claims (over the Chief Executive’s delegated limits) where settlement is advised, the Trust Sub-Group will agree the range of value which
the Chief Executive or nominated representative has discretion to negotiate. All settlements within the negotiated range will be reported to the next available meeting of the Trust Board or nominated committee.

5.5 In situations where a decision is necessary and it is not possible to comply with the Scheme of Delegation limits because of time constraints, the Chief Executive, or nominated Executive Director, will contact the Trust’s Chairperson, or nominated Non-Executive Director and recommend a course of action. (Chairperson’s Action) Any action taken under Chairperson’s Action will be reported to the next available meeting of the Board, seeking retrospective approval.

6. USE OF LEGAL ADVISORS

6.1 The Trust will use legal advisors in the defence or settlement of clinical negligence and significant personal injury claims. Small to moderate value claims of moderate complexity will be managed in-house by the Trust’s Claims Manager. The contract for the management of personal injury claims will be reviewed from time to time to ensure continuing quality and value for money. Clinical negligence claims will be managed by Welsh Health Legal Services.

6.2 Where external legal advice is sought, the Trust will retain the responsibility to direct its solicitors in respect of liability admission, defence, settlement and general tactics. However the Trust will 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
- Estimates of legal costs for plaintiff and defence.

6.3 For claims managed in-house, legal advice will be provided by the Trust’s Claims Manager. In all such cases, legal advice will be recorded on the case file satisfying the same requirements for the provision of legal advice as are set out in paragraph 6.2 above.

6.4 The final decision to settle a claim or to continue with its defence should be taken by the Board, appropriate Manager or Claims Manager within the delegated limits.
7. **THE ROLE OF THE CLAIMS MANAGER**

The Trust will employ a dedicated Claims Manager who holds or who is working towards relevant qualifications in claims management and who can demonstrate sufficient experience in the management of clinical negligence and personal injury claims.

The Claims Manager will be required to demonstrate on-going updating and continuing professional development in the area of claims management.

The Trust will ensure that the Claims Manager is given sufficient profile and seniority within the Trust to achieve the objectives of WHC(97)17. The Trust Board will support the Claims Manager in the furtherance of there objectives.

The Claims Manager can exercise direct access and report to the Chief Executive and Executive Team as necessary to achieve the objectives of WHC(97)17 for effective claims management.

The Trust Board authorises the development of an appropriate escalation procedure to which it will give its full support to highlight the profile of the claims management process and its support for the Claims Manager. The escalation procedure is designed to ensure that all members of staff throughout the Trust acknowledge the importance of the Claims Management process and Board support thereof and will provide all necessary support to the furtherance of the objectives set out in this policy to ensure that claims are managed proactively equitably and in an efficient and timely manner.

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.

8. **REPORTING REQUIREMENTS**

8.1 The Trust Board delegates its responsibilities to the Executive Management Team as the duly authorised committee. The Executive Management Team will receive and review six monthly progress reports on the management and status of claims against the Trust, in the format specified by WHC (97)17. The minutes of the Executive Management Team will be provided to the Trust Board for information purposes. The claims report will include information on:

- The Trust’s claims profile and claims management record
- Key issues and/or major developments affecting the Trust
- 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.

8.2 The Executive Management Team will receive an Annual Report reporting on comparative issues at the end of the relevant financial year.

8.3 The Terms of Reference of the Executive Management Team as the duly authorised Committee will reflect its role in relation to claims.

8.4 The Chief Executive retains responsibility for claims management within the Trust and will ensure that the Trust Board is kept informed of significant and major developments.

8.3 Where 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, the Trust will ensure that a procedure exists which is set out in the Claims Procedure, to support retrospective reporting to the National Patient Safety Agency by the National Reporting and Learning System as appropriate following a review.

8.4 The reporting requirements relating to the reimbursement process managed by the Welsh Risk Pool are set out in Paragraph 16 as follows.

8.5 The reporting requirements to the Welsh Assembly Government are set out in Paragraph 12 as follows.

9. **CLAIMS MANAGEMENT PROCEDURE**

9.1 The Trust will ensure that a Claims Management Procedure is developed which supports and embraces the objectives contained in this Policy and WHC(91)17.

9.2 The Claims Management Procedure will set out the processes and procedures for the day to day practical management of claims and associated matters.

9.3 The Trust Board delegates the authority for the approval of the Claims Management Procedure to the Executive Management Group.

10. **INVolvEMENT OF FRONT LINE STAFF**

10.1 The Trust recognises that the co-operation of all staff involved in the incident leading to a claim is crucial to the early collation of information to that case. The Trust will ensure that such staff are encouraged to support the Claims Manager and any duly appointed legal advisors, in the handling of that claim. All staff are
required to fully and openly co-operate with the investigation of any legal claims and to comply with this Policy and the Claims Management Procedure emanating there from.

10.2 Once an incident 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.

10.3 Unless there are exceptional circumstances, any member of staff asked to do so should provide the Claims Manager with a witness statement and information regarding the investigation of the relevant claim in a timely manner.

10.4 The Trust 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 the Trust.

10.5 The Trust will support an escalation procedure to be contained in the Trust’s Claims Management Procedure to secure this objective.

10.6 The Trust will take full responsibility for managing and where appropriate settling claims in clinical negligence cases meeting all financial obligations and will not seek to recovery 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.

11. **NUISANCE CLAIMS**

11.1 The Trust will not settle claims of doubtful merit, however, small, purely on a ‘nuisance’ value basis. Similarly claims will not be inappropriately defended.

11.2 The decision to settle a claim will always be based upon an assessment of the Trust’s 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.

12. **REPORTING OF CLAIMS TO WELSH ASSEMBLY GOVERNMENT**

12.1 **Novel, Contentious or Repercussive Claims**

The Claims Manager will monitor the nature and type of claims received to ensure that any claims, which are novel, contentious or repercussive are reported in advance of settlement of the Welsh Assembly Government and any required approvals are 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 Assembly Government for advice regarding management.

12.2 **Claims Exceeding the Delegated Authority**

The Claims Manager will ensure that any claims with damages estimated to exceed the Trust’s delegated authority of £1 million are reported to the Welsh Assembly Government and prior approval is obtained in advance of liability being conceded and the claim being settled.

13. **DATABASES**

13.1 The Trust will maintain two databases:

13.2 **Datix**

The Trust's claims data-base will contain the information prescribed in the Claims Management Procedure.

13.3 **LaSPaR**

The Losses and Special Payments Register (LaSPaR) is a computerised database introduced by the National Assembly for Wales to replace previous paper based systems with a national standardised format for actioning write-offs or special payments approval. The main objectives of LaSPaR are to:

- Ensure that health bodies monitor all aspects of losses and special payments, from initial registration to final outcome, on a case by case basis;
- Allow health bodies and the National Assembly to identify settlement/claimant costs, provisions, and defence or other administration costs provisions, and to action any subsequent adjustments; and
- Ensure that all payments and income recoveries are identified separately and that analyses can be performed on all transactions.

13.2 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.

13.3 The Trust will ensure that patient and staff confidentiality is maintained.

14. **LINKS BETWEEN CLAIMS, COMPLAINTS, INCIDENTS AND OTHER RISK INFORMATION**
14.1 The Trust recognises the need for close connections between risk management, complaints and the management of claims. 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.

**Linkages**

14.2 Adverse incidents or outcomes which could lead to a claim for negligence should be identified and reported to the Claims Manager immediately they occur. Either through the provision of a serious incident report sent to the Welsh Assembly Government or Regional Office or by the provision of the required information such as:

- Details of the potential claimant
- Date and details of incident/outcome from which the claim might arise
- Names and contact details of relevant members of staff involved in or witnessing the incident
- Statements by such relevant members of staff and witnesses
- Relevant documentation.

14.3 The Claims Managers and the Complaints Co-ordinators will work together to identify complaints which involved potential breaches of the legal duty of care by the Trust. An appropriate joint investigation will undertaken to enable the Trust to adopt a pro-active stance to the management and resolution of potential claims identified through the complaints procedure.

14.4 Appropriate systems will be established to enable the lead members of staff for complaints, risk and claims to meet on a regular basis through an appropriate forum 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, experts’ reports and investigations.

14.5 The DATIX system identified where a potential claim has previously been reported as an incident or complaint. This facilitates the gathering of information to comply with the relevant Pre-Action Protocols.

14.6 Appropriate reports combining information on complaints, claims, risk and incidents will be provided to relevant groups to enable information to be cascaded through all levels of the organisation.

**Committee Structure**
14.7 Summaries of claims and trends will be routinely provided to the such other committees as requested including:

- Audit Committee;
- Risk Management Committee; and
- Clinical Governance Committee.

14.8 The Director of Finance will routinely report the value and incidence of Losses and Compensation payments to the Audit Committee.

14.9 Detailed claims reports, including an analysis of trends and likely risks will be routinely reported to the Risk Management Committee.

Controls Assurance

14.9 The Claims Manager is the Lead Officer for the Welsh Risk Management Standard for Claims Management and is responsible for self-assessment against these standards.

15. **LEARNING LESSONS FROM CLAIMS AND PREVENTING CLAIMS FROM INCIDENTS AND COMPLAINTS**

15.1 The Trust is committed to learning lessons from claims, complaints and adverse incidents.

15.2 It is important that lessons are learnt following every incident. Each Director has responsibility for liaising with appropriate staff and ensuring any identified and agreed actions are implemented and monitored.

15.3 The Trust will ensure that a formal process and procedure to support the learning of lessons, monitoring of implementation of lessons learned, evaluation of the efficacy of lessons learned and thereafter the auditing of each component, is developed and is set out in its Claims Management Procedure.

15.4 The Claims Manager will identify the potential for ‘learning lessons’ from all claims and complaints. This information will be routinely reported to the appropriate committee in accordance with the formal procedure for learning lessons as set out in the Claims Procedure.

15.5 The Claims Manager will identify the potential for the use of alternative dispute resolution before considering litigation. In addition, the NHS Complaint’s procedure will be used to ensure that patients receive, where appropriate, an apology and a full explanation of what went wrong to reduce the potential for complainants to take legal action to achieve such a remedy.
15.6 The Claims Manager will produce an Annex B Checklist and an associated Action Plan for all claims exceeding the Trust’s excess of £25,000. This will be used as the basis for learning, monitoring and evaluating the efficacy of the lessons learned from claims.

16. **LIAISON WITH THE WELSH RISK POOL**

16.1 The Welsh Risk Pool is the risk pooling scheme run for the benefit of members of NHS Wales and it is funded through the Welsh Assembly Government by a top slicing arrangement.

16.2 The Trust is assessed annually against the Welsh Risk Pool Standard for Claims Management.

16.3 The Trust will comply with the various rules and procedures of the Welsh Risk Pool. The Claims Manager will ensure the Trust’s adherence to the same.

16.4 The Claims Manager will report details of claims settled with a quantum of under £25,000 to the Welsh Risk Pool using the WRP 3 form or such other format as may be required by the Welsh Risk Pool.

16.5 Claims with a quantum in excess of £25,000 will be similarly reported to notify the Welsh Risk Pool of a potential claim against the Pool using the WRP 2 form or such other format as may be required by the Welsh Risk Pool.

16.6 In order to be reimbursed by the Welsh Risk Pool, the Trust is required to submitted a WRP 1, Costs Schedule and Annex B Checklist.

16.7 The Trust acknowledges that the Welsh Risk Pool will to periodically undertake claims reviews of claims managed by the Trust 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.

17. **NHS REDRESS ACT 2006**

17.1 The Trust appreciates and is committed to the objectives of the NHS Redress Act 2006 which provides for the development of a small value clinical negligence scheme for Wales.

17.2 The Trust will undertake such action as it deems appropriate to support the introduction of such a scheme following the development of detailed regulations and which will be included in its Claims Management Procedure.
APPENDIX 1

REFERENCES

This Policy complies with the following references:-

- The Civil Procedure Rules 1998
- WHC(97) 7 – Clinical Negligence and Personal Injury Litigation: Structured Settlements
- WHC(97)17 – Clinical Negligence and Personal Injury Litigation: Claims Handling
- 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 Reimbursement Procedure and other Procedures
- The Trust’s Standing Orders and Standing Financial Instructions
APPENDIX 2

RESPONSIBILITY AND ACCOUNTABILITY FRAMEWORK
## APPENDIX 3

### SCHEME OF DELEGATION

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<td>Corporate Secretary</td>
</tr>
<tr>
<td>• Up to £10,000</td>
<td>Chief Executive</td>
</tr>
<tr>
<td>• Up to £100,000</td>
<td>Chief Executive and Director of Finance</td>
</tr>
<tr>
<td>• Over £100,000 and up to £500,000</td>
<td>Trust Board and/or Claims Sub-Group</td>
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<tr>
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**Notes:**

These limits relate to damages and/or costs payable