

Accessing Legal Advice Procedure

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Accessing Legal Advice Procedure

1 Introduction

- 1.1 There will be occasions when the Trust needs to seek specialist advice about handling complex matters which risk progression to litigation or in cases where advice is required to ensure sound systems of corporate governance and control.

2 Purpose

- 2.1 This procedure sets out when staff can access legal advice and how that is done. The procedure also sets out how costs are controlled. Wherever applicable, legal services will be obtained through the NHS Litigation Authority (operating under the name of NHS Resolution).

3 Scope

- 3.1 This procedure applies in complex cases where Trust subject matter experts cannot provide reasonable certainty due to exceptional circumstances, complications, or risks that involve consideration of statutory or mandatory regulations.

4 Definitions

- 4.1 **Legal advice**
Advice provided by a solicitor or a barrister.
- 4.2 **Advisee**
Someone who receives legal advice.

5 Duties and responsibilities

- 5.1 **Director of Human Resources and Corporate Governance**

The Director of Human Resources and Corporate Governance has overall responsibility to ensure that the Trust obtains quality advice at best cost.

5.2 Subject Matter Experts

If legal advice is to be obtained, it will be for the Trust's respective subject matter expert – subject to the requirements of this Procedure – to obtain the advice and liaise with the lawyer(s) where that advice concerns the subject matter in question.

5.3 Advisee

This will usually be a senior manager. Advisees must have obtained permission to access advice from the relevant director. Once requests to obtain advice have been cleared, the advisee will lead on the case thereafter.

5.4 All staff

All staff must abide by this procedure.

6 Procedures

Assessing the need for advice

6.1 Legal advice will only be sought in exceptional cases, such as those involving formal claims, or where unusual complications have arisen, or because of the complexity of the case.

6.2 To ensure that Trust resources are expended appropriately, a prospective advisee must have authorisation from one of the following officers to seek advice or make an instruction to a legal firm:–

- The Trust Chair – for any matter;
- The Chair of a Board Standing Committee – for any matter;
- The Chief Executive – for any matter;
- The Deputy Chief Executive / Finance Director – for any matter;

- The Director of Human Resources and Corporate Governance – for any matter; and
- The Medical Director – for matters relating to clinical governance.

6.3 In most cases, there will be a presumption that permission will be given when responding to legal enquiries, in which case the main purpose of this control will be to ensure that there is a coherent record of permission and budgetary control.

6.4 Prospective advisees should propose requests based on a risk-based judgement of costs and benefits.

Deciding on a course of action

- 6.5 If the matter relates to clinical practice, property damage, or injury, then the case will be referred to the NHS Resolution, see appendix 2. For all other matters, the Trust's solicitors will be instructed.
- 6.6 No request will be approved unless a budget has been identified to meet the costs of the advice. Only for corporate cases will costs be met centrally.

Instructing a solicitor

- 6.7 Only firms of solicitors on an approved framework shall be used.
- 6.8 It is important to be clear on the question(s) being put to a solicitor.
- 6.9 The solicitor will provide an estimate, and if this is accepted by the approving Director, then work will start on the case.

Managing the case on behalf of the Trust

- 6.10 Once a case has been opened, communication will be limited, generally, to the lawyer and Advisee.
- 6.11 If the case is likely to exceed the initial estimate of costs, then the lawyer will advise the Trust and not proceed further without confirmation (from the approving Director). It will be for the advisee to seek approval of the extension.

Closing a case

- 6.12 A case is formally closed by the Advisee, but will be closed on advice of the lawyers if the matter is resolved or has gone silent.

Keeping records of a case

- 6.13 The Advisee must inform the Director of Human Resources and Corporate Governance of any cases referred to a lawyer and provide

the latter with a monthly update of costs incurred. A central log of cases will be kept by the Director of Human Resources and Corporate Governance.

6.14 The Director of Human Resources and Corporate Governance will provide the Finance department with a monthly report showing, future projected costs for active legal matters and where these have changed from the original estimate.

6.15 A dedicated folder relating to cases must be kept by the advisee and stored in a way that ensures compliance with the Trust's data protection procedures.

7 Training Requirements

7.1 There are no specific training requirements related to this procedure.

8 Process for monitoring compliance with this Procedure

8.1 Compliance will be monitored at the Executive Management Team through the consideration of an annual status report, or by exception as required.

8.2 Breaches of this procedure will be reported using the incidents reporting procedure.

9 References

9.1 <https://resolution.nhs.uk/services/claims-management/>

10 Associated documents¹

Data Protection Procedure
Corporate and DET Records Procedure
Records Retention Schedule

¹ For the current version of Trust procedures, please refer to the intranet.
Accessing legal advice procedure, v1.1, June 2020

Appendix A : Equality Analysis

Completed by	
Position	
Date	

The following questions determine whether analysis is needed	Yes	No
1. Is it likely to affect people with particular protected characteristics differently?		X
2. Is it a major policy, significantly affecting how Trust services are delivered?	X	
3. Will the policy have a significant effect on how partner organisations operate in terms of equality?		X
4. Does the policy relate to functions that have been identified through engagement as being important to people with particular protected characteristics?		X
5. Does the policy relate to an area with known inequalities?		X
6. Does the policy relate to any equality objectives that have been set by the Trust?		X
7. Other?		x

If the answer to *all* of these questions was no, then the assessment is complete.

If the answer to *any* of the questions was yes, then undertake the following analysis:

	Yes	No	Comment
8. Do policy outcomes and service take-up differ between people with		X	

different protected characteristics?			
9. What are the key findings of any engagement you have undertaken?		X	
10.If there is a greater effect on one group, is that consistent with the policy aims?		X	
11.If the policy has negative effects on people sharing particular characteristics, what steps can be taken to mitigate these effects?		X	
12.Will the policy deliver practical benefits for certain groups?		X	
13.Does the policy miss opportunities to advance equality of opportunity and foster good relations?		X	
14.Do other policies need to change to enable this policy to be effective?		X	

Additional comments	
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If one or more answers are yes, then the policy may unlawful under the Equality Act 2010 –seek advice from Human Resources.

1. NHS Resolution Schemes

NHS Resolution handles negligence claims made against NHS bodies through five schemes. Three of these relate to clinical negligence claims (Clinical Negligence Scheme for Trusts ([CNST](#)), ELS and the ex-RHAs scheme), while two cover non-clinical risks, such as liability for injury to staff and visitors along with property damage (LTPS and PES, known collectively as [RPST](#)).

2. *NHS indemnity*

Under NHS indemnity, NHS employers are ordinarily responsible for the negligent acts of their employees where these occur in the course of the NHS employment. See guidance on [NHS indemnity](#) for further details.

3. *Approach to claims-handling*

- 3.1 The NHS Resolution remit is to ensure that claims made against the NHS are handled fairly and consistently, with due regard to the interests of both patients and the NHS. NHS Resolution seeks to settle justified claims efficiently and to defend unjustified claims robustly.
- 3.2 Currently, fewer than 2% of the cases handled by NHS Resolution end up in court, with the remainder settled out of court or abandoned by the claimant.
- 3.3 Where appropriate, NHS Resolution offers mediation or other forms of alternative dispute resolution as a means of resolving disputes fairly. A mediation service has been designed to support patients, families and NHS staff in working together towards a solution which may go further than just financial compensation and avoids the need to go to court.
- 3.4 The firms available for clinical cases are those on the current framework contract.