

## Document Control

<b>Title</b>			
<b>Legal Claims Datix Records Management Standard Operating Procedure</b>			
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<b>Consulted with the following stakeholders: (list all)</b> <ul style="list-style-type: none"> <li>• Divisional Directors</li> <li>• Associate Medical Directors</li> <li>• Divisional Nurses</li> <li>• Divisional Governance Co-Ordinators (DGC)</li> <li>• Head of Midwifery</li> <li>• Datix and Incident Manager</li> <li>• Head of Compliance and Risk</li> </ul>			<b>Contact responsible for implementation and monitoring compliance:</b>
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**Policy categories for Trust's internal website (Bob)**  
Compliance and Risk, Legal Services

**Tags for Trust's internal website (Bob)**  
Legal Claims, Reports, Compliance, Governance

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## 1. Background

1.1. With the implementation of the three Divisions; Medicine, Surgery and Clinical Support & Specialist Services from April 2020, and as part of the new governance requirements it has been agreed that a report is produced by the legal department for details of the following:

- Current/ongoing claims including any important activity
- New CNST claims and inquests
- Closed CNST claims and payout details
- Resumed Inquests and details of conclusions (verdicts)

This report will be provided to the Divisional Governance Co-ordinators (DGCs) within the first week of each month to allow them to review the data in the first instance. The DGC's will interpret the data, preparing relevant reports for speciality and divisional meetings as per the relevant need and cascade to the relevant specialities. This will replace the requirement for direct presentations from the NDHT Legal Team.

1.2. The reports will include the following information:

- Datix ID Number
- Name of Claimant
- Incident Date
- Claim Date (date of Pre-Action Protocol Letter)
- Closure Date\*
- Speciality
- Location – exact
- Incident Type
- Description
- Updates/Progress notes
- Outcome\*
- Lessons Learned
- Financial Settlement\*

1.3. The information will be presented in a spreadsheet style, separated by Divisions using tabs. Examples are provided at Appendices 2 to 4

## 2. Purpose

2.1. The Standard Operating Procedure (SOP) has been written to:

- Ensure that staff are aware of how Legal Data is coded throughout a CNST, Inquest, Personal Injury, Early Notification and Criminal Claim.
- This will allow staff to interpret the data they are provided with and to give assurance to Leads that from the time the data is shared the most up to date position and coding is presented depending on the information the Legal Team has been provided.

### 3. Scope

3.1. This Standard Operating Procedure (SOP) relates to the following staff groups who may be involved in the handling of legal data throughout the Trust (including Triumvirates):

- Legal Claims Manager
- Compliance Administrator
- Divisional Governance Co-Ordinators  
Divisional Management Team inc Associate medical Directors, Divisional Directors and the Divisional Associate Directors of Nursing
- Speciality Governance Leads / Lead Clinicians

### 4. Type of Claims

4.1. Within the Legal Services department, multiple variations of Claims are managed. These include:

- **CNST** - Clinical Negligence Scheme for Trusts (CNST) handles all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995
- **Early Notification** - From 1 April 2017 NHS Trusts that joined the scheme were required to report to NHR within 30 days all maternity incidents of potentially severe brain injury (in line with the criteria used by the Each Baby Counts programme of the Royal College of Obstetricians and Gynaecologists), namely all babies born at term ( $\geq 37$  completed weeks of gestation), following labour, that had a potentially severe brain injury diagnosed in the first seven days of life.
- **Inquest** - An inquest is a fact finding exercise and is not to apportion blame. The Inquest will determine the following: The identity of the Deceased, How, when and where they died, the circumstances in which they died and the medical cause of their death.
- **Employers Liability Claims (non-clinical)** - The Trust is under common law duty and a statutory duty to take reasonable care to provide competent staff, safe plant and equipment, safe premises and safe working systems. The Trust may be liable to pay compensation to an employee for an injury or loss suffered as a result of a breach of their responsibilities.
- **Public Liability Claims (non-clinical)** - Formal allegations from a member of the public or third party who has suffered a wrong or injury deemed to be under the Trust's liability as a direct result of the Trust's actions and services.

### 5. Process

5.1. The Initial process of a Claim is detailed in a flowchart in [Appendix 1](#). There are multiple stages of a CNST Claim. The main initial stages include but may not be limited to:

- **Pre-Action Protocol/ Letter before Action:** The initial letter or email from a Claimant's Solicitor is called the Pre-action Protocol (PAP). This can be generated from a Complaint a patient has made with our Complaints Department, has been the subject of an incident and/or incident investigation (i.e. Concise or SI) or where a patient may have visited a Solicitor direct with the notification of an incident or failings in their care whilst under the care of North Devon District Hospital (Acute & Community). This will also include a consent form for the Solicitors to access the Patient's details.
- **Disclosure of Records:** The Healthcare records of the Claimant have been requested and released in their entirety. This includes all Notes, Radiology Images, Governance documentation which may include an Incident Form, the full Investigation documentation and Complaint file, RIDDOR details, relevant Policies and Procedures,. This ensures that the claimants have received everything we hold to comply with GDPR and ensure good governance.
- **Letter of Claim:** The Letter of Claim will usually be sent once clear facts and evidence have been gathered by the Claimants Solicitor. It will lay out the formal allegations and grounds of the claim including:
  - Claimants full details
  - Dates of alleged negligent treatment
  - The claimant's grounds for negligence
  - Allegations of negligence with causal links and injuries
  - Likely value of claim
  - Details of funding arrangements
  - Limitation (the time period a claim can be brought forward from the known date of injury)
- **Proceedings:** Formal action, suit, litigation (civil for CNST) commenced against the Trust to be heard or conducted before a Court . Requires formal response through the Courts.
- **Denial:** The allegations have been denied by the Trust, this will have been with sufficient evidence and usually following internal and external clinical experts' opinions.

## 6. The Legal Team

### 6.1. In-house Legal Claims Management (NDHT):

- The Legal Claims Manager works within the Compliance and Risk Department providing a service to the Northern Devon Healthcare NHS Trust.
- The Compliance Administrator supports the Legal Claims Manager with new clinical negligence claims
- Contact details can be found here: <https://ndht.ndevon.swest.nhs.uk/legal-claims/who-we-are-and-how-to-contact-us/>

### 6.2. North & East Devon Legal Services (Trust Solicitors) based at RD&E:

- The Trust employs 2 Solicitors, 3 Legal Claims Handlers and 2 Secretarial/Administrators to manage their Legal Services. The Legal Team are based at the Royal Devon & Exeter Hospital (Heavitree) are contactable via the in house legal team using the link above and consist of:

## 7. NHS Resolution

7.1. NHS Resolution, formerly The NHS Litigation Authority (NHS LA) is a not-for-profit part of the NHS.

### 7.2. There main functions are:

- **Claims Management:** dealing with claims for compensation on behalf of the NHS in England;
- **Practitioner Performance Advice:** managing concerns raised about the performance of doctors, dentists and pharmacists;
- **Primary Care Appeals:** dealing with appeals and disputes between primary care contractors and NHS England; and
- **Safety and Learning:** helping providers of NHS care to understand their own claims risk profiles to target safety activity and share learning across the health service nationwide.

## 8. References

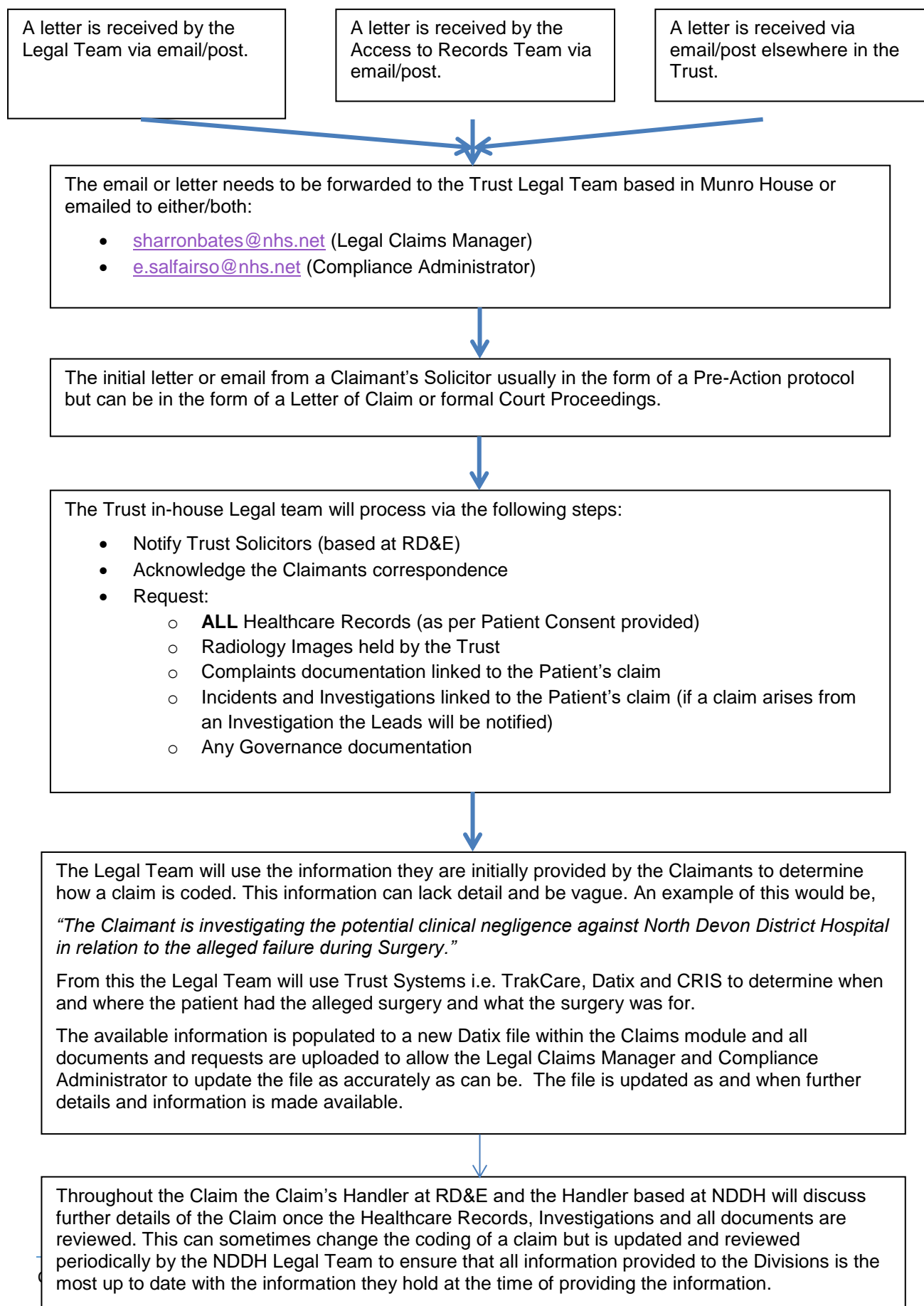
- <https://resolution.nhs.uk/services/claims-management/clinical-schemes/clinical-negligence-scheme-for-trusts/>

## 9. Associated Documentation

### 9.1. Northern Devon Healthcare NHS Trust Policies for :

- [Management of Legal Claims Policy](#)
- [Managing Inquests Standard Operating Procedure](#)

## 10. Appendix 1 - How a Claim is handled in the initial stages





## 11. Appendix 2: Example of Open/ On-going CNST & Inquest (not real cases)

ID	Name	Incident Date	Claim Date	Speciality	Location (exact)	Incident Type	Type	Description	Updates
000	John Doe	01/05/2018	24/08/2020	Surgery	Theatres	Fail/Delay Treatment	CNST	The Claimant is investigating the potential clinical negligence against North Devon District Hospital in relation to the alleged failure during Surgery.	This Claim is in the early stages and has been initially coded according to the Claimants Pre-Action Protocol Letter.
010	Jane Smith	08/09/2019	15/09/2019	Medicine	MAU	Other	Inquest	Patient died within our care on MAU, incident links.	Inquest – awaiting statements being obtained

## 12. Appendix 3: Example of Closed CNST claims and pay out details (not real cases)

ID	Name	Incident Date	Claim Date	Closure Date	Speciality	Location (exact)	Incident Type	Type	Description	Updates	Outcome	Financial Settlement
123	Thomas Crane	06/07/2017	04/04/2018	09/05/2019	CSS	Petter Ward	Fail/ Delay Treatment	Claim	The Claimant is investigating the potential clinical negligence against North Devon District Hospital in relation to failure of correct TVT.	Claim has been settled	Settled out of Court	Damages - £150,000.00 Claimants Costs – £35,000.00 Defence Costs – £18,000.00

### 13. Appendix 4: Resumed Inquests and details of conclusions (verdicts) (not real cases)

ID	Name	Incident Date	Claim Date	Closure Date	Speciality	Location (exact)	Incident Type	Type	Description	Updates	Outcome	Lessons Learnt
123	Thomas Crane	01/03/2018	01/03/2018	08/10/2019	Medicine	Victoria Ward	Other	Inquest	Patient died on Victoria Ward – Links to SI & Incidents	Inquest Closed	Inquest Verdict – Accidental Death	Action plan produced from SI, SOP to be written and training to be kept up to date.