



Policy:

CG 009 - Claims Policy

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Storage

The policy is available to all staff via the Sheffield Health & Social Care NHS Foundation Trust intranet. Hard copies will be distributed to each directorate and also to central services. An e-mail will be sent to all staff informing them that the policy is available.

Previous versions of the policy will be deleted by the Complaints and Litigation Manager, however, a hard copy of each previous version will be held by the Complaints and Litigation Manager in the complaints archive.

Version control is the responsibility of the Complaints and Litigation Manager. This is Version 6 of the policy.

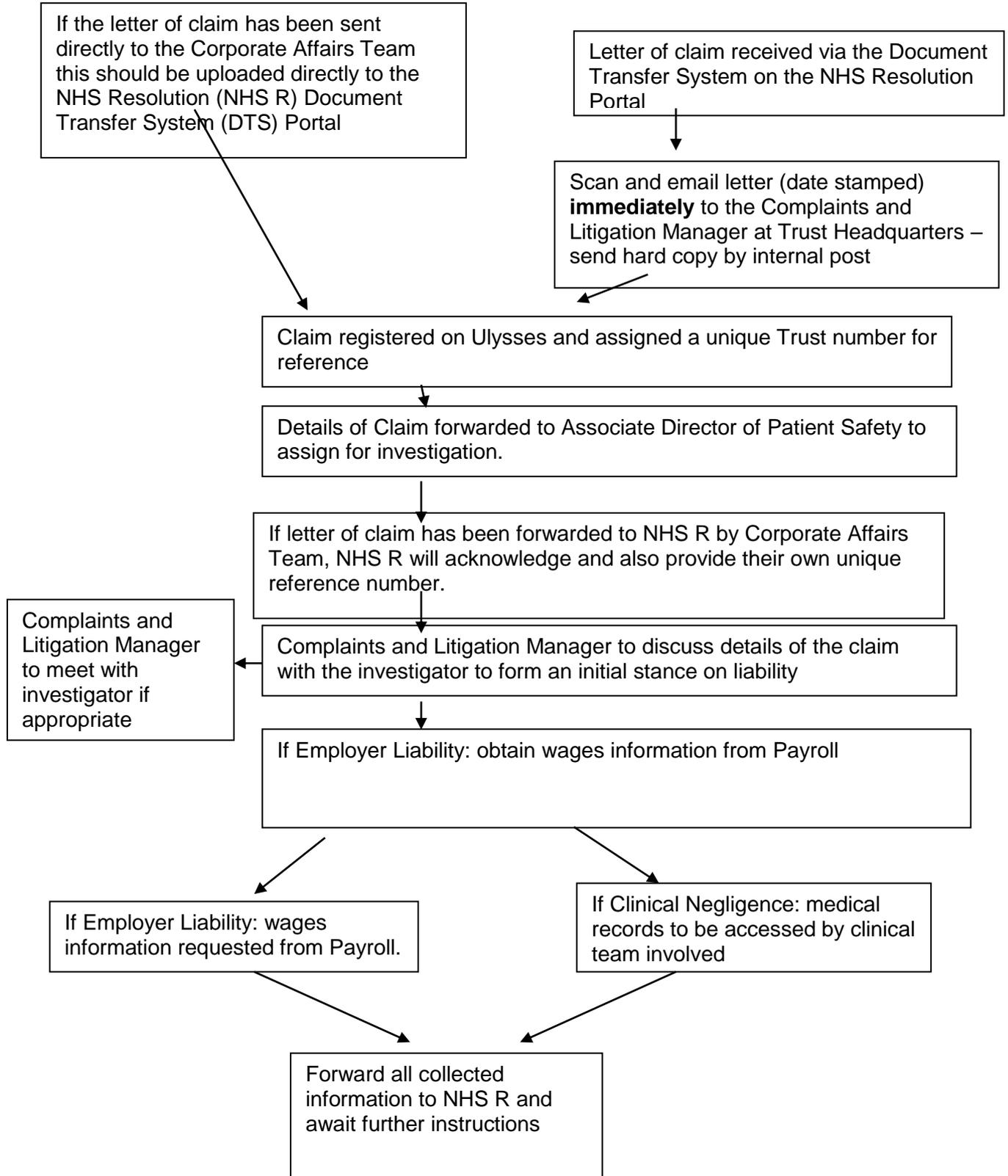
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Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
0.1	New draft policy created	July 2007	New policy commissioned by EDG on approval of a Case for Need.
1.0	Ratification and issue	November 2007	Amendments made prior to ratification.
2.0	Review / ratification / issue	November 2008	Full review completed and policy updated as needed to comply with regulatory requirements
3.0	Review on expiry of policy	November 2010	Full review completed and policy updated as needed to comply with regulatory requirements
4.0	Review on expiry of policy	December 2012	Full review completed and policy updated as needed to comply with regulatory requirements
5.0	Review / ratification / issue	August 2016	Full review completed and policy updated as needed to comply with regulatory requirements
6.0	Review / ratification / issue	June 2020	Review undertaken to reflect organisational changes and minor amendments to process to reflect practice.

Flowchart



1. Introduction

1.1 Sheffield Health & Social Care NHS Foundation Trust is committed to the effective and timely investigation and response to any claim that includes allegations of clinical negligence, personal injury, or loss or damage to property. The Trust provides an effective claims management service which deals sensitively and appropriately with requests for compensation following an adverse event with the emphasis being on:

- encouraging openness in line with the Trust's Being Open policy. All communication between the Trust, individual staff and teams, service users, their relatives and carers should be carried out as per the Being Open policy;
- promoting the proactive identification of potential claims at a stage when these can be more successfully investigated and when a better quality of evidence may be obtained;
- allowing claims which are well founded or which cannot realistically be defended to be correctly and promptly identified so that they may be settled without unnecessary delay, distress or avoidable escalation of costs;
- allowing the Trust and its insurers to be robust in defending unjustified claims and in other cases to limit its liability on the basis of appropriate evidence;
- providing a key resource to support and advise staff who are involved in claims, allowing them to minimise the stress and disruption that can follow when a claim is made;
- assisting individual staff, and the Trust as a whole, to learn from events which result in claims with a view to improving future practice/raising standards;
- promoting the monitoring of themes and trends arising from claims and potential claims, which may indicate areas of risk or weakness in Trust services where remedial work is necessary.

1.2 The Trust will follow the requirements of the NHS R in the management of claims

1.3 The Trust acknowledges its duty to ensure that appropriate financial and risk management systems are in place and that any losses are minimised, with specific reference to the NHS R standards and procedures.

2. Scope

2.1 This policy sets out how clinical negligence and personal injury claims are handled within the Trust. It describes how service users, staff and carers who are involved in claims are supported. It outlines the schemes operated by the NHS R which provide insurance cover for claims, and it gives details of the duties involved.

2.2 The policy applies to all those working in the Trust in whatever capacity. The Trust is vicariously liable for the acts/omissions of its employees both past and present and, as such, all staff have a duty to co-operate fully in the investigation and management of any claim.

3. Definitions

3.1 A claim is a demand for compensation made following an adverse event resulting in damage to property and/or personal injury.

- 3.2 A claimant is any person or their representative who instructs solicitors to act on their behalf to pursue a claim against the Trust, or who enters legal proceedings as a Litigant-in-Person against the Trust, or who pursues compensation.
- 3.3 The incident or situation in which loss or damage is alleged to have occurred is referred to in this policy as an 'adverse event'.
- 3.4 NHS R is a Special Health Authority set up under Section 11 of the NHS Act 1977. Its date of commencement was 21 November 1995 and the current duties are established under the National Health Service Act 2006
- 3.5 The principal task of NHS R is to provide expertise to the NHS on resolving concerns and disputes fairly, sharing learning for improvement and preserving resources for patient care. There are currently four schemes: -

Clinical Negligence (CNST): a scheme covering liabilities for alleged clinical negligence where the original adverse event occurred on or after 01 April 1995. These claims arise when it is alleged that a service user, or a witness to service user care, has been harmed due to a breach of the proper duty of care on the part of Trust staff.

Clinical negligence claims may be made by the service user or, following a death, by their next of kin.

The harm which forms the basis of a clinical negligence claim may arise in many circumstances, including:

- medication errors;
- failure to diagnose;
- failure to provide appropriate care;
- inappropriate advice to service users;
- failure to obtain consent.

Employers' Liability (LTPS): a scheme covering alleged liabilities for injury or harm affecting employees as a result of any failure of the Trust in its duty of care as an employer. This includes claims relating to:

- injury from slips, trips and falls;
- manual handling injuries;
- injuries as a result of assault by service users or visitors;
- work related or bullying related stress claims;
- industrial injuries due to exposure to substances, fire incidents, plant/equipment failure.

Employers' liability claims may be made by any person employed by the Trust at the time that the alleged adverse event occurred.

Public Liability (LTPS): the Trust is also liable for injury, harm or loss affecting members of the public or visitors to the Trust which may occur as a result of omissions or actions on the part of the Trust. These claims may relate to a wide range of situations including:

- personal injury sustained by visitors to NHS premises;
- breach of the Human Rights Act.

Property expenses (PES): a scheme relating to any expenses incurred from any loss or damage to property where the original loss occurred on or after 01 April 1999:

- 3.6 For the purpose of this document, the four schemes are referred to together as ‘the Schemes.’
- 3.7 The **NPSA** is the National Patient Safety Agency.
- 3.8 **RIDDOR** is the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

4. Purpose

- 4.1 The policy sets out the approach which has been adopted by the Trust in delivering an effective claims management service as described in the introduction.
- 4.2 Adherence to the policy should ensure that:
- all staff are clear about the process for managing claims, including their own responsibilities in relation to this;
 - the Trust complies with the requirements for membership of the NHS R pooling schemes and also with the requirements of the Pre-action Protocol for the resolution of clinical disputes, and the Pre-action Protocol for personal injury, thus avoiding the cost penalties associated with non-compliance.
- 4.3 The primary objective of this policy is to ensure the timely and appropriate resolution of claims following the fullest possible investigation. The Trust’s time limits and performance targets for dealing with claims are summarised in Appendix G.
- 4.4 The secondary objective is to ensure the thorough analysis of claims and the identification of themes and trends enabling the Trust to make any necessary changes to practice, protocol or workplace conditions as may be deemed necessary.
- 4.5 Information on the nature of claims received, the outcome, and any actions taken/lessons learned are fed back to Directorate senior management teams on a quarterly basis.

5. Duties

The Director of Corporate Governance is the Trust Board member with overall responsibility for claims management and will keep the Board, the Executive Directors’ Group, and the Quality Assurance Committee informed of major developments. The Quality Assurance Committee also has responsibility for monitoring claims actively throughout the Trust and will escalate any concerns to the Board or Executive Directors’ Group.

The Complaints and Litigation Manager is responsible for the conduct, control and documentation of all claims and potential claims.

The claims management procedures defined within this policy will be triggered by the receipt of all new claims, correspondence indicating that a claim is to be investigated or considered, Letter of Claim or Court Proceedings and/or notification of a potential claim.

The Complaints and Litigation Manager will carry out such preliminary action, investigations, and analysis of reportable claims as is required by the NHS R and will liaise with the NHS R as necessary over the conduct of such claims.

The Complaints and Litigation Manager will ensure that there is liaison with the relevant Directorate if corrective/remedial actions are required.

Arrangements are in place to ensure that in the absence of the Complaints and Litigation Manager essential claims management activities will be carried out by their deputy.

The Medical Director will be advised of all clinical claims and will be informed whenever it becomes necessary to make admissions as to liability in Letters of Response in respect of clinical claims.

Clinical Directors/Service Directors will be advised of all claims affecting their services. In respect of clinical claims, they will be responsible for ensuring that appropriate action is taken in respect of any issues that are identified during the course of the investigation.

In respect of personal injury claims, team/ward managers will provide such documentation for disclosure as required by the Complaints and Litigation Manager, for example, staff personal files, training records etc.

All employees of the Trust have a contractual responsibility to assist in the investigation of claims, both clinical and non clinical, as required of them by the Complaints and Litigation Manager.

6. Process

6.1 On a day to day basis, local responsibility for dealing with all claims made against Sheffield Health & Social Care NHS Foundation Trust will rest with the Complaints and Litigation Manager, who has operational and managerial responsibility for such matters.

6.2 The Complaints and Litigation Manager will make appropriate arrangements for the day to day handling of claims in accordance with agreed Trust procedures and NHS R guidelines.

6.3 Reporting Guidelines

6.3.1 CNST (Clinical Negligence Scheme for Trusts)

6.3.2 Under the CNST Reporting Guidelines, October 2008, when a significant litigation risk has been established and a realistic valuation of a possible claim has been made, the matter becomes reportable to the NHS R. One of five possible situations may arise:

- incidents reported which are graded red (National Patient Safety Agency Reporting Procedures (see Appendix F) that reveal a possible breach of duty leading to a potential large value claim (damages over £250,000) must be reported as soon as possible, usually before a claim is made i.e. before a Letter of Claim or Proceedings are received;
- claims arising from the alleged negligence or serious professional misconduct of a clinician or team;
- claims arising from a complaints investigation where the response, on the facts, indicates that an admission of liability has been implied;
- requests for disclosure of records where the preliminary analysis indicates the possibility of a claim with a significant litigation risk, regardless of value;
- letters of claim as the first indication of any action;
- the receipt of Court proceedings.

6.3.3 Every effort will be made to ensure that potential claims are brought to a satisfactory conclusion without the necessity of a Court hearing, by means of discussion, negotiation and, if appropriate, mediation.

6.3.4 LTPS (Liabilities to Third Parties)

6.3.5 Under the RPST Reporting Guidelines all claims which are above the Trust excess (staff claims £10,000, other personal injury claims £3,000) are reportable to the NHS R via the electronic claims management reporting system.

6.4 Role of The Complaints and Litigation Manager

6.4.1 The Complaints and Litigation Manager will:

- receive, acknowledge, record and process all new claims received independently or from NHS R that arise against Sheffield Health & Social Care NHS Foundation Trust and manage in accordance with NHS R reporting guidelines.
- be responsible for ensuring that the Pre-Action Protocol for the Resolution of Clinical Disputes is followed forwarding them to the NHS R within the timescales laid down;
- identify and arrange for the preservation of relevant records and other items, such as equipment involved in adverse events etc;
- ensure that initial investigations have been made and a preliminary analysis has been compiled to establish early stance on liability.
- establish and, as necessary, maintain contact with relevant staff and former staff;
- identify if there are any reporting requirements to external organisations and whether such organisations should be involved in the investigations/Root Cause analysis;
- it is the Complaints and Litigation Manager' responsibility to prepare reports and other submissions as required for the NHS R, the Executive Directors' Group, the Trust Board, the Quality Assurance Committee and, if necessary, the Service User Safety Group. The Complaints and Litigation Manager will prepare regular reports on:
 - the number and aggregate value of claims and details of any individual claims;
 - the progress and likely outcome of these claims, including the expected settlement date, if possible;
 - the final outcome of the claim;
 - any proposed remedial action arising out of a particular claim.
- the Complaints and Litigation Manager will ensure that risk management issues arising from claims are shared as necessary and that they are entered onto the Trust Risk's Register.
- the Complaints and Litigation Manager will ensure that Trust wide issues are shared with the Quality Assurance Committee and the Service User Safety Group.
- the Complaints and Litigation Manager will liaise with the Communications Manager as necessary where there is a possibility of publicity occurring as the result of a claim.

6.4.2 External agencies may need to be involved for example:

- the Health & Safety Executive where a RIDDOR report had been made relating to the original incident;
- HM Coroner – where the claim relates to a fatality;
- the Police – where a criminal offence is suspected or has occurred;
- professional regulatory bodies – where allegations of negligence are involved.

This list is not exhaustive.

6.4.3 Where claims have initially been investigated as a result of an incident report, appropriate external agencies will have been involved at that stage. In terms of new claims where investigations have not yet been carried out, the circumstances of each individual case will determine which external agencies should be brought into the investigation and reporting process and when.

6.5 LTPS Claims

6.5.1 For all non clinical claims the ultimate decision as to whether admissions will be made rests with the NHS R, in consultation with the Complaints and Litigation Manager. This information will be relayed to the appropriate service once a decision has been reached.

6.6 Legal Expenses

6.6.1 Most legal expenses arising from claims will be met directly by the NHSR. From time to time, however, the Trust may need to incur legal expenses in its own right.

- 6.6.2 The Complaints and Litigation Manager, with the Trust's legal advisers, will attend any Directions hearings before the District Judge arising from the defence of a claim and any other Court appearances as required.
- 6.6.3 In the event that it is deemed appropriate to defend a claim to trial, the Complaints and Litigation Manager will work closely with the Trust's panel solicitors to ensure that witnesses who are required to provide information are supported through the process.

6.7 The Use of Legal Advisors

- 6.7.1 Defence solicitors will be instructed by NHSR and the Trust's panel solicitors in collaboration with Complaints and Litigation Manager where independent advice is sought. Staff should refer to the Accessing Legal Advice Policy available on the intranet.

6.8 Information on Claims

- 6.8.1 The Complaints and Litigation Manager will establish and maintain a database of all claims relating to the Trust, including information about the nature of each claim and in consultation with the database provided by NHS R this will enable the Complaints and Litigation Manager to provide relevant and timely information as required either by the Board, Executive Directors' Group or the Quality Assurance Committee. Due regard will be paid to the confidentiality of data relating to individuals. Data will be processed in compliance with GDPR tailored with the Data Protection Act 2018.

6.9 Delegated Financial Responsibility

- 6.9.1 The NHS R has responsibility for the financial management of all clinical negligence claims. It also has responsibility for the financial management of all reportable LTPS and PES claims above the designated excess levels.

6.10 Risk Management Issues

- 6.10.1 All staff are expected to co-operate fully in risk management issues. Where it is thought that there may be a possibility that a claim against the Trust may arise as the result of an incident, the Complaints and Litigation Manager must be notified at the time at which an incident form is submitted.
- 6.10.2 For all such potential claims, a Root Cause Analysis should be carried out with witness statements. All information should be sent to the Complaints and Litigation Manager.
- 6.10.3 High standards of record keeping documentation are essential, especially in clinical records, to ensure that the facts are available in the event of a claim being made.
- 6.10.4 When staff are asked to provide reports, statements or comments, they will be reminded as necessary on whether their reports are potentially disclosable in the event of a claim proceeding.

6.11 Grading of Claims

- 6.11.1 The Complaints and Litigation Manager will grade all claims, taking into account the original adverse event report, any complaint issues, and the outcome of the investigation.
- 6.11.2 All claims should be graded according to the NPSA Matrix (Appendix F):
- actual severity – taking account of the seriousness of the harm caused as well as the financial implications of the claim;
 - future risk to service users;
 - future risk to the Trust;
 - likelihood of claimant success.
- 6.11.3 Grading may be subject to change on receipt of expert reports or as further information comes to light.

6.12 Root Cause Analysis

6.12.1 In line with national requirements, the Trust applies a Root Cause Analysis approach to investigations into serious incidents, complaints and claims.

6.13 Claims Management Procedure

6.13.1 The Complaints and Litigation Manager will be responsible for the following actions (in addition those in paragraphs 6.4):

6.13.2 Pre-action Protocols

Sheffield Health & Social Care NHS Foundation Trust recognises and will, at all times, adhere to the Pre-action Protocols for the resolution of clinical disputes and personal injury claims, in the interests of:

- encouraging a climate of openness when something has 'gone wrong' with a service user's treatment, or where the service user is dissatisfied with that treatment and/or the outcome. (See the Trust's Policy available on the intranet)
- encouraging the adoption of a constructive approach to complaints and claims, and accepting that concerned service users are entitled to an explanation and an apology if warranted, and to appropriate redress in the event of negligence
- building on and increasing the benefits of early but well informed settlement which genuinely satisfies both parties in dispute.

6.13.4 Pre-action Protocol for Clinical Negligence Claims

6.13.5 Obtaining the Health Records:

6.13.6 The service user and/or their legal adviser may request copies of the service user's clinical records. This request should be made in writing to the Trust. These requests should adhere to the Department of Health Guidelines and should, when properly completed, constitute satisfactory evidence (for Trust purposes) of the service user's consent for the release of their records to their legal and other expert advisers. This can be in the form of a Pre-action Protocol Letter before Action.

6.13.7 The Trust must provide copy records within **40 days** of this request. In the rare circumstances that the Trust is unable to comply with a request within **40 days**, the problem should be explained to the service user or their representative quickly, and details given as to what is being done to resolve it.

6.13.8 If the records are not provided to the service user or their representatives within **40 days** the service user can apply to the Court for an order for Pre-action Disclosure. This will have adverse cost implications for the Trust.

6.13.9 Letter of Claim

If the service user decides that there are grounds for a claim, they or their solicitors may send a **Letter of Claim** to the Trust and this will be received via the NHS R portal or the small claims court.

6.13.10 The Letter of Claim has been received via the small claims court this should be forwarded to NHS R with immediate effect

6.13.14 Letter of Response

6.13.15 The Complaints and Litigation Manager will co-ordinate the investigation of the claim in conjunction with the NHS R and/or panel solicitors within 3 months of the Letter of Claim. NHS R will provide a reasoned answer to it in the form of a **Letter of Response**. The NHS R will liaise with the Trust to determine which issues of breach of duty and/or causation are admitted and which are denied and why. Documents must be enclosed which are material to the issues in dispute and which would be likely to be ordered to be disclosed by the Court during proceedings.

6.13.17 It should be noted that admissions made in a Letter of Response are binding.

6.13.18 Pre-action protocol for employers' liability and public liability claims

6.13.19 Letter of Claim

6.13.20 Receipt of a Letter of Claim via the NHS R portal is likely to be the first indication the Trust receives of a potential injury claim although the adverse event may have been reported in accordance with the Trust's Incident Reporting Policy.

6.13.21 The Trust will conduct an immediate investigation into the issues raised. The Letter of Claim, together with the outcome of the investigation and a completed document list in accordance with the NHS R guidelines, will be sent to the NHS R within **28 days** if possible, but in any event within 42 days. The NHS R will refuse to accept the claim if the required documents are not included.

6.13.22 Under the protocol, the Claimant should not issue proceedings until after **3 months** from the date of the Letter of Claim, unless there is a limitation issue.

6.13.23 Letter of Response

6.13.24 The NHS R will continue to investigate the claim in conjunction with the Complaints and Litigation Manager and within **3 months** of the acknowledgement of the claim, provide a reasoned answer to it in the form of a Letter of Response. If liability is denied, reasons must be given for the denial, and documents must be enclosed which are material to the issues in dispute and which would be likely to be ordered to be disclosed by the Court during proceedings.

6.13.25 The Letter of Response will usually be drafted by the NHS R and/or panel solicitors with a copy to the Complaints and Litigation Manager.

6.13.26 Pre-action Protocol for Property Claims

6.13.27 Claims for damage or loss of property will be handled in accordance with the Liabilities to Third Parties Scheme (LTPS) administered by the NHS R.

6.13.28 Damage, loss or destruction of Trust property will be investigated and reported in accordance with the Property Expenses Scheme (PES) administered by the NHS R.

6.14 Investigation of Claims

6.14.1 The receipt of any of the following will trigger an investigation:

- a request for records pursuant to the pre-action protocol for clinical negligence disputes which intimates a claim against the Trust; or
- a letter of claim; or
- a claim form.

6.14.2 Internal investigations **must** be commenced immediately upon receipt of one of the above. The Complaints and Litigation Manager will liaise with Patient Safety Team to undertake an initial investigation to determine whether the claim has any merit and whether further in depth investigation is required.

6.14.3 Very serious claims are likely to have been the subject of an adverse incident report in accordance with the Trust's Incident Reporting, Serious Untoward Incident and/or Complaints Policies. The NHS R will link into that investigative process if that proves to be appropriate.

6.15 Principal Aims of All Investigations

6.15.1 The principle aims of any investigation will always be as follows:

- to identify the full names and titles of all staff involved;
- to establish an account of the original incident;

- to identify or maintain all written records;
 - to establish and maintain contact with the staff involved and to obtain an in-house expert opinion.
- 6.15.2 The Complaints and Litigation Manager will then pursue further investigations on behalf of the NHS R, depending on whether the claim is for clinical negligence, personal injury, or property damage or loss to obtain further information if required.
- 6.15.3 The relevant Directorate is required to supply full copies all documentation requested by the Complaints and Litigation Manager in conjunction with the investigation officer in order to assist in the investigation of claims.

6.16 Investigation of A Clinical Negligence Claim

- 6.16.1 All Clinical Negligence claims will be investigated by the Patient Safety Team in conjunction with the Complaints and Litigation Manager, with support from the relevant Services as required.
- 6.16.2 It is important that appropriate support mechanisms for staff involved in traumatic/stressful adverse events are accessed.
- 6.16.3 At the request of NHS R and/or the Trust's panel solicitors, the Complaints and Litigation Manager will seek information from all Trust staff who have been involved in the relevant episode of care. The objectives of this will be to gain appropriate information as set out above by: -
- obtaining preliminary comments from all potential witnesses;
 - obtaining authority to release the medical records to the claimant;
 - obtaining details of any incidents and any other similar incidents;
 - identifying any risk management issues, and if risk management issues are identified:
 - identifying the steps required to avoid a repeat incident and agree a plan for corrective action;
 - identifying a timescale for the implementation of corrective action;
 - if corrective actions are necessary, the relevant Service/Clinical Directors will be contacted and requested to take appropriate action;
 - taking an initial view on liability and then seeking the views of the Trust legal advisers if appropriate;
 - ensuring that further in depth investigation/Root Cause Analysis is conducted if it is deemed appropriate from the initial findings.

6.17 Investigation of A Personal Injury Claim

- 6.17.1 All personal injury claims will be investigated by the Complaints and Litigation Manager, with support from the relevant Service as required.
- 6.17.2 The Complaints and Litigation Manager will obtain the relevant incident report form and will conduct an initial investigation as for Clinical Negligence claims and will then report the claim to the NHS R who will continue the investigation.
- 6.17.3 There is no requirement to report the claim to the NHS R if it falls below the Trust excess. In these circumstances, the Complaints and Litigation Manager may retain conduct of the claim.
- 6.17.4 The NHS R Claims Investigator may arrange a meeting via the Complaints and Litigation Manager with the appropriate manager, line manager and any other relevant witnesses. The objectives of the meeting will be as set out in paragraphs 6.16.3 and also to: -
- obtain preliminary comments from all potential witnesses. If these have not already been obtained, and in any event, to corroborate the content thereof;

- confirm that all relevant documentation has been disclosed and to explore whether any other relevant documents might exist;
- obtain details of similar incidents and decide whether any risk management issues have been identified;
- decide on whether liability rests with the Trust and decide what actions will be taken in the immediate future.

6.18 Action, Learning and Analysis

6.18.1 This section describes the process adopted by the Trust to ensure that appropriate action and learning takes place as a result of the investigation and analysis of claims.

6.18.2 In many although not all cases, the event leading to a claim will already have been investigated (using Root Cause Analysis) through the serious incident reporting and management process or the complaints procedures and any identified remedial action will have been taken earlier in response to that investigation.

6.18.3 In other cases, the need for action as a result of claims may be evident from: -

- the Trust's preliminary investigation of the claim;
- other evidence emerging in the course of the claims process;
- the outcome of the claim;
- identification of themes/trends following analysis of aggregated data.

6.18.4 Where a need for action/learning is identified as a result of a claim, the investigating officer in conjunction with the relevant service in and the Complaints and Litigation Manager will prepare an action plan to identify learning.

6.18.5 Completion of action plans arising from claims is monitored by the Complaints and Litigation Manager.

6.18.6 Actions taken following claims are intended to reduce risks and prevent recurrence of adverse events. It is important to ensure that actions taken are effective and do not result in risks being unwittingly transferred elsewhere. The effectiveness of actions taken is, therefore, assessed through ongoing monitoring of adverse event trends and, in some cases, by local or Trustwide audit.

6.18.7 The effectiveness of risk reduction measures is also monitored through the analysis of adverse event reporting patterns and adverse event trends. If an investigation on the analysis of data reveals significant risks or if significant risks remain after the completion of the action plan, a risk assessment will be undertaken. The outcome of the assessment will be discussed at the relevant Directorate Senior Manager's meeting and placed on the Directorate Risk Register.

6.18.8 Lessons learned from claims in relation to the practice of particular individuals and/or teams are shared with the individual and teams concerned.

6.18.9 Where a claims investigation raises issues of wider concern, summary and anonymised details are presented to the relevant Directorate Senior Manager's meeting. Where appropriate (e.g. where major resource or policy issues will be involved in addressing a concern) learning issues for claims investigations will be escalated via the Quality Assurance Committee to the Trust Board. The issues will also be given consideration by the Service User Safety Group.

6.18.11 Where more than one organisation is involved in an adverse event leading to a claim, relevant information in relation to the claim is forwarded to the organisation concerned.

6.18.12 The Trust participates in a range of national initiatives which draw on the findings of adverse

events, including claims. This includes reporting through national confidential inquiries and participating in research projects and other initiatives.

6.18.15 An Annual Claims report is submitted to the Quality Assurance Committee and the Trust Board. This is a confidential document which includes information on all claims received during the previous 12 months and any outstanding claims from previous years.

6.19 Instructing NHSLA

6.19.1 It is a requirement that the Trust must obtain advice from the NHS R for all claims.

6.19.2 The Trust may instruct the NHS R to act on its behalf on receipt of any personal injury claim and for all clinical negligence cases they must be involved once a Letter of Claim or Proceedings are received.

6.19.3 The Trust will co-operate at all times with the NHS R. The Complaints and Litigation Manager will respond to requests for further information and will also ensure that the NHS R or panel solicitors directly instructed by them are in a position to meet the Court's timetable for conduct of a claim.

6.19.5 The NHS R provide the Trust with quarterly updates on the progress of all claims.

6.20 Resources

6.20.1 The NHS R will be responsible for:

- expenditure on the Schemes whether centrally resourced i.e. funded by the Department of Health, or by contributions from members;
- the cost of administering the Schemes and any additional tasks as specified;
- invoicing the Trust in respect of their handling fees and sub excess fees.

6.21 Support for Staff

6.21.1 The Trust recognises that involvement in any serious adverse event can have profound consequences on those staff involved.

6.21.2 Different individuals will have differing responses to the same event and will, therefore, require different levels of support.

6.21.3 An adverse event is one that invokes unusually strong emotions, overcoming normal coping abilities. Examples include the following:

- Claims, complaints, serious incidents;
- Allegations of negligence;
- Dealing with a major incident;
- Involvement in cases of safeguarding adults or children;
- Cases of harassment and/or bullying;
- Involvement in an incident of violence or aggression, whether as a victim or as a witness;
- Being called as a witness in a Court (including Coroners).

6.21.4 It is important that staff are kept fully informed of any investigation relating to an adverse event in which they have been involved.

6.21.5 In particular, they should be made aware when the relevant investigation has been completed and the findings, recommendations and any action to be taken should be shared with them.

6.21.6 The following support will be available to staff both **immediately** and on an **ongoing** basis from the time at which an adverse event is notified, throughout the investigation and until the case is closed:

- Support from their line manager;
- Support from the Complaints and Litigation Manager (Complaints/Claims);
- Support from the Clinical Risk Manager (Incidents/Coroners);
- Support from the Safeguarding Lead;
- Support from Human Resources;
- Access to the Trust staff counselling service Workplace Wellbeing;
- Occupational Health (referral by Manager);
- Trust Chaplaincy service;
- Trade Union support;
- Relevant professional bodies, for example, GMC, NMC etc.

6.21.7 Staff will be made aware that the investigation of any claim takes place independently of any disciplinary procedure and, where appropriate, in accordance with the Trust's Being Open Policy.

6.21.8 On receipt of a claim (whether Clinical Negligence, Employers' Liability, Public Liability or Property Expenses), the following staff will be notified as a matter of course:

- relevant Clinical and/or Service Director;
- relevant team/ward, unit or service manager.

6.21.9 Following the resolution of the claim, debriefing is available from the Complaints and Litigation Manager. All staff involved in a claim will be offered debriefing as a matter of routine.

6.21.10 Should any member of staff be called as a witness in respect of a claim, individual support will be provided by the Complaints and Litigation Manager. Additional support will also be offered by the Trust solicitor.

6.21.11 Guidance will be provided on preparing witness statements for the Court where applicable.

6.21.12 Members of staff involved will be notified of the conclusion of the claim at the time of settlement.

7. Dissemination, Storage and Archiving (Control)

7.1 The policy will be made available to all staff via the Sheffield Health & Social Care NHS Foundation Trust intranet. Hard copies will be distributed to each Directorate and also to central services. An e-mail will be sent to all staff informing them that the policy is available.

7.2 Previous versions of the policy will be deleted by the Complaints and Litigation Manager, however, a hard copy of each previous version will be held by the Complaints and Litigation Manager in the claims archive.

7.3 Version control is the responsibility of the Complaints and Litigation Manager.

7.4 This policy will be implemented within the Corporate Affairs Team by the Complaints and Litigation Manager.

8. Training and Other Resource Implications

8.1 The Complaints and Litigation Manager and staff are required to undertake ongoing professional training through attendance at relevant seminars, conferences etc. provided externally.

- 8.2 To facilitate continual improvement in the handling of claims, one-to-one training will be made available throughout the year for relevant managers involved in collecting information for claims.
- 8.3 Those members of senior staff involved in collecting information for claims are required to have completed Root Cause Analysis training.
- 8.4 In addition, the Complaints and Litigation Manager will be available to work with groups of staff to address their specific training and learning needs.
- 8.5 All staff receive a briefing on risk management, including incident reporting, as part of the Trust Induction and are given a local briefing on reporting incidents as part of their local induction.

9. Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
NHSLA schemes relevant to the organisation (CNST,LTPS and PES)	Claims managed in accordance with Trust Claims Procedure	Complaints and Litigation Manager Quality Assurance Committee Directorate Leads Service User Safety Group	Monthly	Complaints and Litigation Manager	Complaints and Litigation Manager	Complaints and Litigation Manager Directorate Leads
Action to be taken including timescales	Weekly monitoring	Complaints and Litigation Manager Directorate Leads	Weekly monitoring	Complaints and Litigation Manager	Complaints and Litigation Manager	Complaints and Litigation Manager Directorate Leads
How the organisation communicate with relevant stakeholders, such as staff claimants, NHSLA, solicitors ,HM Coroner, etc	As necessary in accordance with Claims Policy	Complaints and Litigation Manager	Weekly monitoring	Complaints and Litigation Manager	Complaints and Litigation Manager	Complaints and Litigation Manager Directorate Leads

- 9.1 The implementation of the procedure and compliance with the NHS Litigation Authority guidelines will be audited by the Complaints and Litigation Manager on an annual basis.
- 9.2 Responsibility for monitoring national guidance (which may necessitate an early review) rests with the Complaints and Litigation Manager who will advise the Director of Organisation Development/Board Secretary as required.

- 9.3 It is acknowledged that periodically, Internal Audit may review the claims process for compliance with relevant guidance and the current procedure. In addition, the NHS Litigation Authority case managers contact the Complaints and Litigation Manager regularly with regard to the appropriate management of individual cases.
- 9.4 The effectiveness of this policy will be measured by:
- monitoring the number and outcome of claims; this is presented for review via the Quality Assurance Committee;
 - an annual audit of complaints, claims and serious incidents which will identify whether adverse incidents leading to claims have been reported to external partners and whether actions agreed in respect of claims investigations have been implemented. This audit will be led by the Complaints and Litigation Manager and presented to the Quality Assurance Committee;
 - monitoring compliance with the time limits identified in this policy. A report on compliance will be submitted by the Complaints and Litigation Manager to the Quality Assurance Committee via the Annual Claims Report. It will include a review of feedback from external agencies including the NHSLA, Trust Solicitors etc;
 - support of staff involved in stressful claims will be included in an annual audit of arrangements to support staff who may experience stress as a result of complaints and/or claims. This audit will be led by the Complaints and Litigation Manager and will be reported to the Quality Assurance Committee via the Annual Claims Report.
- 9.5 The Claims Annual Report will include data relating to the management of claims and a summary of the monitoring described above.

10. Implementation Plan

Action / Task	Responsible Person	Deadline	Progress update
Put new policy onto intranet and website and remove old version	Complaints and Litigation Manager	As soon as ratified.	
Make staff aware of new policy via Communications Digest	Complaints and Litigation Manager	First digest following ratification.	
All Managers to ensure that they make their staff aware of the new policy and its implications	All Trust managers	Within a week of being informed of the new policy via the Communications Digest.	

11. Dissemination Record

Version	Date on website (intranet and internet)	Date of “all SHSC staff” email	Any other promotion/ dissemination (include dates)
1.0	November 2007	November 2007	
2.0	November 2008	November 2008	
3.2	November 2010	November 2010	
4.0	December 2012	December 2012	
5.0	August 2016	August 2016	
6.0	31 July 2020	August 2020	

12. Links to Other Policies, Standards and Legislation (Associated Documents)

- 12.1 This policy links to Being Open Policy, Incident Reporting/Investigation Procedure, Complaints Policy, Guidance on Risk Assessment, Policy on Accessing Legal Advice - all are available from the Trust's webpage (intranet).
- 12.2 This policy is to be read in conjunction with the Trust's Policy for the Investigation of Complaints, Claims and Incidents.

13. Contact Details

Title	Name	Phone	E-mail
Director of Corporate Governance	David Walsh	50803	david.walsh@schs.nhs.uk
Complaints and Litigation Manager	Joanne Slater	64071	joanne.slater@shsc.nhs.uk

14. References

NHS Litigation Authority Framework Document. Available from www.nhsla.com

NHS Litigation Authority Clinical Negligence Rules and Reporting Guidelines Fourth Edition – January 2007. Available from www.nhsla.com

NHS Litigation Authority Risk Pooling Scheme for Trusts Rules and Reporting Guidelines. Available from www.nhsla.com

NHS Litigation Authority LTPS and PES Rules. Available from www.nhsla.com

NHS Litigation Authority Disclosure List. Available from www.nhsla.com

Risk Management Standards for Mental Health and Learning Disability Trusts.

Department for Constitutional Affairs, 1998, *Pre-action Protocols for the Resolution of Clinical Disputes 1998/183* [online]. London: The Stationary Office. Available from www.dca.gov.uk

Department for Constitutional Affairs, 1998, *Pre-Action Protocol for Personal Injury Claims* [online]. London: The Stationary Office. Available from www.dca.gov.uk

Association of Litigation and Risk Management (ALARM) www.alarm.org

Appendix A – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES** – proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

Stage 3 – Policy Screening - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations, in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice this can be found at <http://www.shsc.nhs.uk/about-us/equality--human-rights>

	Does any aspect of this policy actually or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
AGE	No	N/A	N/A
DISABILITY	No	N/A	N/A
GENDER REASSIGNMENT	No	N/A	N/A
PREGNANCY AND MATERNITY	No	N/A	N/A
RACE	No	N/A	N/A
RELIGION OR BELIEF	No	N/A	N/A
SEX	No	N/A	N/A
SEXUAL ORIENTATION	No	N/A	N/A

Stage 4 – Policy Revision - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)

Please delete as appropriate: Policy Amended / Action Identified / no changes made.

Impact Assessment Completed by (insert name and date)

David Walsh, June 2020

Appendix B – Development, Consultation and Verification

As this policy is a statutory requirement which must comply with NHS R guidance there was no consultation process.

The previous policy (dated 2016) was revised in line with the Risk Management Standards for Trusts, latest guidance from the NHS R and in line with the Trust's revised Policy on Policies.

Claims Risk Grading

Table 1 Assessment of the severity of the consequences of an identified risk: domains, consequence scores and examples of score descriptors

Consequence score (severity levels) and examples of descriptors					
	1	2	3	4	5
Domains	Negligible	Minor	Moderate	Major	Catastrophic
Impact on the safety of patients, staff or public (physical/psychological harm) Clinical issues Health & Safety issues	Minimal injury requiring no/minimal intervention or treatment Requiring no time off work Expected death Missing patient 'low' category Additional examples: incorrect medication given but not taken	Minor injury or illness requiring minor intervention Requiring time off work for <3 days Care plan compliance failure Missing patient 'medium' category Illicit drug use	Moderate injury requiring professional intervention (includes self harm) Requiring time off work for 4-15 days RIDDOR reportable incident Self harm Event which impacts on a small number of patients Fracture/dislocation Adverse drug error Patient assault on staff (SIRS) Personal injury – fracture Serious injury to a child Missing patient 'high' category Serious outbreak of disease/ food poisoning	Major injury leading to long-term disability/incapacity (includes serious self harm) Requiring time off work for >14 days Mismanagement of patient with long term effects Serious self harm Suicide attempt Serious assault against staff Transmission of serious infection	Incident leading to death (including unexpected death reportable to Coroner) Multiple permanent injury or irreversible health effects An event which impacts upon a large number of patients Suspected homicide Loss of limb Fatality

Consequence score (severity levels) and examples of descriptors					
	1	2	3	4	5
Domains	Negligible	Minor	Moderate	Major	Catastrophic
Quality/ Complaints/ Audit	Peripheral element of treatment or service sub-optimal Informal complaint/ inquiry	Overall treatment or service sub-optimal Formal complaint Local Resolution Single failure to meet internal standards Minor implications for patient safety if unresolved Reduced performance if unresolved	Treatment or service has significantly reduced effectiveness Serious complaint Repeated failure to meet internal standards Local resolution (with potential to go to independent review) Majority patient safety implications of findings are not acted on	Non-compliance with national standards with significant risk to patients if unresolved Multiple complaints/ independent review Low performance rating Critical report Major complaint/ claim	Incident leading to totally unacceptable level of quality of treatment/ service Gross failure of patient safety if findings no acted upon Inquest/ Ombudsman inquiry Gross failure to meet national standards
Human resources organisational development/ staffing/ competence	Short term low staffing levels that temporarily reduces service quality (<1 day)	Low staffing level that reduces service quality	Late delivery of key objective/ service due to lack of staff Unsafe staffing level or competence >1 day Low staff morale Poor staff attendance for mandatory/ key training	Uncertain delivery of key objectives/ service due to lack of staff Unsafe staffing level or competence (>5 days) Loss of key staff Very low staff morale No staff attendance at mandatory/ key training	Non-delivery of key objectives/ service due to lack of staff Ongoing unsafe staffing levels or competence Loss of several key staff

Consequence score (severity levels) and examples of descriptors					
	1	2	3	4	5
Domains	Negligible	Minor	Moderate	Major	Catastrophic
Statutory Duty/ Inspections	No or minimal impact of breach of guidance/ statutory duty	Breach of statutory legislation Reduced performance rating if unresolved	Single breach in statutory duty Challenging external recommendations/ improvement notice	Enforcement action Multiple breaches in statutory duty Improvement notice Low performance rating Critical report	Multiple breaches in statutory duty Prosecution Complete systems change required Severely critical report
Adverse publicity/ reputation	Rumours Potential for public concern	Local media coverage – short term reduction in public confidence Elements of public expectation not being met	Local media coverage – long term reduction in public confidence	National media coverage with <3 days service well below reasonable public expectation	National/ international coverage with >3 days service well below reasonable public expectation MP concerned (questions in the house) Total loss of public confidence
Business objectives/ projects	Insignificant cost increase/ schedule slippage	<5% over project budget Scheduled slippage	5-10% over project budget Schedule slippage	Non-compliance with national 10-25% over project budget Schedule slippage Key objectives not met	Incident leading to >25% over project budget Schedule slippage Key objectives not met

Consequence score (severity levels) and examples of descriptors					
	1	2	3	4	5
Domains	Negligible	Minor	Moderate	Major	Catastrophic
Finance including claims	Small loss Risk of claim remote	Loss of 0.1-0.25% of budget Claim less than £10,000 Vandalism/ theft <£10k Cosmetic damage to premises	Loss of 0.25-0.5% of budget Claims between £10,000 and £100,000 Vandalism/ theft £10-50k	Uncertain delivery of key objective/ loss of 0.5-1.0% of budget Claim between £100,000 and £1 million Purchasers failing to pay on time Vandalism/ theft £50-£100k	Non-delivery of key objective of >1% of budget Failure to meet specification/ slippage Loss of contract/ payment by results Claims > £1 million Vandalism/ theft over £100k
Service/ business interruption Environmental impact	Loss/ interruption of >1 hour Minimal or no impact on the environment	Loss/ interruption >8 hours Minor impact on environment Cosmetic damage to premises	Loss/ interruption of > 1 day Moderate impact on environment Structural damage to premises	Loss/ interruption of > 1 week Major impact on environment Permanent irreparable damages to premises/ damage up to £100k	Permanent loss of service or facility Catastrophic impact on the environment Serious fire Permanent irreparable damage to premises/ damage over £100k

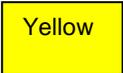
Table 2 Measures of Likelihood

(Based on current controls, systems and previous trends)

Likelihood Rating	Description
Almost Certain	This type of even will happen again and frequently (above 90% chance)
Likely	This type of event will happen again but is not a persistent concern (between 50-90% chance)
Possible	There is a possibility that this type of even will happen again (between 10-49% chance)
Unlikely	Unlikely that this type of even will happen again
Rare	Cannot believe that an event of this type will occur again in the foreseeable future

Table 3 Risk Rating Matrix

Risk Rating Matrix (Consequence x Likelihood)					
Consequence ↓	Likelihood				
	Rare (1)	Unlikely (2)	Possible (3)	Likely (4)	Almost certain (5)
Negligible (1)	1	2	3	4	5
Minor (2)	2	4	6	8	10
Moderate (3)	3	6	9	12	15
Major (4)	4	8	12	16	20
Catastrophic (5)	5	10	15	20	25

<i>Risk Rating</i>	 Green	 Yellow	 Amber	 Red
	Very Low	Low	Moderate	High