

Claims Management Policy

Policy information

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Corporate

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Summary of document:

Defines the Health Board policy, roles and responsibilities in the handling of Redress matters, Clinical Negligence claims, Personal Injury claims and General Medical Practice Indemnity claims (GMPI).

This policy does not cover small claims and claims that do not have an element of personal injury to them such as damage to property, road traffic collisions, see link below at paragraph 6.17 for further information.

Scope:

The policy applies to members of staff employed by the Hywel Dda University Health Board (permanent and non-permanent) and, in certain circumstances, to contractors and those who work on behalf of contractors.

To be read in conjunction with:

All Wales Putting Things Right Guidance

[982 Incident, near miss and hazard reporting policy](#) – opens in a new tab

[156 Risk Management Strategy & Policy](#) – opens in a new tab

[066 - Losses and Special Payments Procedure](#) – opens in a new tab

- [347- Corporate Records Management Policy](#) – opens in a new tab
- [192- Health Records Management Policy](#) – opens in a new tab
- [1088- Information Right Procedure](#) – opens in a new tab
- [249- Access to Health Records Policy](#) – opens in a new tab
- [836- All Wales Information Governance Policy](#) – opens in a new tab
- [193- Retention and Destruction of Records Policy \(Including Health Records\)](#) – opens in a new tab
- [172- Confidentiality Policy](#) – opens in a new tab

Owning group:

Listening and Learning Sub Committee
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Executive Director job title:

Mandy Rayani – Director of Nursing, Quality and Patient Experience

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- 1.0 – New Policy
- 2.0 – Revised
- 3.0 – Full Review
- 4.0 – Full Review and Revision

Keywords

Claims, management, Clinical Negligence, Redress, Personal Injury

Glossary of terms

Term	Definition
Clinical/Medical Negligence - Liability	Where it is established that the duty of care owed by the Health Board via its staff/systems has been breached and harm and/or loss has been caused as a result of that breach. A breach of duty is said to have occurred where the standard of care provided has fallen below that expected of a responsible body of doctors, nurses, allied professionals, or other members of staff.
Personal Injury	Where harm has been caused to a member of staff, patient, visitor, due to a breach of the relevant employment regulations/Occupiers Liability Act 1957/1984.
National Health Service Concerns, Complaints and Redress Arrangements (Wales) Regulations 2011	These regulations form the statutory framework under which incidents, complaints and concerns regarding patient care are managed and decisions are made about whether or not a Qualifying Liability (QL) exists and, if so, whether redress is required. A QL is said to exist where the standard of care has fallen below the standard required (as in breach of duty above) resulting in harm or loss to the patient. It should be noted that there is a distinction between the process for managing a concern/complaint (under part 5 of the regulations) and the process for managing redress (under part 6 of the regulations).
Redress	Where a qualifying liability exists, redress can be given in a number of different forms such as an apology, remedial treatment and/or financial compensation

Public Service Ombudsman	PSO investigates complaints/concerns made in relation to the provision of health services and other public services and, subject to his findings, he can instruct Health Boards to apologise or make payments following his conclusion.
NWSSP Legal and Risk	NHS Wales Shared Services Partnership, Legal and Risk Services provides legal advice and representation to Health Bodies in Wales in clinical negligence and person injury matters and can advise in other areas of law.

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Introduction

The Health Board has a duty of care towards its patients/clients/service users, its staff and members of the general public.

When the duty of care has been breached, the matter will be dealt with in one of 3 ways:

1. Under the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011, locally known as the Putting Things Right (PTR) Regulations if the matter relates to the care of a patient and the value, if successful, is estimated to be under £25,000. If, during an investigation, it becomes apparent that the value of the case sits just above the £25,000 ceiling, settlement can still be negotiated outside of the regulations if both parties agree.
2. In matters where damages are estimated to be over £25,000 at the outset or where a patient does not want their complaint to be dealt with under the PTR regulations, the matter will be managed through the Pre-action Protocol for the Resolution of Clinical Disputes provided for within the Civil Procedure Rules. It will be conducted jointly by the in house legal services team and Legal and Risk Services – solicitors employed directly by the NHS and based in the NHS Wales Shared Services Partnership (NWSSP).
3. For matters relating to staff or visitors to the hospital or where personal injury has occurred to a patient which is not related to care and treatment, it will be dealt with under the Pre- action Protocol for Personal Injury which can be found in the Civil Procedure Rules.

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

- that he/she was owed a duty of care by the Health Board;
- that the duty was breached; and
- that the breach of duty identified caused, or materially contributed to, harm or loss.

Civil claims have a statutory time limit under The Limitation Act 1980 known as “limitation.” It provides that proceedings must be issued within three years of the date of the incident, 3 years from the date a claimant becomes aware that he/she has or may have suffered harm due to negligence (date of knowledge) or 3 years from the date of a person’s death. Where death has occurred, the claim can be brought on behalf of the person’s estate. In the case of minors, the 3 year limitation period starts running once they have reached the age of 18. For people who lack capacity to litigate, limitation does not run.

Where limitation has expired, a moratorium on limitation can be agreed between the parties for example where there has been a genuine difficulty obtaining records or expert reports or where the claimant has been ill. If a moratorium cannot be agreed, a Claimant can make an application to court to have limitation set aside and would have to satisfy a judge that the failure to bring the action within the 3 years is justifiable and there would be no prejudice to the Defendant’s investigation of the claim if limitation were to be set aside.

Litigation is lengthy and expensive.

Policy statement

This document sets out the Health Board's policy for the management of clinical negligence claims, personal injury claims and PTR matters brought against the Health Board.

Scope

The scope of this policy covers all staff employed by Hywel Dda University Health Board who are involved in a claim or redress matter.

Aim

The aim of this policy is to assist staff to understand the claims and redress processes and support them in assisting the health board when a claim is brought against it or when a case is being managed under redress.

Objectives

The aim of this document will be achieved by the following objectives:

- To assist those employed by the Health Board to adopt a standardised approach when dealing with claims and redress.
- To provide an understanding of why it is necessary to gather evidence quickly and make a concerted effort to bring the claim/redress matter to a swift conclusion.
- To ensure that the relevant Pre-Action Protocols/ PTR regulations are followed.
- To provide an understanding of why claims are sometimes settled without making any admissions to save on the cost of litigation where there is a litigation risk.
- To explain what alternative dispute resolution (ADR) is and why the Health Board might engage in that process.

Managing Claims Procedure

A clinical negligence claim is usually brought against the Health Board rather than an individual member of staff as the Health Board takes responsibility for the actions/inactions of all of its "servants and agents." This is known as vicarious liability.

Where an employee has not followed policy or has directly operated against policy then, following legal advice, it may be necessary for an individual member of staff to become the Defendant or Co-Defendant in a matter which means they would become a party to the proceedings allowing them to have their own legal representation in court. This rarely happens but remains a possibility.

The Health Board is initially notified of a potential claim by way of a request for copies of the Claimant's medical records and, when the records have been disclosed and reviewed by the Claimant's solicitors, where the claim is being pursued, a Letter Before Action or a Letter of Claim will follow setting out the allegations of negligence being brought against the Health Board and the harm alleged to have been caused. The Health Board has 4 months to prepare a letter of response in clinical negligence matters and 3 months in personal injury claims.

Once the Health Board is notified that a claim is being pursued, solicitors at Legal and Risk Services (L&RS) are instructed to act on its behalf in all clinical negligence and personal injury claims. The Claimant's medical records are provided to the solicitor at L&RS who, at that stage, will review the matter, request witness comments/statements, policy documents and any other relevant documents. In the case of personal injury claims, other documents might be required such as plans, maintenance records etc...

The relevant staff will be asked to prepare a factual witness statement setting out their involvement in the patient's care. Staff involved in a claim should not discuss their evidence with any other staff member involved with the same claim nor allow others to read their witness statements. If they need support it should be sought from a manager not involved in the claim who could be their line manager if they are not a witness or a different manager within the directorate if they are.

Independent expert witnesses are usually instructed to provide an opinion on whether there has been any breach of duty of care, whether or not any harm was caused due to that breach (causation) and, if so, the extent of that harm and future prognosis (condition and prognosis). The experts should be like for like in relation to breach of duty, however, other experts such as Occupational Therapy (OT), Physiotherapists or care experts may be necessary to give an opinion on causation, condition and prognosis. Once staff have completed their factual statements, they will have an opportunity to read and make comments on the expert reports and, where appropriate, assist the legal team in formulating questions to be put to the expert witnesses.

After all of the evidence is obtained, the solicitor at L&RS will advise the Health Board on whether there is enough evidence at that stage to defend the claim or whether the Health Board should concede liability in full or in part. A further review on liability will take place after the parties exchange witness evidence and expert reports. In appropriate matters, the expert witnesses will meet to produce a joint statement to establish what points can be agreed and whether they can narrow down any outstanding issues between them. Counsel will be instructed to advise in more complex matters.

When a decision has been made to settle a claim, the Health Board has 60 working days to produce a Learning from Events Report (LfER – [Appendix A](#)) showing what has been done to mitigate against the risk of the same issue recurring. Evidence of any actions taken such as minutes of meetings, audits and distribution lists must accompany the LfER otherwise reimbursement may be deferred until the Health Board can produce the evidence. The service(s) must also provide a Learning Assurance Plan (i.e. Audits, regular scrutiny meetings etc) to show that the actions put in place have been sufficient to mitigate against the risk of recurrence. If the evidence cannot be produced, the Welsh Risk Pool (WRP) may decline reimbursement. This would have serious financial consequences for the health board if the value of the claim is high. It can also result in an increase in the amount of money the Health Board has to contribute to the WRP at the start of the financial year and may affect reimbursement of cases of a similar nature.

At times, it may appear possible at the outset to defend a claim, however, as the matter progresses, if it becomes evident that there are likely to be significant risks in taking the matter to trial, The Health Board may be advised by the solicitor/counsel to settle the matter on an economic basis without making any admissions. This will avoid incurring unnecessary litigation costs which can be significant. In smaller claims, the costs can be greater than the damages awarded

If the matter progresses to trial, some or all of the staff members involved will be called to give oral evidence. Prior to the trial date, counsel for the Health Board will meet with the witnesses to help them prepare for appearing in court. Those witnesses will also have access to their line manager or other manager for support who can attend court with them.

The witnesses will receive a court summons. Once they have been served with a summons they must attend court on the specific day they have been asked to attend. Failure to do so without good reason would render the witness in contempt of court which can have significant consequences for them individually (a fine or imprisonment depending upon the circumstances). If a witness receives a summons and cannot attend on the day for good reason, they should inform the court directly **and** the Legal Services manager as soon as possible to avoid any adverse consequences.

Where appropriate, LRS may advise alternative methods of resolving disputes such as Mediation (the mediator helps both sides to reach agreement between themselves) or Alternative Dispute Resolution other ways of reaching agreement without going to court. If that happens, authorisation to settle by mediation/ADR is sought from a member of the Executive Board prior to Mediation/ADR (see [Appendix B](#), Schedule of Delegation). Accompanying the authorisation form for signing by the executive will be counsel's assessment of quantum and advice on a settlement figure. In the event new information comes to light during mediation causing Counsel to change their advice in relation to settlement, in order to avoid missing an opportunity to conclude the case, delegated authority is given to the Legal Services Manager and the legal representatives to act in the Health Board's best interests and a written explanation will be provided to the Chief Executive thereafter. Witnesses will not be asked to attend mediation or a joint settlement meeting.

At the end of a matter, the Claims Managers have to submit a Case Management Report (see [Appendix C](#)) and U2 checklist within 4 months of the final payment being made giving an outline of what has happened and how the Claim was managed. This is submitted to the WRP for reimbursement. Reimbursement can also be applied for during the course of a claim when the expenditure reaches £100,000.

In a claim where the recipient of the damages award is a child or an adult who lacks capacity to instruct a solicitor in relation to the proposed settlement figure, an approval hearing will take place in which a judge will determine whether the settlement agreed between the parties is fair and should be approved.

L&RS can also provide general legal advice in areas such as judicial review, data protection, funding, procurement, contracts, employment and property etc... The Health Board may also request general legal advice from solicitors/barristers other than those in LRS where specialist legal advice is required.

This policy does not cover **small claims** and **claims which to not have a personal injury element to them** such as those involving road traffic collisions, damage to property. Claims such as these are covered by a different policy, the link to which can be found below:

https://nhs.wales365.sharepoint.com/sites/HDD_Corporate_Governance/Policies/Forms/AllItems.aspx?id=%2Fsites%2FHDD%5FCorporate%5FGovernance%2FPolicies%2FFinancial%20Procedures%2F066%2F066%20%2D%20Losses%20and%20Special%20Payments%20Procedure%2Ev3%2Epdf&parent=%2Fsites%2FHDD%5FCorporate%5FGovernance%2FPolicies%2FFinancial%20Procedures%2F066
(opens in a new tab).

Redress

The investigation of a matter under the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 is conducted in two stages. Firstly, the concern will be investigated by the Feedback team or Quality Assurance Team under Part 5 of the Regulations (Handling of a Concern). Secondly, where it is found under Part 5 that there has been a breach of duty of care which has or may have caused harm or loss, the matter will be referred to the Redress Team who will continue to progress the matter under part 6 of the regulations (Redress). During an investigation under part 5, the Feedback or QAST team may seek the advice of the Redress and Legal Services Managers in relation to breach of duty or to ask them to instruct an expert for an independent opinion on whether or not there has been a breach of duty of care. In this instance the expert will be instructed by the Health Board alone.

Once it is established that a qualifying liability may or does exist, the Redress team will assess what, if any, harm or loss has been caused by the breach of duty(causation), and, where established, the extent of the harm or loss. Under Part 6 of the Regulations, an independent expert may be instructed on a joint basis to determine causation. Once the expert has been agreed by both parties, he/she will be instructed on a joint basis to provide a causation report or causation, condition and prognosis report.

Where a Qualifying Liability is admitted the appropriate type of redress will be considered and an offer of redress will be made to the complainant either directly or via their legal team if instructed. Redress can take a number of forms including an apology; remedial treatment, financial compensation or a combination of any of those. If financial compensation is appropriate, the matter will be quantified by the Redress and Legal Services Manager with assistance from Deputy/Head of Legal Services or the solicitors at L&RS in the more complicated matters and an offer made to the patient. If an award is being considered above £25,000 in damages (general and special combined) and/or there is a Compensation Recovery Unit (CRU) certificate or NHS Certificate from Department of Work and Pensions (DWP) over £3,000, approval must be sought from L&RS solicitors **prior** to the offer being made (see WRPS Reimbursement Procedures (2019) 21.0-5 and 22.0-22.7).

To ensure a level playing field, the person raising the concern is entitled to instruct a solicitor to advise them on causation, the value of the claim and consideration of any offer of redress made by the Health Board. Under Part 6 of the Arrangements the costs of a solicitor will be met by the Health Board in accordance with Appendix O of the Putting Things Right document, the 'Fixed Fees Framework.'

In a matter settled under the Regulations, where the recipient of the damages award is a child or an adult who lacks capacity to instruct a solicitor in relation to the proposed settlement figure (Reg 33(f)(i)(ii)), either a Parental Indemnity Waiver Agreement can be signed by a parent with parental responsibility in the case of a child or, in respect of an adult, a Lasting Power of Attorney/Court Appointed Deputy for property and affairs can sign a Waiver Agreement. If none of the above are available to sign the Waiver Indemnity/Agreement, it will be necessary for an application to be made to court for a judge to determine whether the proposed settlement agreed between the parties is fair and should be approved.

At the time a qualifying liability is admitted, the Redress Team has 60 working days to submit a Learning from Events Form which has to be completed by the service. Any issues in the case must be identified on the form together with actions taken to minimise the risk of the same issues recurring in future. Documentation to evidence such actions (i.e. minutes of meetings, training sessions with attendee list, audits and distribution lists where memos have been produced etc.) must also be

submitted with the LfE. The service(s) must also provide a Learning Assurance Plan (i.e. Audits, regular scrutiny meetings etc.) to show that the actions put in place have been sufficient to mitigate against the risk of recurrence. Failure to provide an LfE on time, may result in the Health Board not being reimbursed, an increase in the amount of money the Health Board has to contribute to the Welsh Risk Pool at the commencement of the financial year and it may affect reimbursement of future cases of a similar nature. The LfER from for claims and redress can be found at [Appendix A](#)

If a case has settled at or below £25,000 under the Redress process or above £25,000 by the Redress team 'in the spirit of the PTR Regulations' (but outside of the regulations, see PTR Regulation 29.3 and WRPS Reimbursement Procedures (2019) 21.0-5) or a redress matter discontinues and the matter progresses as a claim, a Case Management Report (see [Appendix D](#)) and U2 Checklist are to be submitted to WRP within 4 months of the final payment made on the case or the case being transferred to a different route.

At 12pm on the last working day of each quarter the Health Board will submit to WRP the three 'Forecast' spreadsheets detailing each and every 'open' redress case, identifying the stage of the case, predicted forecast of damages/costs for each case and detailing the payments made to date on each case (see WRPS Reimbursement Procedures (2019) at 28.0)

The Redress Team will submit figures for the Welsh Government Pro Forma to WRP for the previous quarter in the first month of the quarter.

Where a claim is initially being pursued, if it fits the criteria for consideration under PTR, the Claimant will be asked whether they want to change to the PTR pathway. It is up to the Claimant to decide how they would like to proceed.

In accordance with Putting Things Right Regulations 14(1)(i) - if court proceedings are issued when a concern/complaint is under investigation or has passed to the redress team, all further investigations of the concern and/or redress must stop and the matter will progress in accordance with the Civil Procedure Rules.

Claims involving GP Practices

For General Medical Practices, in relation to incidents occurring on or after 1 April 2019, the Health Board can provide an indemnity arrangement and will be the named Defendant for clinical negligence litigation. LRS GMPI Team will act on behalf of and seek instructions from the Health Boards in relation to the litigation and will seek evidence and views on strategy from General Medical Practices and their staff.

Matters will be sent to L&RS for triage to GMPI@wales.nhs.uk to see if it is in scope for the GMPI scheme.

On conclusion of a case LRS will co-ordinate the Learning from Events Report and Case Management Report in liaison with the Redress and Legal Services Manager for submission to the WRP.

Confidentiality and Disclosure

During a claim or PTR matter, the Health Board will be asked, on production of a consent form, to disclose the patient's medical records to the Claimant's legal representatives. This will include **any document** where information has been stored about a patient in either written or electronic form. Full

disclosure of all information is essential in order for both sides to be in a position to fully assess their positions during the course of a claim. Late disclosure of documents available at the outset of a claim can jeopardise the Health Board's ability to defend a matter. When staff are notified of a claim they will need to inform the Redress and Legal Services Manager or all places where information is stored as this may differ from directorate to directorate. Examples of the types of documents for disclosure can be found at [Appendix E](#).

Disclosure will be made in accordance with the Health Board's Information Governance Policies and Procedures redaction may be required prior to disclosure, for example, where there are allegations made about a 3rd party or there are other 3rd party references in the records.

Information gathered during the course of a claim will be stored in accordance with the Health Board's Information Policies and Procedure for Records Management, Data Protection and Confidentiality.

Correspondence with the directorate relating to a claim should **never be stored** within the patient's medical records, nor should any legal advice obtained for any purpose. Legal advice attracts Legal Professional Privilege (LPP) and, as such, should not be disclosed to any other party in the proceedings. If the information becomes part of the medical records it will be disclosed within the record any legal advice in the file should be redacted and an exemption applied. Legal matters should be stored in a separate file. It may sometimes be necessary to file a Court Order within the medical records but staff will be advised if this is necessary.

Financial Matters

Welsh Government (WG) has delegated the responsibility to authorise the settling of claim up to a limit of £1,000,000 to the Chief Executive/UHB. Any claims over this amount which have not been managed in accordance with the relevant legal framework will be treated as losses which will require either retrospective approval from WG (if appropriate) or recover/write off action. For claims over £1,000,000 authorisation to settle has to be sought from the Welsh Government. Legal and Risk Services obtain such authorisation directly on behalf of Health Boards once authority from the CEO has been obtained.

Legal Services Managers and relevant finance officers will maintain the databases for all claims and redress management including appropriate accounting provision for the Health Board liabilities. All payments in respect of clinical negligence or personal injury claims will be entered in the register of losses and special payments LaSPAR by the Finance Department.

The Health Board agrees delegated financial limits for the settlement of each claim as set out in [Appendix B](#)

Links between Concerns, Risk and Litigation

Adverse incidents or outcomes where the severity of the incident is severe or catastrophic and which could lead to a claim for negligence should be identified and reported to the Head/Deputy Head of Legal Services when they occur, either by provision of an incident report or by provision of the required information such as:-

- a. Details of potential patient/staff member/visitor
- b. Date and details of incident/outcome from which a claim might arise
- c. Names of clinical, nursing and other staff involved in or witnessing the incident
- d. Statements by clinical, nursing and other staff involved in or witnessing the incident.

Whether a potential claim has previously been reported as an incident or concern can be identified within the Datix system. This assists with expediting the process of gathering information.

Reports providing information on concerns, claims and risks will be provided to relevant groups to enable information to be cascaded through all levels of the organisation.

Early Reporting Scheme - potential claims involving hypoxic brain injuries following birth.

The early reporting scheme devised by L&RS is currently under review. The previous pathway was found to be too onerous with no real benefit when it came to investigating the claim. It is to be simplified by L&RS with a change in the criteria for referral. Health Boards are to be informed of the new process in due course.

Learning Lessons

All directorates and services within the UHB are required to have systems in place for identifying issues as they arise and for putting actions in place to minimise the risk of or prevent similar occurrences. This is done through the incident reporting module on the Datix system. Through the system's incident reporting function, local trends can be identified highlighting where remedial action is required. Monitoring the efficacy of changes will involve the Clinical Audit Department. Each Directorate has responsibility for ensuring that any identified and agreed actions are implemented and monitored and that lessons are shared across the organisation.

Any new risks identified through the investigation of a claim must be subject to a full risk assessment carried out by the relevant service and incorporated within the relevant risk register

The Learning Lessons Sub-Committee (LLSC) will meet regularly to consider themes and trends and specific cases. Making suggestions and authorising proposed changes where issues have been identified during the investigation of incidents/concerns/claims necessitating a change in process, pathway or practice. Appropriate seniority level will represent directorates at this meeting in order to facilitate decision making and/or effect change. The findings/decisions made at LLSC will be reported to the Quality, Safety, Experience and Committee (QSEC) meetings at board level.

Novel, Contentious or Repercussive Matters

Settlements within the UHB delegated limit of £1 million will not usually be reported to the WG. However, any claims which exceed the UHB delegated limit of £1 million or that are novel, contentious or repercussive will be reported to the WG via the Delivery Unit for approval. These will include claims, which could set an unintended precedent.

Audit

The responsibility for auditing compliance with this policy and procedure lies with the Director of Nursing, Quality and Patient Experience. The Legal Services Team will ensure an audit is carried out which complies with the WRP Concerns and Compensation Claims Management Standard.

Responsibilities

Chief Executive

The Chief Executive has overall responsibility for the management of legal claims made against the Health Board which is delegated to the Director of Nursing, Quality and Patient Experience. The Chief Executive (or other Executive Office holder) is also responsible for signing the Case Management Report at the conclusion of a matter for Reimbursement by the WRP in Claims. Any risks identified as a result of claims will be fed into the appropriate Risk Register by the service.

Director of Nursing, Quality and Patient Experience

The Director of Nursing, Quality and Patient Experience is the designated Director responsible for legal issues and claims relating to clinical negligence, personal injury, property and other relevant losses and for keeping the Health Board informed of major issues or developments affecting the organisation. The Director also has responsibility for recommending, agreeing and implementing a reporting mechanism to facilitate monitoring of claims. This should include an annual review of claims management, in accordance with the WRP Concerns and Compensation Claims Management Standard Assessment Standard.

A request for compensation following on from a concern can be made by the patient. The Director of Nursing, Quality and Patient Experience can authorise payments in line with the Redress scheme, without legal advice, for sums within the authorised limit, see [Appendix A](#). The Director will establish structures to ensure:-

- a. Staff responsible for handling claims act within their delegated limits and levels of authority
- b. Claims are investigated thoroughly, speedily and accurately with appropriate internal and independent overview
- c. Legal and expert advice is obtained when necessary and such services deliver the best value for money
- d. The outlay in damages and costs reflects the best settlement possible for the Health Board, see [Appendix A](#).
- e. Processes to learn lessons from claims are adhered to and the implementation of agreed actions to improve safety is monitored by the relevant service
- f. Legal and Risk services provide regular reports on probabilities, estimated claims values and anticipated settlement dates
- g. Reports are submitted to the Listening and Learning Sub-Committee on a themed basis, a sub-group of the Statutory Quality, Safety and Experience Committee
- h. The Datix Database is maintained
- i. There is an annual audit of cases submitted for reimbursement to the WRP as required by WRP Standard 5.

All Executive Directors

All Executive Directors have a delegated accountability and responsibility within their directorates for the implementation of and adherence to this policy and to ensure that any failings identified within the directorates are addressed as soon as is practicable and any lessons learned are shared across the organisation.

Medical Director

The Medical Director has responsibility for ensuring that any failings identified during the investigation of a claim are addressed appropriately. Any issues of a medical nature that the team are struggling to

address can be escalated to the medical director if cannot be resolved by another means. The Medical Director will be supported in this by the Director of Operations /Deputy Chief Executive.

Heads of Service and Directorate/Hospital Senior Management Teams

Heads of service and directorate/hospital senior management teams are responsible for ensuring the policy is distributed to and read by members of their teams and that the policy is understood and adhered to. Heads of service and senior managers will be responsible for ensuring that witness evidence and policy documents are provided in a timely manner when requested and ensuring that actions are taken to remediate any identified failings which arose during the investigation of a claim or redress matter. They are responsible for producing and monitoring action plans, providing evidence of actions taken to address issues identified and evidence of how the learning has been cascaded throughout the organisation. They are responsible for providing this evidence in accordance with the timescale for submitting the LfE report to the WRP.

Assistant Director (Patient Experience/Legal Services) and the Redress & Legal Services Managers

The Assistant Director (Patient Experience/Legal Services) is responsible for producing the policy for claims management and ensuring this is being implemented across the organisation.

The Assistant Director (Patient Experience/Legal Services) and the Legal Services Team are responsible for:

- a. The management of claims
- b. Facilitating compliance with this policy
- c. Facilitating compliance with the All Wales Putting Things Right Guidance in respect of Part 6 of the regulations
- d. Complying with delegated authority limits
- e. Securing the most cost-effective resolution of claims.

The Health Board will ensure that the appointed Legal Services Managers have sufficient seniority as required by the WRP standard 5 - Concerns and Compensation Claims Management.

Managers and Staff involved with claims

Managers and Staff involved in a claim must provide evidence when requested to do so in accordance with the code of practice from their relevant regulatory bodies. They will be kept informed of the progress and outcome of individual cases by the Redress and Legal Services Manager with conduct of their particular claim.

Legal Services Team

Legal Services Team will support directors, service managers and staff in this process by:

- a. Helping staff to understand the process
- b. Providing assistance with identifying the issues in a claim
- c. Assisting with the preparation of witness statements
- d. Supporting staff if the matter goes to trial.

The Redress and Legal Services Managers:-

- a. Have Responsibility for updating the Datix system for claims and redress matters as they progress.
- b. Are responsible for reviewing the LfE and advising on its contents.

- c. Are responsible for submitting the WRP documentation completed by the directorate
- d. Will ensure that any requests from the WRP for further information on a form WRP8 will be conveyed to the directorate promptly in order for the information to be gathered swiftly by the directorate for submission to the WRP within the timescales set.
- e. Will provide routine reports to UHB appropriate committees.
- f. Will be suitably experienced and qualified, either on appointment or be working towards a suitably recognised qualification in claims management.
- g. Will be supported by the UHB in continuing professional development and have sufficient standing within the organisation to demonstrate seniority and status fit to exercise direct access to the relevant Directors as appropriate
- h. Will be kept up to date with Wales Wide issues by attending the WRP Claims and Redress Networks meetings – Claims Specialist Sub Group, the Listening and Learning Sub Committee and WRP and L&RS conferences. The Redress and Legal Services Managers should make every effort to attend and feed back to appropriate staff, managers and /or committee(s).
- i. Will inform the WRP of any claims where the alleged negligence occurred during the period covered by the former Dyfed Powys Health Authority. These claims predate the merger of the Trusts to form the Hywel Dda UHB and are managed in accordance with the guidance provided by the WRP. LRS should also be informed to ensure the claim is allocated to the correct defendant on the quantum listing.
- j. Will be responsible, following legal advice, for authorising settlement of reasonable costs.
- k. Will identify and manage claims on the Ministry of Justice Personal Injury Claims Portal as a means of reducing legal costs and speeding up the process.
- l. Will identify any claims over £1,000,000, any nuisance, contentious or recurring claims and seek legal advice from L&RS who will, if appropriate, inform WG.
- m. Will implement a quarterly review process to include the updating of information in Datix from information in the quarterly quantum listing supplied by L&RS.
- n. Will be made aware of concerns or incidents that may become claims with a view to resolving issues with complainants or litigants in person prior to litigation.
- o. Will arrange training in the application of the Claims Management Policy and any identified legal training needs.
- p. Will, on advice, consider the use of Alternative Dispute Resolution.
- q. Will follow the All Wales Putting Things Right Process to mitigate against the risk of a complaint escalating into a claim.
- r. Will, where appropriate, offer PTR to a Claimant as an alternative route, where a Letter of Claim has been received. It will be for the Claimant to decide whether to change the pathway or continue with the matter as a claim.
- s. Receive potential claims and, where appropriate, will inform the directorate for example where there is a linked incident or complaint. Once a letter before action or letter of notification arrives, the matter will be referred to L&RS.

All members of staff

All members of staff must report all adverse incidents in line with the Health Board's incident reporting policy, including those that may lead to claims for compensation.

All staff are required to fully and openly co-operate with the investigation of any legal claims and to comply with this Policy and their regulatory code of practice. This duty continues even after they have left the organisation.

Unless there are exceptional circumstances, Health Board staff are expected to provide a witness statement when asked to do so. Support and guidance will be provided to members of staff who are asked to give written evidence /attend court.

The Health Board will take responsibility for managing and, where appropriate, settling claims and meeting all financial obligations relating to a claim save where, in very exceptional cases, the health professional was found to be acting outside of his/her remit. In such circumstances the member of staff may be advised to obtain separate legal advice to avoid any conflict of interest.

The Listening and Learning Sub Committee

Approval of this Claims Management Policy has been delegated to the Quality, Safety and Experience Committee and the arrangements for complying with this policy will be delegated to the Listening and Learning Sub Committee which is a sub-group of the Quality, Safety and Experience Committee.

The Welsh Government and the Welsh Risk Pool

The WG funds the WRP by a top slicing arrangement. The WRP reimburses all claims in excess of £25,000, and Redress cases both under and over £25,000, as long as the Health Board is compliant with the WRP reimbursement procedure.

Where the Health Board is unable to comply with the WRP reimbursement pathway, for example by not providing information in accordance with the WRP deadlines, there is a risk that reimbursement will not take place and/or the amount top sliced against the Health Board may be increased.

Legal Advisers

The Health Board instructs Legal and Risk Services to advise in confirmed clinical negligence and personal injury claims on:

- a. Breach of Duty and causation (liability)
- b. The merits of a claim
- c. The strength of the defence and the probability of success or otherwise
- d. The likely valuation of a claim best and worse scenarios and on negotiating settlement;
- e. An estimate of legal costs for claimant and defendant.

In complex matters or where a matter is taken to trial a barrister will be instructed by Legal and Risk Services to advise and represent the Health Board in court.

The Health Board Responsibilities

The Board of the Health Board is accountable for the performance of the organisation, in handling claims and ensuring that improvements are made where issues with care become apparent. It is responsible for monitoring claims/redress matters and ensuring that any themes and trends are addressed to avoid similar issues occurring in future.

The Health Board is responsible for supporting staff who are asked to assist with claims and redress matters to facilitate frank and open discussion in accordance with the pending statutory duty of candour.

Delegated authority for medium and low cost claims has been agreed as set out in [Appendix A](#) of this policy which complies with the Standing Financial Instructions.

Training

Training on Claims Management is provided to clinical and non-clinical staff on a regular basis. This is also undertaken in line with the training on Putting Things Right and Being Open processes.

Implementation

This process will be implemented by the Legal Services Managers.

Relevant Documents

This policy complies with the following documents:

- The Civil Procedure Rules 1998
- All Wales Putting Things Right Guidance
- The WRP Concerns and Compensation Claims Management (2013)
- The WRP Reimbursement Procedure, Guidance on Electronic claims' submission and other Procedures
- The UHB's Standing Orders and Standing Financial Instructions
- WRP All Wales Policy on Insurance, NHS Indemnity and related risk management for potential losses and special payments (2020)
- The National Health Service (Concerns, Complaints and Redress Arrangements (Wales) 2011
- GMPI Guidance from Legal and Risk Services

Appendix A – Learning from Events Reports – Clinical

[Learning from events reports – Clinical](#) (opens in a new tab)

Appendix B – Learning from Events Reports – Non-Clinical

[Learning from events reports – non clinical](#) (opens in a new tab)

Appendix C – Table of Delegated Authority

The table below confirms levels of delegated authority.

Damages	Delegated authority
Over £1,000,000	No delegation. Refer to DU by L&RS
£100, 001 to £1,000,000	Chief Executive and Director of Finance
Up to £100,000	Chief Executive (or Deputy Chief Executive in absence of CEO) Director of Nursing, Quality and Patient Experience

NOTES:

1) Urgent decisions for the purpose of settling litigation claims

The Standing Financial Instructions, Appendix 7 of the Standing Orders paragraph 19.15 allow for the Chief Executive or nominated deputy in his absence, to provide such authorisation if appropriate.

2) Periodic payments

In cases over £250,000 (where the claimant is agreeable) the Chief Executive and Legal Services Manager, in conjunction with the UHB legal advisors and the WG will evaluate the cost and benefits of setting up periodical payments.

Appendix C – Case Management Report – CLAIMS

[Claims management report – claims](#) (opens in a new tab)

Appendix D – Case Management Report – REDRESS

[Claims management report – REDRESS](#) (opens in a new tab)

Appendix E – Examples of Documents for Disclosure

- Handwritten clinical notes
- Electronic notes
- E-mails
- Letters
- Lab Reports,
- X-rays reports
- Drug Charts
- Care Plans/assessments
- Printouts from monitoring equipment
- MDT minutes
- Best Interest Meeting Minutes
- Best interest Balance Sheets
- Deprivation of Liberty Papers
- Home Office Forms relating to detention under the Mental Health Act.
- Incident forms
- Photographs
- CCTV
- Audio/Video recordings
- Text messages
- Handover entries
- Ward diary entries
- Telephone notes
- Anything else upon which patient information is stored