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Public Health
Wales

Reference Number: PHW16/TP01

**Version Number: 4 Date of
Next review: July 2025**

Claims Management Procedure

The aim of this procedure is to detail the way in which clinical negligence and personal injury claims should be managed in Public Health Wales and should be read in conjunction with the Claims Management Policy.

The Procedure does not apply to claims for reimbursement relating to damage to personal property, or claims under the Human Rights Act 1998 and employment issues.

Linked Policies, Procedures and Written Control Documents

Claims Management Policy

Putting Things Right Policy

Complaints Procedure

Incident Procedure

Redress Procedure

Risk Management Policy

Risk Management Procedure

NHS Indemnity and Insurance Policy (All Wales)

Scope

This procedure applies to all Public Health Wales staff, visitors, contractors, agency staff and volunteers and any reference to staff should be interpreted as including these groups.

It aims to promote openness and co-operation between parties in order to resolve claims as quickly as possible.

This procedure establishes the importance of the co-operation of staff and management in the investigation, response and review of claims, incidents and concerns.

The Incident, Complaints and Redress Procedures are closely aligned and as such there are many parallel activities between the two. The Procedure therefore indicates reference points within the Complaints or Redress Procedure for the reader to establish and trigger points or timescale requirements. These reference points are identified by the link icon.



Equality and Health Impact Assessment	An Equality Health Impact Assessment form has been completed.
Approved by	Quality, Safety and Improvement Committee
Approval Date	20 July 2022
Review Date	20 July 2025
Date of Publication:	21 July 2025
Accountable Executive Director/Director	Executive Director of Quality, Nursing and Allied Health Professionals
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Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [PHW Board.Business@wales.nhs.uk](mailto:PHW_Board.Business@wales.nhs.uk)

Summary of reviews/amendments				
Version number	Date of Review	Date of Approval	Date published	Summary of Amendments
V1	20.11.15	21.03.13	21.03.16	New policy introduced to replace the Velindre NHS Trust Claims policy.
V2	10.10.14	21.01.15	02.02.15	Policy reviewed to reflect changes in management structures.
V3	22.07.16	26.01.17		Reviewed to ensure compliance with the requirements of the Welsh Risk Pool Services. Additional information on lessons learned and links between claims, concerns, incidents and other risk information added to policy.
V4	10.06.22			Updated to reflect changes to management structure and Welsh Risk Pool arrangements and legislation updates.

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1. Introduction

This procedure underpins the approach set out in the Claims Management Policy. It aims to ensure that Public Health Wales operates an effective claims management system, which complies with the pre-action protocols laid down by the Civil Procedural Rules 1999.

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

Public Health Wales will make every effort to negotiate and resolve claims wherever possible in order to avoid the need for court proceedings, which can be distressing for all involved.

The responsibility for the review and future approval of this procedure has been formally delegated by the Board in the Claims Management policy, to the Executive Team.

2. Aims and objectives

By establishing a clear process, this procedure aims to ensure that Public Health Wales deals with all compensation claims made against it proactively and in an equitable, efficient and timely manner.

It aims to promote openness and co-operation between parties in order to resolve claims as quickly as possible.

This procedure establishes the importance of the co-operation of staff and management in the investigation, response and review of claims, incidents, Redress and complaints.

Learning lessons from claims plays a key role in helping to improve the quality and safety of services provided along with creating a safer working environment. Learning from claims is essential part of an open and learning culture to try to prevent similar incidents occurring again. The information obtained from claims, concerns and incidents investigations will be triangulated to identify trends and patterns to facilitate learning and continuous improvement.

3. The Legal Test

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

- that he/she/ they was owed a duty of care;
- that the duty was breached;

- that the breach of duty caused, or materially contributed to the harm caused; and
- that there were consequences and effects of the harm.

If a claim is successful, then the injured person has a right to compensation for that harm, the amount of which is assessed in accordance with the principles of common law and statute.

4. Time Limits

The Limitation Act 1980 requires that claims be made within three years of the date of the incident or three years from the date a claimant became aware that he/she had suffered from an episode of negligence.

For minors, the three-year limitation period becomes effective once they have reached the age of 18. However, there are no time limits for people with a disability who cannot manage their own affairs.

Claims exceeding the three-year limitation period may, however, still be brought against Public Health Wales at the discretion of the Court.

5. Claims Management Systems

Public Health Wales will manage all claims on the following claims management system: Datix Cloud

- Datix Cloud – All claims must be logged on the claims module within Datix

Public Health Wales' finance team maintains a database for recording payments made in settlement of clinical negligence and personal injury compensation claims and information relating to reimbursements received from the Welsh Risk Pool Service (RRPS).

All clinical negligence and personal injury claims will be entered onto both databases by an authorised member of staff. Other losses and special payment details will be similarly input onto the database.

Public Health Wales will ensure that patient and staff confidentiality is maintained.

6. Potential Claims

Every concern (incident or complaint) has the potential to become a claim. The quality of investigations undertaken by Public Health Wales under its Risk Management Strategy and Incident & Complaints procedure should ensure is able to manage future litigation effectively.

There will always be some claims that pose a greater litigation risk than others. The Legal Services Manager must be notified of any cases which could potentially result in a claim at via legalsupport.phw@wales.nhs.uk and be provided with copies of the investigation. These cases should be appropriately reported on Datix as an incident or complaint. This will ensure that all information is gathered at the earliest possible opportunity to enable Public Health Wales to effectively manage any future claim.

Public Health Wales' Risk Lead, Complaints Lead, Incident Lead and Legal Services Manager will liaise regularly to ensure the pro-active identification of potential claims and thorough and robust investigation of such incidents and complaints which have the potential to become claims.

All concerns (incidents, complaints and claims) are recorded on the organisation's Datix management system and linked as appropriate to facilitate the identification of potential claims and ensure a single seamless investigation.

The Legal Services Manager will formally open a new **Potential Claim** record on Datix upon receipt of one of the following:

- A request for Health Records, indicating that action for clinical negligence or personal injury is being contemplated against Public Health Wales, and it is deemed that there is grounds for potential legal action

7. Confirmed Claims

The Legal Services Manager will formally open a new **Confirmed Claim** record on Datix upon receipt of one of the following:

- A letter providing details of concerns raised in respect of clinical negligence or personal injury that can also be described as a 'Letter of Claim' (where the matter cannot be dealt with in line with the 'Putting things Right' legislation).
- A request for compensation to be paid arising out of an incident involving NHS staff or services.

7.1 Action upon setting up a confirmed claim

Upon receipt of a new claim the Legal Services Manager will:

- Upload all correspondence & investigation evidence to the Datix record
- Establish an objective account of the original incident
- Notify the relevant Divisional Director and any other relevant staff who may assist in the investigation of the claim.
- Notify the Director of Quality, Nursing and Allied Health Professionals

(AHP's) and relevant Executive Director

- Where the claim involves occupational stress, bullying or harassment, the Director of People and Organisational Development must be notified.
- Request copies of any concerns file where applicable.
- Acknowledge the claim in writing
- Report the claim on the next quarterly report for submission to the Executive Team
- Contact relevant personnel for the release of clinical and personal records as appropriate
- Where appropriate, instruct relevant solicitors to act on behalf of Public Health Wales.

8. Instructing solicitors

Public Health Wales will use legal advisors in the defence or settlement of clinical negligence and personal injury claims. Public Health Wales has access to legal advice via the 'National Procurement Services – Legal Services by solicitor's framework.'

The management of clinical negligence claims remains the responsibility of Legal & Risk Services-Shared Services Partnership. Public Health Wales will also instruct Legal and Risk Services, in the first instance, for advice in relation to defending or settling personal injury claims.

Where external legal advice is sought, Public Health Wales will direct its solicitors in respect of liability admission, defence, settlement and general tactics. Public Health Wales will however, always take due account of qualified legal advice in making such decisions. Legal advice will cover:

- Qualifying Liability to include Breach of Duty and Causation;
- An assessment of the strength of the available defence and probability of success;
- The likely valuation of quantum of damages including best and worst case scenarios and
- The likely costs of defending the claim.

The final decision to settle a claim or to continue with its defence should be taken by the Director of Quality, Nursing & Allied Health Professionals in line with the scheme of delegation. If a claim is contentious, further approval can be sought from the Chief Executive.

In respect of Clinical Negligence Services, Legal and Risk Services do not invoice for this service, because of the manner in which they are funded by the NHS in Wales.

At the conclusion of any personal injury case Legal and Risk Services will submit an invoice for services carried out in respect of that claim. The invoices will be delivered to the Legal Services Manager and discharged in accordance with Public Health Wales' arrangements.

9. Legal Services Manager Delegated Authority

The Legal Services Manager has delegated authority to:

- The choice/identity of expert witnesses
- The choice /identity of barristers/counsel
- The choice/identity of costs draftsman
- Approve disbursement invoices up to the value of £2,000
- Acquisition of copy records from other parties when necessary

10. Civil Procedural Rules and Pre-Action Protocol

The Civil Procedural Rules 1999 aim to ensure that all parties are on an equal footing and that legal proceedings are less expensive, proportionate and dealt with more quickly. Pre-action protocols were introduced as a part of this process. The aim of the pre-action protocol is to attempt to negotiate a settlement, without the need for legal proceedings.

Pre-action Protocols outline the steps and time that parties should take to seek information from, and provide information to each other before resorting to Court proceedings. Settlement is encouraged by promoting openness between parties and co-operation in the process of obtaining the evidence necessary to determine liability and value the claim.

Public Health Wales acknowledges the importance of adhering to the pre action protocol and will aim to complete investigations and make a formal determination on issues relating to liability with regard to personal injury and clinical negligence claims within the protocol time period.

10.1 Pre-action protocol deadlines

The flowchart found [here](#) sets out Public Health Wales' key obligations under the Pre-Action Protocol for the Resolution of Clinical Disputes and the Pre-Action Protocol for Personal Injury claims.

Public Health Wales acknowledges the importance of adhering to the time limits. The earlier and timely exchange of information informs the pre action investigation and assists Public Health Wales to settle appropriate claims quickly and without the need for court proceedings.

Where court proceedings are nevertheless issued and Public Health Wales has a defence to the proceedings, compliance with the protocol will put

Public Health Wales in a better position to manage the subsequent proceedings.

10.2 Complying with the pre-action protocol

Compliance with the protocol is a legal requirement. Failure to co-operate may lead to unnecessary litigation and cost penalties imposed by the Court. Not only can this cost Public Health Wales money in wasted costs, but evidentially where documents have not been disclosed this can prevent Public Health Wales from effectively defending claims.

It is the intention that the steps set out below become the normal and reasonable response to claims. Where a party does not follow the protocol and proceedings are subsequently issued, the Court will take into account the fact that the protocol has not been followed which may have adverse cost consequences.

(i) Letter of notification

In some cases, the Claimant or the Claimant's representative may notify Public Health Wales when they know a claim is likely to be made, but before they are able to send a detailed letter of claim. Public Health Wales must acknowledge this letter within **14 days**. If a letter of notification is received this will not start the timetable for providing a letter of response. If a letter is received in Welsh, Public Health Wales will acknowledge the letter in Welsh and will ensure that all subsequent correspondence is provided in Welsh. Public Health Wales will establish language preference at this initial point of contact.

(ii) Letter of Claim

Once a letter of claim has been received, Public Health Wales is required to acknowledge this within **21 days** of its receipt failing which the Claimant is entitled to commence legal proceedings.

All claims should be initiated by a letter of claim sent by the Claimant to the Defendant. This letter should include sufficient information to enable Public Health Wales to determine when, where and how the Claimant's accident occurred together with a summary of the injuries sustained by the Claimant.

In order to successfully claim compensation, the Claimant must prove that the accident and injuries were caused by the negligence and/or breach of duty of Public Health Wales. The Claimant has to show that somebody was legally at fault and the perceived reasons for this are set out in the Letter of Claim usually as "allegations of negligence and/or breaches of statutory duty".

The letter of claim should also give an indication of any financial loss or expense incurred and continuing as a result of the accident.

(iii) Investigation

Once Public Health Wales has acknowledged the letter of claim, it has three months to investigate liability in personal injury claims and four months to investigate clinical negligence claims and to respond to the Claimant's solicitors, disclosing all relevant documentation.

Public Health Wales will use the Pre-action Protocol period to ensure that every effort is made to discuss and negotiate resolution and settlement of claims prior to court proceedings, following a thorough investigation and determination of the liability issues on the basis of expert advice received. Where necessary, Public Health Wales will enter in face to face or mediation type meeting with the Claimant and/or the Claimant's solicitors to facilitate such negotiated resolution. This may require the involvement of a translator if the claimant and/or their representative wish to speak Welsh in any meetings to discuss the claim. Confidentiality must be made clear to the translator.

10.3 Disclosure

10.3.1 Internal Disclosure

On receipt of a claim for Clinical Negligence or Personal Injury, the Legal Services Manager will write to the relevant lead in Public Health Wales to relay the request for information as quickly as possible, once a Form of Authority (consent form) has been received.

Where the claim is received directly by a department, the department must notify the Legal Services Manager as soon as reasonably possible via legalsupport.phw@wales.nhs.uk and provide a copy of all records disclosed to the service user/representative.

The Legal Services Manager is also required to be notified when records have been released and there is a suggestion within correspondence received that there may be a potential claim against Public Health Wales.

Where a claim is made by an employee of Public Health Wales, Public Health Wales is legally obliged to disclose earnings information within the period of time stipulated by the Pre-Action Protocol for Personal Injury Claims. The Legal Services Manager will request earnings details via the Human Resources Department for the 13 week period prior to the accident date and thereafter together with details of wages paid whilst on sick leave as a result of the accident and details of any increments or overtime which may have been paid in that post accident period. The Legal Services Manager may also be required to obtain release of other records such as personal or

occupational health records where an appropriate Form of Authority requesting release of the records has been provided.

10.3.2 Disclosure to Third Parties

Public Health Wales will ensure that appropriately documented claims for disclosure of health records and other appropriate records will be made in accordance with the requirements contained under the General Data Protection Regulation 2018, the Data Protection Act 1998 and the Access to Health Records Act 1990. Public Health Wales will ensure wherever possible adherence to the 40 day time limit for the disclosure of records.

10.3.3 Response and disclosure of documents

Following the investigation, Public Health Wales must respond to the Claimant's Solicitors within 3 months. In this response Public Health Wales, in conjunction with Legal and Risk Services, must state whether or not it accepts that it was at fault. Where liability is accepted, the parties can turn their attention to valuing the claim.

The Pre-Action Protocol sets out standard disclosure lists which can be found **here**.

Public Health Wales is obliged to disclose all relevant documentation, failing that Public Health Wales is required to provide a detailed explanation as to why it cannot be provided.

If liability it is not accepted, Public Health Wales, in conjunction with Legal and Risk Services, must provide the Claimant with a detailed explanation for this denial. It must enclose, with the letter of reply, all the documents which are relevant to the issues in dispute which support the case and also any which may in fact hinder the case.

This is to enable the Claimant's Solicitor to consider Public Health Wales response and documentation in order to determine whether or not to pursue the case. If they feel that the case may still be successful, then Court proceedings may be commenced.

In some cases Public Health Wales accepts some of the blame but also feels that the Claimant is partially to blame for the incident and the injuries suffered. In such circumstances, Public Health Wales, in conjunction with Legal and Risk Services, will have to give a full explanation as to why it considers the Claimant to be partly to blame and must again also provide any documents relevant to this decision.

10.4 Failure to comply with the Pre Action Protocol

Compliance with the protocol is a legal requirement and its importance cannot be understated. Failure to co-operate may lead to the following sanctions:

- Public Health Wales can be penalised in awards of costs and interest especially if non-compliance with the protocol has led to the commencement of proceedings which might ordinarily have been avoided or costs incurred unnecessarily.
- The Claimant may issue an application for pre-action disclosure of documentation. Such applications can routinely cost between £500 and £1,000 in wasted costs. If the Order is breached and there is a failure to provide the documentation, Public Health Wales can then not rely upon that documentation if it is subsequently found.
- The Court may order Public Health Wales to pay money into Court if it has without good reason failed to comply with the Pre-Action Protocol. The monies paid into Court will act as a security for any damages subsequently found to be payable within the proceedings including costs.
- Further in such cases the Court can order the party in default of the Protocol to pay the other party's costs on an indemnity basis. This means a full recovery of all legal and other costs at a higher level than usually payable.

11 Low value personal injury claims received via the claims portal

The Pre-action Protocol for low value personal injury claims was introduced as part of a series of civil justice reforms to make the claims process more efficient.

The Protocol requires low value personal injury claims (claims with estimated damages of between £1,000 and £25,000) to be submitted and managed via an electronic 'claims portal'. The Protocol imposes strict deadlines which must be adhered to in order to 'keep' the claim in the portal.

There are many benefits to both the Claimant and Defendant in managing the claim in the Portal. Claims can be resolved quickly and associated costs are fixed, which can result in substantial costs savings for the Defendant.

The timescales set out in the Pre-action Protocol for low value personal injury claims are detailed [here](#).

Failure to adhere to any of the timescales will result in the claim leaving the portal. If this occurs then the Pre-action Protocol for personal injury

claims will apply and the organisation will not be able to benefit from any of the fixed costs.

The Legal Services Manager is responsible for checking the organisations Claims Portal on a daily basis.

12 Liability Decisions

A decision on liability can be made at any time during the course of a claim depending upon the outcome of the investigations undertaken. The Legal Services Manager will make every possible effort to negotiate settlement of cases prior to the issue of legal proceedings but it is the objective of Public Health Wales to make responsible and reasonable decisions on liability at the earliest possible stage of the claims dependant on the expert and legal advice given.

Denial: where it is recommended that a denial of liability is made in respect of a claim, advice will be provided to the relevant Divisional Director and the Director of Quality, Nursing and AHPs as appropriate.

Admissions where the advice is to make an admission of liability: The Legal Services Manager will consult the relevant Divisional Director and other appropriate personnel involved in the case to ensure that they have an opportunity to comment on the proposed course of action. The Legal Services Manager will also seek ratification from the Director of Quality, Nursing and AHPs.

Alternative dispute resolution: at any state of the claim, consideration can be given to whether any appropriate method of alternative dispute resolution such as mediation Joint Settlement Meeting (JSM) can be employed to resolve the claim. Any such case that the Legal Services Manager deems is appropriate, will be discussed with the Director of Quality, Nursing and Allied Health Professionals.

13 Escalation process

In the event that the Legal Services Manager experiences delays in obtaining a prompt or satisfactory response to a request for information, assistance or documentation, the matter will be referred to Director of Quality, Nursing and AHPs, being the Lead Executive with responsibility for claims, for input and action.

It is the responsibility of the Legal Services Manager, on the individual circumstances of each case, to determine what constitutes a reasonable timescale for or which comprises, a satisfactory response and to advise the Director of Quality, Nursing and Allied Health Professionals accordingly.

The Legal Services Manager will agree with the Director of Quality, Nursing and Allied Health Professionals on an appropriate course of action and timescales for action.

In the event of non-compliance, the matter will be referred to the Chief Executive for input and action. The Legal Services Manager and Director of Quality, Nursing and Allied Health Professionals in conjunction with the Chief Executive will agree an appropriate course of action and timescales for action.

14 Litigants in person

Public Health Wales acknowledges that claims management systems should embrace and allow for more pre action contact with Claimants.

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To facilitate this and also to support the spirit and intention of the NHS (Concerns, Complaints and Redress Arrangement) (Wales Regulations 2010), the Legal Services Manager should be notified immediately via legalsupport.phw@wales.nhs.uk of any reported incidents or complaints which could potentially result in a claim or redress.

Such potential claims which are identified from incidents or complaints or where a Claimant does not have Solicitors acting and is acting effectively as a litigant in person, will be managed and investigated in accordance with this procedure in compliance with the NHS (Concerns, Complaints and Redress Arrangement) (Wales) Regulations 2010.

As such, where a Claimant does not have a Solicitor acting and acts as a litigant in person, every effort will be made to liaise with the service user and enter into dialogue with them including face to face discussions where appropriate regarding the claim.

15 Court proceedings

Where proceedings are issued and served on Public Health Wales, the Legal Services Manager will liaise with Legal and Risk Services to ensure that the Acknowledgment of Service Form is filed at the court within fourteen days of being served with the proceedings. Following service of the Claim Form, Public Health Wales has a strict deadline of 28 days in which to provide its defence or to obtain an extension of time thereto.

The Legal Services Manager in conjunction with Legal and Risk Services will ensure that Court proceedings run efficiently and to time table throughout the duration of the claim.

Where a claim is also the subject matter of a concern, Public Health Wales will continue with the complaints investigation and response until such

time as court proceedings are formally served upon Public Health Wales. Pending such action, the Legal Services Manager and Head of Putting Things Right will work together to ensure that appropriate investigations and responses are undertaken.

16 Assessment of Quantum and Settlement

Assessment and settlement of damages may occur at the same time as an admission of liability, but more usually follow at a later date when further evidence in relation to medical condition and prognosis have been gathered and/or schedules of special damages have been served on each party.

Quantum will be assessed using the Judicial College Guidelines and relevant case law obtained from Lawtel and in appropriate cases, Public Health Wales, may seek independent expert evidence from a variety of disciplines to assist in valuing the damages claim including Counsel.

Negotiation of Quantum with Litigants-in-person: In such cases, the Legal Services Manager will provide the litigant-in-person with a breakdown showing how the quantum has been calculated. This will include a special damages calculation based upon the information provided by the litigant-in-person and evidence to support the calculation of general damages including copy documentation in support which may include:-

- Judicial College Guidelines
- Case Law

In the event that the offer is not acceptable to the litigant-in-person, the Legal Services Manager will offer to instruct an independent barrister to value quantum on the basis of the above and other relevant information. Public Health Wales agrees to abide by the decision of the barrister.

To show impartiality, Public Health Wales will provide a list of Counsel specialising in the relevant subject area, drawn from Chambers which are not used by Public Health Wales. The list can be supported with the Curriculum Vitae of each barrister and a copy of the instructions should be provided to the litigant-in person for consideration and agreement.

The choice of Barrister will be made by the litigant-in-person and Public Health Wales agrees to abide by the decision of the nominated barrister.

17 Delegated limits for the settlement of Claims

The delegated limits within Public Health Wales are in accordance with Public Health Wales' standing financial instructions and scheme of delegation can be found [here](#).

18 Learning lessons from claims

It is important that Public Health Wales makes constructive use of information which arises from clinical negligence and personal injury claims and that any remedial action is taken where appropriate to prevent or minimise the risk of further reoccurrence.

It is important to note that Public Health Wales recognises the need for close connections between complaints, incidents, claims, Redress and other risk related information. It appreciates the need for close and co-operative working between these functions and will ensure that appropriate linkages are in place to facilitate this objective. The Putting Things Right Team will also work closely with quality & improvement colleagues to maximize opportunities to identify trends and learning opportunities.

Lessons learned will be identified as part of the investigation process. The relevant Divisional Director has responsibility for liaising with appropriate staff and for ensuring that any identified and agreed actions are implemented, monitored and evaluated in order to improve the services provided and seek to avoid such errors recurring.

In order to reduce risks every claim will be closely reviewed, with the cooperation of the responsible Divisional Director and other Heads of Service as appropriate to identify the failures in the systems, which led to the claim. Educational sessions are encouraged for Divisions to highlight claims in their areas to understand the missed opportunities that led to the claim to help prevent recurrence.

A root cause analysis (RCA) investigation may be undertaken to identify care and service delivery problems and latent factors, which led to the circumstances of the claim, ensuring that remedial action is identified and taken.

Lessons learnt from every claim will inform the Learning From Events Report (LFER) which includes issues identified and actions taken and what learning assurance plans are in place to prevent recurrence. The LFER is submitted to Welsh Risk Pool Services (WRPS), so that reimbursement may be released from WRPS as the indemnifier.

The Legal Services Manager will produce a Learning from Events Report with support from the relevant Divisional Lead. They will put arrangements in place for an associated Action Plan for all claims and produce a Case Management Report for claims exceeding the Health Board's excess of £25,000. This will be used as the basis for learning, monitoring and evaluating the efficacy of the lessons learned from claims together with the necessary data entry into Datix.

19 Risk Management

Risks identified during the management of the claim or as part of the 'Learning from Events' process should be identified and recorded on Public Health Wales' risk management system, DATIX.

Once a risk is identified it must be analysed, assessed and evaluated. An individual must be assigned (Risk Owner) to review the risk and ensure that there are adequate controls in place to manage and monitor the risk.

The Risk Owner must ensure that the risk is placed on the appropriate risk register, according to its severity and impact, in line with Public Health Wales' risk management procedure.

In the context of claims, some risks will be assigned to the area in which the claim originated, but if a risk has implications for the whole organisation or is a significant risk (risk that threatens the organisations success/reputation), and then these should be managed by the Executive Director with the portfolio for the specific subject area.

The Legal Services Manager must be notified of any risks placed on the risk register by the divisions/service areas etc which relate to claims, so that the risk can be cross referenced to the claim.

If the Legal Services Manager identifies any risks during the management of the claim, they must notify the relevant area/division so that the risk can be appropriately recorded and managed.

As part of the accountability process Executive Directors, Divisional Directors and Managers must maintain a risk register for their areas of responsibility.

Progress against the implementation of the risk action plan should be regularly monitored by the appropriate management group / committee.

20 Reimbursement from Welsh Risk Pool

Services (WRPS)

All clinical negligence and personal injury claims are subject to a reclaim by Public Health Wales from the WRPS, via the submission of a Learning From Events Report to WRPS ([here](#)). All submissions must be made within the agreed timescales set by WRPS.

From the 1 October 2019 the Welsh Risk Pool changed the claims reimbursement procedure. The trigger is now from when Public Health Wales makes a decision to settle a case (i.e Admission made by PHW, Offer to settle made by PHW, Offer to settle accepted by PHW, Damages awarded at Trial) and PHW has 60 days from the decision to settle a case, to submit

a Learning from Events Report to the Welsh Risk Pool. PHW is required to submit, electronically via NWSSP WRPS Claims & Reimbursement email, a Learning from Events Report and a U1 form. The Learning from Events Report needs to be approved by the Welsh Risk Pool in order to obtain financial reimbursement.

PHW has a period of four calendar months from the final financial payment on the case to request reimbursement from the Welsh Risk Pool. In order to be reimbursed by the Welsh Risk Pool, PHW is required to submit, electronically via NWSSP WRPS Claims & Reimbursement e-mail, U1 form, Costs Schedule, Case Management Report and approved Learning from Events Report in accordance with the Welsh Risk Pool Services Claims Reimbursement Procedure.

Public Health Wales acknowledges that reimbursement can be refused, delayed or withheld by the Welsh Risk Pool if the Trust has failed:

- To meet with the relevant minimum standard issued by the Welsh Risk Pool
- To comply with the requirements of the procedures for submitting claims for reimbursement
- To comply with the various technical and briefing notes published by the Welsh Risk Pool.

For claims which are settled below £25,000, PHW will complete a Learning from Event Report (LFER) (previously known as an Appendix T) which will give details of the claim and lessons learned.

The Welsh Risk Pool Services Case Reimbursement **Procedure** outlines how the WRPS will carry out reimbursement processes and establishes the reimbursement scheme rules for member health bodies. All staff must cooperate with the requirements within this procedure and provide Governance declarations as appropriate.

21 Support for staff involved in claims

Public Health Wales will ensure that members of staff who are involved in a claim will be supported through the entire process.

Initially the individual's Line Manager will provide support and the Legal Services Manager will provide such support and assistance to members of staff involved in litigation as appropriate.

Support will be made available immediately from the following as appropriate:

- Executive Director of Quality, Nursing and AHPs
- Occupational Health Service
- Human Resources Team

Professional legal advice will be made available from Legal and Risk Services for those members of staff involved as appropriate if the claim proceeds.

External sources of support may also be provided from the following where appropriate:

- Medical Defence Union
- Medical Protection Society
- Professional Regulatory Bodies
- Staff Union Organisations
- National Clinical Assessment Services (NCAS)

Trade Union and elected Staff representatives may also provide support if felt appropriate by the member of staff.

This will be determined on an individual basis dependent upon the requirements of each individual and can include staff meeting with the Legal Services Manager to discuss the claims process, visits to working courts, attending moots (mock trials) and the provision of training on how to give evidence in court.

22 Reporting procedures

22.1 External reporting to Welsh Government

The Legal Services Manager will ensure that any claims with damages estimated to exceed Public Health Wales' delegated authority of £1 million are escalated to the Chief Executive & Board.

The Legal Services Manager will also follow the procedures set out in the Welsh Risk Pool Services Reimbursement Procedure and ensure any cases which exceed or may exceed the delegated authority limit of £1 million are identified on the Learning from Events Report checklist.

This procedure has been established for organisations to seek approval of Welsh Government in relation to the proposed settlement. This procedure requires that Welsh Government is satisfied in relation to the steps taken by organisations to reduce the potential for reoccurrence or to mitigate the impact of any future steps.

In addition, the Legal Services Manager will monitor the nature and type of claims received to ensure that any claims which are novel, contentious or

repercussive are reported in advance of settlement to the Welsh Government and any required approvals are obtained at relevant stages.

These may include claims, involving unusual and/or new features which if not correctly handled might set an unfortunate precedent for other NHS litigation or which appears to represent test cases for potential claims actions or cases which although not formally part of a class action appear to be very similar in kind to concurrent claims against other NHS bodies. In such cases, the Legal Services Manager will contact the Welsh Government for advice regarding management.

22.2 Welsh Risk Pool Service (WRPS) claims review process

The WRPS is required to identify a minimum number of 30 claims for reimbursement made on the WRPS for review within a financial year. The purpose of the review is to consider the manner in which the claim was handled by the organisation, whether lessons were learned and practices made safer with the primary purpose of identifying good practice in the management of claims for the benefit of all NHS organisations. The review may take the format of either a:

Follow up Review by WRP Learning Advisory Panel: a follow up recommendation is made when there are particular issues around implementation of remedial action that the WRP Learning Advisory Panel wishes to be clarified. This means that a case can be submitted for reimbursement but it can be deferred until the scrutiny of lessons learned is concluded. The follow up will consider the action taken by Public Health Wales in respect of the outstanding item. It may as a consequence focus upon the remedial action and monitoring set out in the Learning from Events form but which was not formally in place at the time of the submission of the claims to WRPS.

Claims Review: this review has a significantly wider scope than the follow up review process. The Learning Advisory Panel having considered the claim have formed the view that there are aspects of the claim that would benefit from further review. It is likely to involve a detailed review of the circumstances and background to the claim with an analysis of remedial action and monitoring defined within the LFER and Case Management report. In addition, it may be used to identify good practice which can usefully be disseminated across all NHS organisations in Wales. If there are residual uncertainties that prevent a recommendation to approve the claim being made, a review can then be taken in respect of the aspect of the claims giving rise to any queries.

22.3 Initial arrangements

Where the WRPS wishes to undertake a claims review, a letter will be sent to the Chief Executive and copied to the Legal Services Manager. The letter will contain:

- A request for information and documentation pertinent to that previously contained within the Learning from Events Report at the time of the original submission of the claim
- An indication of whether the request is for a **Follow Up Review** or a **Claims Review**
- It will identify whether the WRPS Assessor is intending to undertake a site visit or a remote review.

Public Health Wales **must** acknowledge receipt of the request within 14 days advising the WRPS Assessor who will be the nominated point of contact for the effective operation of the review.

The Legal Services Manager or nominated contact will then proceed to collate or delegate responsibility for the collation of the documentation and information requested by the WRPS Assessor.

The documentation and information requested should be forwarded to the WRPS Assessor within 1 calendar month of the date of the request. Where this cannot be achieved, the Claims Manager will contact the WRPS Assessor to agree a timescale for the provision of the information and documentation.

The WRPS Assessor will contact the Legal Services Manager or nominated contact to arrange a mutually convenient date and identify any staff who will be interviewed.

22.4 Site visits

In preparation for a site visit, the Legal Services Manager or nominated contact should:

- Organise a location suitable for the Assessor and any interviewees for the conduct of the review
- Ensure all and any documentation required that has been previously communicated is available. This may include the claims file, patient records, policies, procedures/care pathways, and or audit.
- Ensure that all required interviewees are available for the period of the claims review and can be contacted and released for interview. The Legal Services Manager should be available to co-ordinate information provision and interviewees.

The Legal Services Manager will be responsible for the safe return of all documentation to its rightful source.

22.5 Reports

The Assessor will draft the report and send a copy to the Legal Services Manager for dissemination and comment to appropriate personnel, at Public Health Wales' discretion. Any comments or discussion points or requests to amend the report should be forwarded to the WRPS within 1 calendar month of the date of receipt of the report. In the absence of any comment within this time scale, the WRPS will assume that there are no comments and will issue the report as final.

Following issue of the final report to Chief Executive and Legal Services Manager, the content is abridged and anonymised by WRPS and reported to WRPS Advisory Board. The Advisory Board will either accept the report with no further action or request a follow up in cases further action is identified.

23 Monitoring and auditing

In order to comply with the requirement of the WRPS Claims Management Standard, Public Health Wales' Internal Audit Service will, undertake an annual audit of 25% or 25 of all claims (whichever is the fewer number) which have been through the WRPS Reimbursement Process.

This will ascertain the accuracy of reports, costs, compensation claims and further ascertain that claims/refunds and dealt with in accordance with the Welsh Risk Pool Reimbursement Scheme.

24 Information governance statement

This policy has the potential to deal with extremely sensitive information and Public Health Wales staff involved in any claim need to be fully aware of the material they are handling. The preferred method of information exchange should be via secure email which is password protected. Royal Mail can however be used in exceptional circumstances

Any materials/documents that form part of the claim should be transported in a secure manner to ensure maintenance of confidentiality and minimise risk of loss and the following security measures should be followed:

1. Documents should be sent by recorded delivery post with double enveloped contents.
2. Documentation for the claim should be viewed on a "**need to know basis**"

3. All documents should be stored in the appropriate secured storage facilities and destroyed confidentially in accordance with Public Health Wales retention and destruction guidelines
4. Use of e-mail to transmit documentation relating to a claim is preferred on the provision that emails attaching confidential information are password protected.
5. Information and passwords must be sent in separate emails
6. With all email systems the **sender must however check that the recipient is correctly addressed.**
7. Emails can be used to arrange meetings, although careful wording of the appointment and who can see the calendar must be considered.
8. As appropriate, emails should be marked as Private & Confidential

25 Appendix - Links

Please find below, helpful links to various resources to support this procedure.

Resource Title	Externally available	Internally available
Pre-action Protocol flowchart		✓
Pre-action Protocol standard disclosure lists		✓
Timescales of the Pre-action Protocol		✓
Delegated Limits for the Settlement of Claims		✓
Welsh Risk Pool Claims Reimbursement Procedure	✓	
Learning From Events Form (LFER)		✓
Flowchart post Letter of Claim		✓