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PROCEDURE FOR ACCESSING LEGAL ADVICE

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PROCEDURE FOR ACCESSING LEGAL ADVICE

1. Background

- 1.1 To support Health Boards and Trusts in achieving value for money when obtaining legal services in support of their activities, NHS Wales Shared Services Partnership (NWSSP) provides legal services via NWSSP Legal and Risk Services. In addition legal services are available via the National Procurement Service.

2. Scope of the Procedure

- 2.1 This procedure applies to all staff employed by or contracted to the Trust, including those within the Hosted Organisations who may need to access legal advice or services for the purposes of the Trust. Handling clinical negligence claims remains the responsibility of NWSSP Legal and Risk Team.
- 2.2 This procedure covers all categories of legal activity, however, there may be personal or professional matters which should be directed to the appropriate professional body for legal advice i.e. General Medical Council (GMC).
- 2.3 Furthermore, staff can access legal advice from the Employee Assistance Programme (EAP), further information is available on the Trust intranet site.

3. Aims and Objectives

- 3.1 The purpose of this procedure is to ensure the Trust complies with the NHS Wales Legal Services Framework (“the framework”) and accesses advice through the most appropriate and effective route.
- 3.2 The procedure will support Standing Orders, the Scheme of Reservation & Delegation and Standing Financial Instructions

4. Legal Providers in the “Framework”

4.1 NWSSP – Legal & Risk Services:

NWSSP Legal and Risk Services was established by Welsh Government for the purpose of providing specific legal services as one cohesive group legal service for the whole of NWSSP, including all of those bodies under the Shared Services Partnership umbrella.

It is hosted by Velindre University NHS Trust (‘the Trust’) and are effectively “in house” legal providers to the whole of NHS Wales providing a comprehensive, in-house, specialist legal service to Health Service bodies in Wales.

4.2 The National Procurement Service (NPS)

The National Procurement Service was established in 2013 and is responsible for ensuring that common and repetitive commodities were only procured once for Wales. Public sector organisations throughout Wales were invited to sign up to the NPS and commit to buy through its contracts and frameworks.

The NPS have established a framework contract for public sector legal services. This framework is available from the Head of Corporate Governance.

5. Accessing the Framework

- 5.1 If an NHS Wales Organisation wishes to use legal services then it should instruct Legal and Risk Services in the first instance via its Authorised Officer. Alternatively it may access the NPS framework where Legal and Risk Services are not able to act or in the case of conflict of interests. Access to the NPS framework will be managed by the Authorised Officer and the nominated contact in Legal & Risk Services.

6. Nominated “Authorised Officer” within the Trust

- 6.1 The Trust has appointed an Authorised Officer, the Head of Corporate Governance, who has responsibility for authorising all requests for legal services that are sent to the contractors (Legal & Risk Services and/or the NPS Framework) under this arrangement. Where a request for legal services has been sent direct to the contractor by a person who is not the Authorised Officer, a duty has been imposed upon the contractor to notify the Authorised Officer as quickly as reasonably practicable.

7. Initiating the Legal Advice

- 7.1 In the first instance, the Head of Corporate Governance is the individual authorised to request legal advice, or the Director of Corporate Governance in their absence. This allows for monitoring of any legal activity and associated costs.
- 7.2 The Head of Corporate Governance will need to have received approval from the appropriate individual outlined in Appendix 1, prior to initiating the advice.

8. Detailed Procedure Steps

- 8.1 Where it becomes apparent that legal services are required, any member of staff can discuss the need for the provision of legal advice with their Line Manager and then Divisional Director.
- 8.2 Following discussion and approval (Appendix 1) from the Executive/Divisional Director (as appropriate) any staff member can submit an electronic ‘request for legal advice’ proforma (See Appendix 2) to the Head of Corporate Governance.
- 8.3 Assuming appropriate approval is in place (see Appendix 1), the Head of Corporate Governance will forward the request to the Legal and Risk Services contact for advice. Legal and Risk Services will accept the instructions or will access the NPS Framework on

behalf of the Trust advising on the appropriate contractor for the subject matter e.g. employment legal advice, commercial legal advice.

- 8.4 The Head of Corporate Governance reviews the case and proceeds to access the recommended advisor. They will also provide contact details of the individual seeking advice to the Legal Provider to enable them to liaise directly.
- 8.5 The Head of Corporate Governance will retain a register of all legal advice accessed through the process outlined in this procedure.

9. Billing / Payment Arrangements

- 9.1 As NHS Wales Shared Services Partnership is a hosted organisation of the Trust (for which Legal & Risk Services is a part), Legal & Risk Services billing arrangements will be managed via Shared Services financial procedures and arrangements as set with the Trust.
- 9.2 If advice is being sought from a Legal Provider via the NPS Framework than an official purchase order number must be raised in accordance with NHS Wales 'No Purchase Order No Pay Policy', which is available on the Trust website via the following link:
<http://howis.wales.nhs.uk/sitesplus/972/page/51681>
- 9.3 Where applicable all invoices sent from the Legal Providers will be received by the Head of Corporate Governance for payment in line with their delegated limits. Any invoices above the Head of Corporate Governance's delegation will be submitted to the appropriate Executive/Divisional Director for authorisation for payment.

10. Arrangements for Hosted Organisations

- 10.1 Hosted organisations will adhere to the procedural arrangements outlined in this document, except for the exceptions outlined below:

- 10.2 NHS Wales Informatics Service (NWIS)
Authorised individuals within NWIS are permitted to obtain legal advice directly with the Legal Providers in relation to legal assistance required on NWIS Procurement Contracts only.

All other areas of legal advice will be routed through the Head of Corporate Governance in line with the process detailed within this procedure.

- 10.3 NHS Wales Shared Services Partnership (NWSSP)
Due to the nature and size of the NWSSP the management and access to legal advice requests will remain the responsibility of the NWSSP and they will access advice directly through their agreed internal processes.

Authorised officers will be appointed to manage this function and provide central co-ordination and monitoring of advice requests.

11. Equality Impact Assessment

- 11.1 The Trust is committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and the way it treats its Employees reflects their individual needs and does not discriminate against individuals or groups.
- 11.2 The Trust has undertaken an Equality Impact Assessment and received feedback on this policy and the way it operates. The Trust wanted to know of any possible or actual impact that this procedure may have on any groups in respect of gender (including maternity and pregnancy as well as marriage or civil partnership issues) race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or other protected characteristics.

The assessment found that there was no impact to the equality groups mentioned. Where appropriate the Trust will make plans for the necessary actions required to minimise any stated impact to ensure that it meets its responsibilities under the equalities and human rights legislation

12. Training

- 12.1 Whilst there are no formal training programmes in place to ensure implementation of this policy, each Executive Director, Divisional Director, Clinical Director, Divisional General Manager, Divisional Nurse, Departmental Manager and Head of Departments must ensure that managers and all staff, clinical and non-clinical, are made aware of the procedure provisions and that they are adhered to at all times.

13. Resources

- 13.1 The implementation and management arrangements associated with this procedure do not present any significant resource implications to the Trust.

14. Implementation & Monitoring

- 14.1 This procedure will be implemented and maintained by the Head of Corporate Governance.
- 14.2 NHS Wales Shared Services Partnership - Legal and Risk Services, have the responsibility of monitoring the provision of legal services to NHS Wales.
- 14.3 Legal & Risk Services will provide performance reports and matter analyses to the Trust on a quarterly basis.

15. Procedure Conformance / Non Compliance

- 15.1 If any Trust employee fails to comply with this procedure, the matter may be dealt with in accordance with the Trusts Disciplinary Policy. The action taken will depend on the individual circumstances and will be in accordance with the appropriate disciplinary procedures. Under some circumstances failure to follow this policy could be considered to be gross misconduct.

16. Distribution

- 16.1 The procedure will be available via the Trust Intranet Site and from the Head of Corporate Governance. Where staff do not have access to the intranet their line manager must ensure that they have access to a copy.

17. Review

- 17.1 There will be a review of the operation of the procedure as necessary and at least every three years.

18. Legislation/References

- 18.1 NHS Wales Shared Services Partnership Legal & Risk Services – Arrangements for the Provision of Legal Services to NHS Wales from 1st February 2016.
- 18.2 National Procurement Service (NPS) Legal Services by Solicitors Framework Guidance

19. Further Information

- 19.1 For more information please contact the Head of Corporate Governance on 02920 316956 or via email: cally.hamblyn@wales.nhs.uk.

20. Appendix 1 - Authorised Personnel for Approving Legal Advice and Associated Expenditure within their Division / Function

The Head of Corporate Governance will need to have received approval from the appropriate individual outlined below, prior to instructing advice requests)

Velindre University NHS Trust

Executive Team:

- Chief Executive
- Executive Director of Organisational Development & Workforce
- Executive Director of Finance & Informatics
- Executive Director of Nursing & Service Improvement
- Medical Director
- Director of Strategic Transformation, Planning, Performance & Estates
- Director of Corporate Governance
- Chief Operating Officer
- Divisional Directors

In the absence of the Executive Director or Divisional Director where formal cover rules apply e.g. annual leave cover etc., the Assistant Director or Deputy Director can authorise access to legal advice.

In exceptional circumstances where time may not allow it may be necessary for a member of the Executive Team to contact the Legal Provider directly, in which case the above listed individuals are authorised to request legal advice. Arrangements must be made to ensure that the Head of Corporate Governance is notified of the advice request in order for it to be captured in central monitoring arrangements.

Hosted Organisations

NHS Wales Informatics Service (NWIS):	Director (see Section 10 above)
NHS Wales Shared Services Partnership (NWSSP):	Director (see Section 10 above)
Health Technology Wales (HTW):	Director

21. Appendix 2 - Proforma for the access to Legal Advice - This form should be completed and sent to the Head of Corporate Governance prior to accessing legal advice.

PART A – TO BE COMPLETED BY INDIVIDUAL SEEKING LEGAL ADVICE	
Date issue raised:	
Name of the person raising the issue:	
Responsible Executive/Divisional Director	
Has approval been received from Executive/Divisional Director? <i>Yes – (enter date and format received i.e. via email)</i> <i>No – (this is required before advice can be initiated)</i>	
Description of Issue:	
Deadline for Response:	
Contact details for any queries:	
PART B – COMPLETED BY LEGAL SERVICES & GOVERNANCE MANAGER	
Internal Reference Number:	
Date Legal Provider Contacted:	
Name of the Legal Provider contact:	
Legal Provider Reference Number:	
Milestone Figure:	
Purchase Order Number Raised:	
Date entered on Advice Register:	
Date Legal & Risk Service response received:	
Summary of Legal & Risk Service advice received:	
What was the cost of the advice:	
Details of Invoices Received:	
Which area of law and which external contractor was contacted:	