

Ref QS 04a

CLAIMS MANAGEMENT POLICY (CLINICAL NEGLIGENCE & PERSONAL INJURY LITIGATION)

Executive Sponsor & Function:	Executive Director of Nursing, Allied Health Professionals and Health Science
Document Author:	Claims Manager
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DOCUMENT CONTROL SHEET

Purpose of document	This Policy describes the claims management process for the timely and cost-effective management of claims, including learning from claims to prevent re-occurrence and monitors the effectiveness of relevant procedures. The Policy extends to the importance of supporting staff during the investigation of a claim or other legal proceedings and compliance with the requirement of the Welsh Risk Pool.
Dissemination	The Policy must be disseminated to all services within the Trust and will be made available on the staff intranet.
Implementation	Senior Managers are required to bring the Policy to the attention of all staff.
Review	The Policy is required to be updated 3 years or earlier, depending on new national guidance or legislation.
Equality and Diversity Impact Assessment	Completed and agreed 25 September 2023.

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1. Introduction

- 1.0 This policy describes the Velindre University NHS Trust Policy for the management of negligence claims made against the Trust.
- 1.1 The Policy mirrors the objectives of openness, transparency and timelines, as part of the legislative reforms introduced by the Civil Justice System in April 1999, following recommendations made by Lord Woolf.
- 1.2 It is recognised that both the human and financial cost involved in a claim are powerful incentives for effective risk management. Funds that are spent on addressing and compensating could otherwise contribute to the continuous improvements of healthcare services and working environments. This policy therefore forms an integral part of the Trust's Risk Management Strategy and is intrinsically linked with the Trust's system for the management and learning from concerns.
- 1.3 The Trust is committed to ensuring:
- timely and effective investigation, response and management of any claim, which includes allegations of clinical negligence or personal injury made against the Trust
 - learning from claims to prevent recurrence
 - supporting staff throughout the investigation of a claim
 - ensuring that any healthcare governance issue which may emerge, is addressed promptly and the outcome used to facilitate wider organisational learning.
 - this policy complies with relevant legislation and procedures, including Welsh Risk Pool Procedures, the National Health Service (NHS) Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 as amended in April 2023, the Health and Social Care (Quality and Engagement Act) (Wales) 2020 and the Civil Procedural Rules 1998, as amended by the Civil Procedure (Amendment) Rules 2020. Any future change in procedures implemented by the Welsh Risk Pool will be followed and may supersede the procedures laid down in this document.
 - each claim will be assessed on its own merits, taking advice from legal advisers, where appropriate, for resolution of the case.

2. Purpose

- 2.0 This Policy has been developed in order to fulfil the Trust's commitments, as described in Section 1 above, and to ensure compliance in the management and handling of all claims.
- 2.1 All members of staff are expected to co-operate fully in the investigation of a claim and implement lessons learnt where required.
- 2.2 The Trust will follow the requirements of the Welsh Risk Pool in the management of all claims in a manner consistent with the guidance of being open, honest and transparent.

3. Scope

3.0 This Policy is to be used by all Trust employees involved in the claims process which applies to the management of the following types of claim:

- Clinical Negligence
- Personal Injury
- Redress Scheme

3.1 The Policy provides additional guidance and direction for seeking advice in respect to Inquests.

3.2 The Trust has a legal duty of care towards those it treats. This duty of care is extended to visitors, staff and third parties. The Trust may be held vicariously liable for the acts or omissions of its staff, visitors and third parties.

3.3 Those who consider they have suffered harm from a breach of duty in care can make a claim for compensation and damages against the Trust. For a claim to be successful, it must be proved that:

- the duty of care was owed;
- the duty of care was breached;
- the breach of duty caused, or materially contributed to the harm caused and
- there were consequences and effects that resulted from the harm.

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

3.4 The Trust acknowledges the importance of the claims management process within its organisation and will ensure that the appointed Claims Manager has sufficient seniority and profile as required by the Welsh Health Circular (WHC) (97)17 and the Putting Things Right Guidance (2013) Part 8, revised in April 2023. The Trust and relevant nominated committees will support and promote these objectives, including the provision of support through an approved escalation procedure as set out in the Trust's claims management processes.

3.5 The Trust is committed to learning lessons from claims to ensure the continuous improvement in standards of patients and staff safety and services. Incidents and/or feedback/complaints reporting are crucial elements in the claims process, as this is often the first key indicator of a potential claim. Recording and preserving evidence is crucial in determining if the Trust can defend a claim. All staff are required to be aware of the importance of recording and preserving evidence.

3.6 The Claims Manager will support directors, key managers and staff in the claims process and will ensure that where an investigation identifies the need to learn lessons, that appropriate recommendations are made, and remedial action taken to prevent future occurrence.

- 3.7 In addition to the Putting Things Rights Regulations, the Trust is equally committed in complying with the Health and Social Care (Quality and Engagement Act) (Wales) 2020 and the principles of the Duty of Candour and Duty of Quality, which aligns to the Putting Things Right Regulations of being open and transparent in the investigation and management of claims.
- 3.8 The Act places an onus on all Welsh NHS organisations to be open and honest with service users when things go wrong and put in place learning to prevent a recurrence. The Trust is committed to enhancing service user safety and providing an efficient and effective person-centred, timely and equitable health care system in the context of a learning environment.
- 3.9 The Trust will have due regard to the Wellbeing of Future Generations (Wales) Act 2015, the Equality Act 2010 and various legislation, that support the Trust's plan in meeting its objectives by promoting a fairer and safe healthcare organisation.
- 3.10 Due to the complex nature of healthcare, a claim may involve more than one defendant organisation, e.g. acute hospital or GP practice. It is important that notification of a claim is made to the Claims Manager promptly, in order that discussions can take place with the Claimant's solicitor, NHS providers or other external organisations within a timely manner.
- 3.11 Claims arising from the treatment provided by contracted practitioners are not indemnified and do not form part of the Welsh Risk Pool Scheme. The Trust has no delegated authority to make admissions of liability in respect to such claims or authorise payments in relation to damages or costs.
- 3.12 This policy does not extend to cases involving procedures for submitting a claim for loss or damage of property and does not apply to claims for reimbursement from the Welsh Risk Pool relating to the Human Rights Act 1998, claims for unlawful imprisonment arising from the activities of Mental Health Services and employment issues.
- 3.13 The Trust is liable for the actions of all its employees and volunteers, during the legitimate course of their employment and volunteering services. The content of this policy applies to all employees and extends to volunteers acting on behalf of the Trust.
- 3.14 The Trust will adopt a common and standardised approach in dealing with claims for both clinical negligence and personal injury. The Trust will gather all evidence as expeditiously as possible and, when liability is admitted, will seek to negotiate settlement in a timely fashion to prevent unnecessary delay and increased litigation costs.
- 3.15 The Trust will make every effort to resolve a claim before the issue of court proceedings and will explore the option of alternative dispute resolution methods, where appropriate. Where formal legal action or Court proceedings are unavoidable, the Trust will ensure that it conducts its defence of the claim

in a fair and timely manner, ensuring that legal costs are appropriate and proportionate.

- 3.16 The Trust will comply with the Pre-Action Protocols laid down by the Civil Procedural Rules in dealing with all claims and will ensure a constructive and open approach is taken with the aim of reducing delays and preventing, where possible, formal legal proceedings from commencing.
- 3.17 The Trust is responsible for complying with the Welsh Risk Pool (WRP) (the National Health Service (NHS) Welsh organisation indemnifier), to ensure that the Trust complies with its statutory and obligatory duties as outlined by the Welsh Risk Pool All Wales Indemnity and Insurance Policy and Scope document revised and effective from 1 September 2023, and guidance on the management of claims.

3.18 Nuisance Claims

The Trust will not settle claims of doubtful merit, however small, purely on a value basis. Similarly, claims of this nature will be defended as appropriate.

The decision to settle a claim will always be based upon an assessment of the Trust's legal liability and the risks and costs associated with the defence of that claim.

4. Objectives

- 4.0 The Trust acknowledges that its duty is to ensure that the appropriate financial and risk management systems are in place and that any loss is minimised. In seeking to manage risk effectively, the objectives of this Policy are to ensure:
- the timely and effective management of claims
 - a systematic approach is adopted and takes account of legal and best practice requirements for risk management
 - that the Trust learns from claims to prevent an occurrence
 - that Trust staff are supported, directed and guided throughout the investigation of a claim and advice provided on other legal matters as and when required e.g. inquests.
 - there is accountability and responsibility for the management of all claims against the Trust, which are clearly defined
 - that the Trust complies with the requirements of the Welsh Risk Pool and also with the requirements of the Pre-action Protocol for the Resolution of Clinical Disputes and the Pre-action Protocol for Personal Injury, thereby avoiding the cost penalties associated with non-compliance.
 - external agencies are involved in the investigation of a claim or legal matter when required
 - adequate procedures are in place for monitoring the effectiveness of the policy and the claims process.

5. Definitions

- 5.0 The definition and meaning of a “concern”, relate to complaints, incidents and claims, where a significant litigation risk is presented. The definition for clinical negligence and personal injury negligence claims are outlined below as follows:-

Clinical/Medical Negligence

“A breach of duty of care by members of the health care professions employed by NHS bodies or by others consequent on decisions or judgements made by members of those professions acting in their professional capacity in the course of employment and which are admitted as negligent by the employer or are determined as such through the legal process.”

Personal Injury

“Any disease or impairment of a person’s physical or mental health condition.”

- 5.1 **Claim** – a demand for compensation made following a clinical negligence claim and/or adverse incident resulting in damage or loss and/or personal injury, which carries significant litigation risk for the Trust.
- 5.2 **Claimant** – Any patient or their representative, a member of the public, or employee who instructs solicitors to act on their behalf to pursue a claim against the Trust, or who enters into legal proceedings against the Trust to pursue compensation.
- 5.3 **Clinical Negligence** – A claim based on an allegation that care fell below a reasonable medical or clinical acceptable standard (care which is less than best practice may still be ‘acceptable’ in the legal definition and may not be considered ‘negligent’).
- 5.4 **Personal Injury** – Harm caused to a patient, staff, or visitor, arising from a breach of common law or statutory duty to take reasonable care to provide safe premises, systems of work, equipment and competent staff.
- 5.5 **Employer Liability** – In accordance with common law and statutory duty, the Trust is required to ensure that there is reasonable care to provide competent staff, safe plant and equipment, safe premises and safe systems of work. The Trust may be liable to pay compensation to any employee for any injury or loss suffered if a breach of these responsibilities is established. These circumstances may also give rise to criminal liability.
- 5.6 **Public Liability** – The Trust is under a duty to take reasonable care in all circumstances to make safe any visitor to its premises. The Trust may be liable to pay compensation to any visitor who sustains injury or loss, as a result of a breach of duty, to take reasonable precautions to protect the visitor or third party.

- 5.7 **Human Rights** – A claim made against a public body by an individual for a breach of Human Rights legislation.
- 5.8 **Ex-gratia** – Ex-gratia payments are the responsibility of the Trust and sit outside the remit of the Claims Policy. Further information in relation to ex-gratia payments can be found in Appendix 3
- 5.9 **Judicial Review** – An action taken to bring court proceedings in which a judge reviews the lawfulness of a decision or action taken by a public body.
- 5.10 **Conditional Fee Agreements (CFAs)** – Commonly referred to as a ‘no win, no fee’ agreement in which the Claimant enters into a contract with their legal representative. In the event of a successful claim against the Trust, the court will normally make an order to pay the Claimant’s legal costs. For CFAs entered on or after the 1st April 2013 (where the insurance policy was signed on or after that date), with a few exceptions, success fees and insurance premiums will be paid by the claimant not the defendant. A ‘success fee’ may form part of a CFA. This is an uplift on the solicitor’s basic costs that can be recovered from successful claimant damages.
- 5.11 **Qualified One-Way Costs Shifting** - From the 6th April 2023, claims issued after this date, will see a change in the costs rules relating to recovery of Defendant costs from a Claimant. This means that costs orders made against a Claimant will be enforceable not only against orders for damages under the Civil Procedural Rules 44.14 but against *“any orders for damages or agreements to pay or settle a claim for, damages costs and interest made in favour of the claimant”*.
- 5.12 **Compensation Recovery Unit (CRU)** – The introduction of the social benefits recovery scheme came into effect on the 6th October 1997, following the Social Security (Recovery of Benefits) Act 1997. In recent years, further legislation has been introduced, including the Health, and Social Care (Community Health and Standards) Act 2003. The scheme places the onus of liability to repay social security benefits (known as NHS charges) on the compensator rather than the injured person. The Department of Works and Pension govern the NHS charges and CRU payments. When a claim is made against the Trust or a concern is considered under the Redress arrangements of the Putting Things Right Regulations, the Trust is legally obligated to inform the Compensation Recovery Unit. The aim of the Compensation Recovery Unit is to seek to recover the NHS charges incurred as a consequence of an act of negligence on the part of an NHS provider and ensures that a Claimant is not reimbursed twice.
- 5.13 **Duty of Candour** There is a requirement on all NHS organisations to be open and honest, transparent, fair and impartial.
- 5.14 **Duty of Quality** There is an obligation for the Trust to provide safe, effective, patient- centred, timely, efficient and equitable health services.

6 Responsibilities

- 6.0 Subject to the provisions of the Limitation Act 1980, the Trust will be responsible for managing claims that fall within its scope.
- 6.1 **Chief Executive** – The Chief Executive is the accountable officer for the proper and effective handling of claims for the Trust with overall responsibility for claims management. The Chief Executive is required to ensure that there is a designated Executive Director Lead with clear responsibility for the management of claims. The Chief Executive delegates responsibility to the Executive Director of Nursing, Allied Health Professionals (AHPs) and Health Science in overseeing the function and management of claims.
- 6.2 **Executive Director of Nursing, Allied Health Professionals (AHPs) and Health Science** – The Executive Director of Nursing, AHPs and Health Science is the Board member/Executive Lead responsible for claims management and for issues affecting clinical negligence, personal injury claims and Redress matters. The Executive Director of Nursing, AHPs and Health Science, is also responsible for ensuring that the Executive Management Board and Trust Board are kept informed of any significant and major developments as they arise.
- 6.3 **Director of Finance** – The Director of Finance is responsible for maintaining the Losses and Special Payments Register (LaSPaR) and ensuring that any major developments or concerns that pose a financial risk to the Trust, are highlighted to the Board and relevant Committees accordingly, to safeguard and/or ensure that such financial risk or concern is actioned appropriately.
- 6.4 **Medical Director** – The Medical Director is responsible for ensuring that medical quality and safety is paramount and has responsibility for providing medical leadership and support in achieving the aims and objectives as set out in this policy.
- 6.5 **Deputy Director of Nursing, Patient Experience and Corporate Services** – The Deputy Director is required to act upon and oversee the claims function in the absence of the Executive Lead Director of Nursing, AHPs and Health Science, and is assigned reasonable delegated authority to comply with the efficient and timely management of the claims procedures and processes.
- 6.6 **Divisional Directors** – All divisional directors and service managers have a delegated accountability and responsibility within their divisions for the implementation and adherence to this policy.
- 6.7 **Trust Head of Quality, Safety and Assurance** – The Trust Head of Quality, Safety and Assurance is accountable to the Director of Nursing, AHPs and Health Science in the implementation of procedures and guidance on quality and safety assurance matters, including monitoring and performance. The Trust Head of Quality, Safety and Assurance is required to deputise in the absence of the Deputy Director of Nursing.

6.8 Trust Deputy Head of Quality, Safety and Assurance – In the absence of the Claims Manager, the Trust Deputy Head of Quality, Safety and Assurance is responsible for overseeing the claims management and its function, and will have relevant experience and qualifications, in addition to demonstrating continual professional development, in the management and responsibility of the day to day operation of claims management, including participating in relevant networks and meetings to advance the profile and management of claims and will be responsible for implementing any new procedures, legislation and guidance that will affect the governance arrangements in place for claims management and its functions. The Deputy Head of Quality, Safety and Assurance will also be responsible for ensuring that the Once for Wales Cymru databases, are consistent across all modules (Incidents, Complaints, Claims, Risk Management and Patient Experience), for the purpose of learning lessons and monitoring.

6.9 Claims Manager - The Trust is committed to employing a Claims Manager who has the relevant experience and qualifications in the management of claims.

6.9.1 The Claims Manager will be required to demonstrate ongoing continuing professional development in the area of claims management.

6.9.2 The Claims Manager is required to hold sufficient seniority and profile as required by Welsh Health Circular (97)17 and the Putting Things Right Guidance (2013) Part 8 and is accountable to the Director of Nursing, Allied Health Professionals and Health Science, for ensuring compliance with this Policy and for securing the most cost- effective resolution of claims.

6.9.3 The Claims Manager is responsible for taking an active part in the quarterly All Wales Claims Management, Redress and Inquest Networks, to ensure that the claims processes and any new procedures are discussed and implemented in accordance with the Trust's commitment to the Welsh Risk Pool's obligations.

6.9.4 The Trust and relevant nominated committees are required to support and promote the objectives and scope of this policy by ensuring that an appropriate escalation process is in place to achieve equitable, efficient and timely managed claims.

6.9.5 The Claims Manager is required to ensure that throughout the progress of the claim, staff are kept up to date on the status and progress of the claim and its outcome.

6.10 Employees, Responsibilities, Support and Guidance

6.10.1 The Trust recognises that the co-operation of staff involved in a claim is crucial and acknowledges that the litigation process can be a difficult, daunting and anxious experience. The process can also be time consuming, slow and lengthy, with some cases taking years rather than months to conclude. The Trust accepts that staff may find this a stressful time and

encourages staff to access well-being support and occupational health resources when needed. It is vital that staff are provided the relevant access to services to assist them throughout the litigation period, if required.

- 6.10.2 A manager who has responsibility for a staff member involved in a claim, owes a duty of care to ensure that there is appropriate support in place. Managers who have concerns, should signpost staff to confidential counselling and wellbeing support when required and/or to Occupational Health for additional support, if necessary. advice and guidance should also be sought from Workforce and Organisational Development when there are concerns relating to any staff member.
- 6.10.3 The Trust is required to ensure that guidance is provided to staff who are involved in the claims process and that they have access to training and guidance, at a level appropriate to their role and responsibilities.
- 6.10.4 There is a duty on staff to ensure that early collation of evidence is appropriately captured on the RL Datix Once for Wales' incident/feedback modules with provision to escalate to directorate leads and managers as appropriate. It is also a requirement that staff members ensure that evidence is preserved and good record keeping maintained, as this will be fundamental in the investigation of a claim.
- 6.10.5 Staff are required to engage with the Claims Manager and co-operate fully to ensure that the cost of a claim is minimised. This includes reporting adverse incidents promptly to allow early investigation of potential claims and providing witness accounts and statements, when required, within a timely manner.
- 6.10.6 Any staff member receiving written notification of a claim or potential claim must not enter into direct correspondence or communication with the claimant or their legal representative. All such notifications are to be directed to the Claims Manager who will take the required action at the earliest available opportunity to avoid any adverse costs consequences.
- 6.10.7 The Trust will take full responsibility for managing and, where appropriate, settling claims, meeting all financial obligations and will not seek to recover any costs from health professionals, save in exceptional cases, where the health professional was legally found to be acting outside of his/her remit.
- 6.10.8 Should a case go to trial, staff giving witness evidence will receive support from the Claims Manager and legal advisers, both in conference and prior to attending court. Staff have the option of being accompanied by their union representative should they wish to exercise this right.
- 6.10.9 It is not the intention of the claims investigation to assess whether employment action against an individual member of staff should be considered. However, if, as a result of the investigation there is prima facie evidence of a breach of the law or professional misconduct, further action may need to be considered. In these circumstances, the appropriate senior

manager will determine whether Workforce and OD employment policies should be invoked. Staff should also be aware that in exceptional circumstances their actions might give rise to personal criminal liability and referral to their professional body.

7. Limitation Act 1980

- 7.0 Subject to the provisions of the Limitation Act 1980, the Trust will be responsible for managing all Trust related claims. The Limitation Act 1980 requires that claims are made within three years of the date of the incident or three years from the date a Claimant became aware of the incident, or from the date when the Claimant could reasonably have been expected to know. For minors, the three-year limitation period will commence on the minor attaining the age of 18. The limitation period will not usually apply to a Claimant incapable of managing and administering their own affairs. In certain circumstances, Courts have discretion to waive the limitation period when necessary.
- 7.1 A Human Rights Act claim is to be made within one year of the act being committed, or its failure to act.
- 7.2 A Judicial Review application should be made within three months of the act or the omission.
- 7.3 The Trust will comply with the requirements of the Welsh Risk Pool in notifying other organisations and bodies of claims arising from service provision and will retain day- to-day management of such claims unless otherwise instructed.

8. Welsh Risk Pool (WRP)

- 8.1 The Trust will comply with various rules and procedures relating to the Welsh Risk Pool, including its revised Welsh Risk Pool Procedures and All Wales Indemnity and Insurance Policy and Scope Document.
- 8.2 The WRP currently provides the means by which all Trusts and Health Boards are able to fund their risk exposure for all risks, such as employers and third-party liability, including that for clinical negligence.
- 8.3 The WRP has responsibility for reimbursement of claims handled under the NHS Indemnity, which exceed £25,000. The cases reimbursed mainly relate to clinical negligence and personal injury matters, although the scope of the WRP includes buildings and, in exceptional circumstances, equipment, where an excess of £50,000 is applied.
- 8.4 The role of the WRP was expanded in 2018, to include responsibility for the appropriate reimbursement of permitted costs and damages arising from Redress cases. Redress cases, introduced in 2011 through the 'Putting Things Right' arrangements, deal with matters where there is a qualifying liability arising from complaints and healthcare reported incidents. Effective use of the Redress process has a direct impact on litigation costs for each organisation,

with savings in claimants' costs. Further guidance on the extent of the WRP indemnity is found in the revised All Wales Policy on Insurance, NHS Indemnity and Related Risk Management for/ Potential Losses and Special Payments and Scope of Welsh Risk Pool. The Trust will ensure there is a comprehensive and robust governance framework in place for dealing with the financial management of potential losses and special payments when they do arise and make any necessary changes and updates as required by the Welsh Risk Pool.

- 8.5 The Welsh Risk Pool Scope document sets out the types of losses arising from legal obligations (with the exception of contractual claims) and losses defined by the losses and special payment manual. For the effective management of the claims function the Trust will have:
1. Up-to-date procedures, contract documentation and management practices for the provision and commissioning of healthcare and other services to ensure that they are consistent with the key principles set out in the All Wales Indemnity and Insurance Policy.
 2. Ensure there is indemnity or insurance arrangement which provides appropriate cover for all activities which fall outside of the scope of NHS Indemnity
 3. Ensure there are clear, written policies, procedures and financial arrangements for meeting liabilities arising from negligence claims which are fully consistent with the All Wales Welsh Risk Pool Indemnity and Insurance Policy and the risk pooling arrangements of the Welsh Risk Pool and associated Technical Notes.
- 8.6 Of note, the Policy has replaced the Welsh Health Circular (WHC) (98) 08 and incorporates the requirements of WHC (2000) 04, which outlines the risk pooling arrangements made for clinical negligence claims received from those person to whom the health body owes a duty of care. It does not, however, apply to other types of legal claims that might be made in respect of purely commercial or employment contracts and specifically excludes any payments made for harm sustained where there is no negligence (i.e. personal accident cover).
- 8.7 The Welsh Risk Pool All-Wales Indemnity and Insurance Policy now contains an addendum (WHC 04 (2000)) which specifically allows personal accident cover to be purchased where a health body considers it relevant or appropriate to do so, for example, the Policy does not extend to losses arising from non-emergency vehicles for which the health body is permitted under WHC 04 (2000) to purchase commercial insurance. The decision to enter into agreements for cover for non- negligent harm rests with individual health bodies and cannot be recouped from the Welsh Risk Pool.
- 8.8 Other losses, including building, equipment and consumable losses, are dealt with under the Welsh Risk Pool Indemnity and Insurance Policy and Scope document, outlined in the Insurance and Indemnity Arrangements section.

- 8.9 The Trust is assessed annually against the Welsh Risk Pool Standard for Claims Management and is responsible for complying with the procedures, as captured in the Welsh Risk Pool Indemnity and Case Reimbursement Procedures. The procedures were introduced in October 2019 and revised following consultation throughout NHS Wales. The revised Welsh Risk Pool Procedures will come into effect from the 1 September 2023. Guidance on the procedures, including revisions and updates are periodically provided by the Welsh Risk Pool and are implemented in accordance with the Trust's governance requirements.
- 8.10 The review and auditing of claims management is recognised as an essential component of the Trust's risk management systems and governance processes in place. Periodic claims reviews and audits are compulsory and are undertaken both by internal and external auditors, including the Welsh Risk Pool. Following notification of a review or audit, the co-operation of Trust staff will be required, if called upon, to ensure compliance has been achieved and is maintained.
- 8.11 The Claims Manager is responsible for monitoring 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 WRP and, any required approvals are obtained at relevant stages. These may include claims involving some unusual and new features. If not correctly handled, these claims might set an unfortunate precedent for other NHS litigation and might represent test cases for a potential class action, or cases not formally part of a class action but might appear to be similar in kind to concurrent claims against other NHS bodies. In such cases, the Claims Manager will contact the WRP and, where appropriate, NWSSP Legal and Risk Services for advice regarding the further management of the claim.

9. Learning

- 9.0 The Trust is committed to identifying opportunities for learning and continuous improvement from all events that arise from claims and is responsible for ensuring that a process exists to support its learning by ensuring that there is adequate monitoring of implementation of lessons learned, evaluation of the efficacy of lessons learnt and auditing of learning to prevent and minimise a future occurrence.
- 9.1 It is important that all directorates involved in a claim capture lessons learnt and the actions of evidence following an event, incident or near miss, regardless if it is the subject of a claim. The basis for this is to diminish the risk of future events. This includes learning lessons from any report issued by the Public Ombudsman for Wales and/or His Majesty's Coroner, following the issue of a Preventable Future Deaths Report.
- 9.2 Each directorate lead has responsibility for liaising with appropriate staff and ensuring any identified and agreed actions are implemented and monitored.
- 9.3 The Claims Manager will highlight the potential for 'learning lessons' from

claims as they arise through the reporting and governance mechanisms in place and will share learning with the approved management boards and relevant Committees.

10. Delegated Financial Authority

- 10.0 The Welsh Government has delegated its responsibility for the settlement of claims up to a limit of £1m. The Trust is required to exercise discretion when settling a claim, ensuring that this is within the legal advice provided, and conforms to the Trust's governance arrangements in place for the settlement of cases, including the criteria set out by the Welsh Risk Pool. The levels of financial delegated authorities approved by the Trust are set out in the Trust's Scheme of Delegation (Appendices 2 & 3).
- 10.1 For claims where the sum exceeds that of the Chief Executive/or nominated Executive Director financial delegated limits, the Trust Board is required to agree the settlement of the claim up to the value of £1m.
- 10.2 In situations where a decision is necessary and it is not possible to comply with the financial delegated limits because of time constraints, the Chief Executive, or nominated Executive Director, will contact the Trust's Chairperson, or nominated Independent Member and recommend a course of action (known as a Chairperson's Action). Any action taken in accordance with the Chairperson's Action will be reported at the next available meeting of the Trust Board where retrospective approval will be obtained.
- 10.3 In accordance with the Welsh Government's delegation to the WRP, the Claims Manager will ensure that when damages in a claim are estimated to exceed that of the Trust's delegated authority of £1m, such claims are reported to the WRP, prior to any decisions taken in the claim.
- 10.4 The Trust is required to exercise its discretion in settling claims by ensuring that:-
- a) It adopts a clear policy for the handling of claims that satisfies the requirements of Section 8 of the National Health Service Putting Things Right – Guidance on dealing with NHS concerns - thereby ensuring that there is clarification upon which the Trust will manage and settle claims. The requirements of which the Guidance will form the basis of the procedure for the day-to-day management of claims
 - b) Appropriate Welsh Risk Pool (WRP) approvals and settlements under the delegated authorities' provision, are obtained
 - c) Appropriate checklists are completed for every settlement authorised by the Trust within its delegated limit
 - d) Promotion of good economic practice in the management of claims
 - e) Assurance is provided from learning from events with the objective of improving standards in patient safety and with the aim of diminishing risk.

11. Legal Advisers – NWSSP Legal and Risk Services

- 11.1 In accordance with the WRP procedures, the Trust is responsible for instructing NWSSP Legal & Risk Services in the defence or settlement of clinical negligence and personal injury claims.
- 11.2 Where NWSSP Legal and Risk Services' advice is sought, the Trust will retain the responsibility to direct its solicitors in respect of liability, admission, defence, settlement and general authorities associated with a claim e.g. approval for instruction of an external expert report. However, the Trust will always take due account of qualified legal advice in making such decisions. Legal advice will cover:
- Liability 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
 - Estimates of legal costs for claimant and defence.
- 11.3 The final decision to settle a claim or continue with its defence, requires approval by the Executive Director of Nursing, AHPs and Health Science, or by the Chief Executive and/or the Board, taking into consideration the delegated financial limits, as appropriate. Any decision taken to settle a claim or continue with its defence is captured within the quarterly reporting in accordance with the governance processes in place or alternatively, by briefings as directed by the Executive Director of Nursing, AHPs and Health Science.
- 11.4 The Trust will ensure that, when appropriate, advice is sought from NWSSP Legal and Risk Services, with appropriate expertise, when required to do so, and where there is an indication of a possible risk to the Trust or the Trust's reputation if legal advice is not sought. Advice may be sought in the following circumstances:
- Coroners Inquests
 - Responses to Serious Incidents
 - Complaints
 - General legal advice of a nature that requires legal expertise or specialism
- 11.5 In all eligible cases, the Claims Manager will work in collaboration with NWSSP Legal & Risk Services in obtaining the necessary legal advice as required.
- 11.6 Authority to seek legal advice will be required from the Executive Director of Nursing, AHPs and Health Science in the first instance, as the cost of such instruction is not recoverable and will be borne by the Trust.

12. Reporting Requirements & Structure

- 12.1 The Claims Manager is required to prepare a claims analysis report on a quarterly basis that will form part of the Putting Things Right quarterly report and annual report. The report outlines information regarding claims, including details of new claims, settled and closed claims within each quarter, the number and aggregate value of compensation claims in progress, including their outcome and any remedial action taken or proposed. Learning undertaken in relation to new, settled and closed claims, and any resultant changes in practice which have occurred, or which might be needed.
- 12.2 Claims are escalated through governance arrangements routinely. Any case requiring escalation will be raised with the Deputy Head of Quality, Safety and Assurance in the first instance.
- 12.3 **The Executive Management Board (EMB)** is responsible for
- a) promoting a climate of openness
 - b) ensuring prompt incident reporting and investigation
 - c) being assured that clear explanations are provided to patients who have concerns or complaints
 - d) ensuring directorate compliance regarding claims to comply with WRP reporting requirements.
- 12.4 **Trust Quality, Safety and Performance Committee**
The Committee receives quarterly reports on the management and status of all claims activities against the Trust in the format specified by section 8 of the Putting Things Right Guidance and WRP guidance, which includes updates on the learning undertaken to prevent recurrence and future risk to the Trust.
- 12.5 **Trust Integrated Quality and Safety Group**
Provides oversight to support the Board, Executive Team and Divisional senior Leadership Teams in meeting their Quality and Safety responsibilities and helps to ensure quality is at the centre of decision making across the Trust.
- 12.6 **Trust Health, Fire and Safety Management Board**
The Trust's Health, Fire and Safety Management Board reviews health and safety claims as part of the Trust's health and safety governance processes. Any health and safety event, which could potentially result in a claim, is highlighted to the Board as part of the Trust's governance requirements. Learning that is implemented following a decision taken to settle a health and safety claim is captured in the quarterly reporting and cascaded down to the Health and Safety Management Group.
- 12.7 **Audit Committee**
The Director of Finance is responsible for updating and reporting the value and incidences relating to the Special Losses and Compensation payments to the Audit Committee.

13. Claims Management Process/Procedures

- 13.1 The Claims Manager will ensure that claims management

processes/procedures are developed which supports and embraces the objectives contained in this Policy and the Putting Things Right Guidance.

- 13.2 The Claims Management Procedure will set out the processes for the day-to-day operational and practical management of claims and associated matters.
- 13.3 The Executive Management Board delegates the authority for the approval of the Compensation Claims Management Policy to the Quality & Safety Performance Committee.

14. Databases & Systems

- 14.1 The Trust will maintain the following databases in compliance with the governance and risk framework as outlined below:-

- 14.2 **The RL Datix Once for Wales (OfW) Claims, Inquests and Redress Modules:** The Once for Wales Concerns Management System has been designed to bring consistency to the use of electronic tools used by all NHS Wales health bodies. The system is a cloud-based platform adopted by the Trust to comply with best practice in relation to cyber security and has the benefit of an All Wales approach in adopting integrated functions.

The modules encompass wider functionality and delivers extensive specifications for incorporating integration across Welsh NHS organisations. These modules form the Trust's Claims management database and captures up-to-date information relating to claims, inquests and redress.

Staff are required to ensure that they submit timely incidents or near misses on the Incident Module and, where concerns are raised, for these to be reported via the Feedback Module. All relevant information is required to be uploaded and all fields completed to allow for a seamless, effective co-ordination and management of the claims handling function.

- 14.3 **The Losses and Special Payments Register (LaSPaR)**

LaSPaR is a computerised database previously introduced by the Welsh Government to replace previous paper-based systems with a national standardised format for actioning write-offs or special payments approval. All NHS organisations are required to have procedures in place to record details of losses incurred by the Trust and any special payments made. The register is required to capture all payments, including details of the reason to make the payment. The register forms part of the Trust's annual accounts and is subject to scrutiny by auditors and the Trust's Audit Committee. The main objectives of LaSPaR are to:

- Ensure that health bodies monitor all aspects of losses and special payments, from initial registration to final outcome, on a case by case basis;
- Allow health bodies and the Welsh Government to identify settlement/claimant costs, provisions, and defence or other administration

costs provisions, and to action any subsequent adjustments; and

- Ensure that all payments and income recoveries are identified separately and that analyses can be performed on all transactions

14.4 Detailed guidance on the management of losses and special payments are provided within the losses and special payments chapter within the NHS Wales Manual for Accounts. The Trust is required to ensure that arrangements are in place for compliance with the requirements of the manual and the Welsh Risk Pool procedures and All-Wales Indemnity and Insurance Policy and Scope document. In particular the Losses and Special Payments Manual requires that health bodies throughout NHS Wales have effective systems for:-

- a) The control and safe custody of health service property
- b) Administration of property including that of patients, and
- c) Recording, reporting and investigating losses and special payments

14.5 Compensation claims (including redress settlements), are captured on the LaSPaR database spreadsheet and updated by the Claims Manager and authorised staff, to ensure that relevant financial information is up-to-date and complies with auditing requirements. These payments are monitored closely to ensure that any trends or potential risk is analysed, highlighted and reported and escalated within the Trust's governance framework.

14.6 The Trust is responsible for ensuring that patient and staff confidentiality is maintained when accessing the databases outlined above and that staff comply with the Trust's information governance policies and procedures, as required.

14.7 The Trust requires any employee or officer discovering or suspecting a loss of any kind must either immediately inform their head of department, who must immediately inform the Chief Executive and the Director of Finance or inform an officer charged with appropriately informing the Director of Finance and/or Chief Executive.

14.8 The procedure for submitting a claim for loss or damage of property is found in the Trust's document "Procedure for Submitting a Claim for Loss or Damage of Property". The procedure provides guidance to Trust staff in relation to claims concerning loss of damage of personal property.

Losses and Compensation claims are defined as;

"Losses, damage to/or loss of personal belongings through no fault of the individual".

14.9 The "Procedure for Submitting a Claim for Loss or Damage of Property" outlines the responsibilities of the accountable directors and panel members and sets out the process to be followed in the event of losses involving staff and service users.

14.10 The differences between a Loss and Special Payment is outlined below:-

Loss

Relates to the loss of money or property belonging to the Trust (e.g. theft, damage to buildings, loss of cash, bad debts and loss or obsolescence of stock). Pharmacy Stock is defined as drugs kept on Trust's premises.

Special Payments

Special Payments are made outside the normal day-to-day business of the Trust (e.g. compensation payments for clinical negligence and employer's liability claims, to staff for loss/damage to personal property whilst on Trust premises).

- 14.11 Appendices 3 and 4 outline the financial authorities delegated in accordance by the Welsh Government and includes the Trust's Model Standing Orders – Reservation and Delegation of Powers 2021.

15. Link between Claims, Incidents & Complaints (Concerns)

- 15.1 The Trust will be committed to ensuring that there is need for a close connection between complaints, incidents, claims (collectively known as concerns) and other risk related information.
- 15.2 The triangulation of concerns are dealt with under a collective governance arrangement and meet the requirements of the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 as updated in April 2023, to ensure an effective concerns process is in place that identifies risks and trends through the analysis, gathering and scrutiny of data collection.
- 15.3 Claims may be identified as a result of an incident, complaint, request for records or correspondence from a claimant or solicitor indicating that a claim is being considered. There may be further circumstances that also indicate a potential claim, examples of which are outlined below:
- Where a Serious Incident Investigation or Coroner's Inquest identifies a breach in the duty of care owed
 - Where there has been an allegation of professional misconduct
 - Where a response to a complaint implies acceptance of liability of a potential claim.
- 15.4 The outcome of all investigations are reviewed through the appropriate forum i.e. by the relevant divisional management group, to ensure that any lapse in action/provision of service identified during the investigation is acted upon and monitored to ensure that lessons are learnt and evaluated to improve services with the aim of preventing a future occurrence.
- 15.5 Adverse incidents or outcomes, which could lead to a claim for negligence, should be reported to the Claims Manager to consider the likelihood of a potential claim. The following information should be supplied:-
- Details of the potential claimant

- Date and details of incident/outcome, giving rise to a potential claim
- Names and contact details of relevant members of staff involved in witnessing the incident
- Statements by such relevant members of staff and witnesses
- Any further documentation which is considered relevant.

16. Putting Things Right (PTR) Redress Scheme

- 16.1 The Trust adopts a pro-active stance to the management and resolution of potential claims identified through the 'Putting Things Right' process.
- 16.2 The Deputy Head of Quality, Safety and Assurance will work with the Claims Manager and concerns/investigation leads within divisions to highlight concerns where identified breaches in the legal duty of care are established.
- 16.3 When a concern handled via the Putting Things Right Regulations identifies that a breach of duty has potentially caused/or has caused harm which does not exceed the PTR threshold, and the breach or breaches in the duty of care has been approved by the Putting Things Right Panel, followed by a Regulation 26 response issued to the service user or representative, the matter is transferred to the Claims Manager to investigate further under the Redress Scheme with a view to determining a qualifying liability.
- 16.4 As part of the Putting Things Right process, the Claims Manager will be responsible for liaising with relevant staff to obtain in-house comments as part of the investigation process, including comments from clinicians, nursing leads and professionals within their capacity and speciality when considering causation. When it is not possible to establish causation, the Claims Manager will liaise with the Claimant, or the Claimant's clinical negligence accredited solicitor, to instruct a suitably qualified expert on a joint basis, with a view to seeking an opinion to determine qualifying liability.
- 16.5 When a qualifying liability is established the Claims Manager will be responsible for evaluating, assessing and quantifying Redress cases. Where there is difficulty in quantifying the case, the Claims Manager will seek advice from NWSSP Legal and Risk solicitors following approval by the Executive Director of Nursing, AHPs and Health Science.
- 16.6 Prior to making an admission in relation to qualifying liability and making an offer of compensation in matters where the value of a Redress case is less than the PTR threshold of £25,000, the Claims Manager will be responsible for convening a Putting Things Right Redress Panel and bringing the matter before the Panel to consider liability and the offer of compensation. This may also include seeking approval on one or more of the remedies available under the Putting Things Right Regulations e.g. the associated cost of remedial treatment.

- 16.7 Where a Redress case is considered to be in excess of the PTR threshold of £25,000, if a qualifying liability were to be determined, the matter must not proceed under the Putting Things Right Regulations. The Claims Manager will, instead, be required to inform the service user or their representative to seek independent legal advice.
- 16.8 The Claims Manager will be responsible for obtaining a Compensation Recovery Unity (CRU) Certificate from the Department of Works and Pension (DWP), in accordance with legislative requirements, and will be required to obtain approval, within the financial delegated limits set, for settling any NHS/CRU charges incurred as part of a financial compensation settlement. The Claims Manager will be responsible for providing the outcome to the CRU on all Redress matters. Where CRU exceeds that of £3,000, in accordance with the Welsh Risk Pool Procedures, the matter will be referred to NWSSP Legal and Risk Services for advice.
- 16.9 The Deputy Head of Quality, Safety and Assurance will direct the nature and involvement of the Claims Manager in any subsequent investigation of an incident or reported concern that involves a potential breach of the legal duty of care by the Trust.
- 16.10 The Trust is to ensure that there is an appropriate forum to enable lead members of staff for complaints, risk and claims to meet on a regular basis to discuss risk and ensure that the identification of any trends and/or remedial action that may be required are highlighted and signposted for action accordingly.
- 17. Payments made under the Putting Things Right Regulations - NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011**
- 17.1 The Trust is required to ensure that all requests for compensation associated with a possible negligence claim, should only be made in the event of the Trust being liable for the claimant's loss. Payments requiring financial compensation arising out of any episode of negligence must satisfy the requirements of the Welsh Government's delegated authority and WRP guidance as follows:-
- 17.2 Concerns involving a qualifying liability in tort are to be resolved by the settlement of damages up to a maximum of £25,000 under Redress
- 17.3 Concerns (i.e. claims for negligence) exceeding £25,000 and formal claims for negligence below £25,000 are to be resolved in accordance with the relevant Pre- Action Protocols and Civil Procedure Rules.
- 18. The Putting Things Right Panel**
- 18.1 Following an investigation into a PTR concern, in accordance with the Trust's Terms of Reference, the Putting Things Right Panel will convene and make a decision on one or either of the following:

- breach of duty has occurred
- causation (harm) that has resulted in a qualifying liability

Authorisation is required by the PTR Panel before making any admissions on breach of duty and causation, including any financial offers of compensation and/or remedial treatment to put the Claimant back into the position he/she would have been in, but for the negligence

- 18.2 The Putting Things Right Panel is chaired by the Executive Director of Nursing, AHPs and Health Science and consists of the Deputy Director of Nursing, Clinical PTR Lead, Clinical Director and/or Medical Director, Nursing leads, Directorate leads, the Trust's Head of Quality, Safety and Assurance and Deputy Head of Quality, Safety and Assurance and Claims Manager in addition to members of staff invited to attend.
- 18.3 Approval is authorised by the Chair and is based upon the following considerations:
- the strength and merits of the case
 - the remedies available under the Redress Scheme
 - the likelihood/requirement of settling the case and its associated cost
 - Any lessons learnt
- 18.4 If a decision is made to proceed with a financial offer and that offer is subsequently accepted, correspondence will state that the payment is made in full and final settlement of the concern.
- 18.5 The complainant is advised that they will be unable to pursue a claim for the same matter, as outlined by the Putting Things Right procedures.
- 18.6 The relevant Divisional Director has responsibility for liaising with appropriate staff, ensuring any identified and agreed learning and actions arising from the Panel, are implemented and monitored.

19. Inquests

- 19.1 Inquests are legal inquiries into the cause and circumstances of a death, and are limited, fact-finding inquiries.
- 19.2 The Coroner will consider both oral and written evidence during the course of an inquest. Inquests are public hearings and can be held with or without juries - both are considered equally valid. Under Rule 8 of the Coroners (Inquest) Rules 2013, Coroners are required to complete an inquest within 6 months of the date on which the Coroner is made aware of the death, or as soon as is reasonably practicable.
- 19.3 Coroners are independent judicial officers, appointed by the local authority, and are either doctors or lawyers responsible for investigating the cause of deaths in accordance with the Coroners and Justice Act 2009.

- 19.4 Under section 5 of the Act, a Coroner is responsible for determining:
- who the deceased was;
 - how, when and where the deceased came by his or her death; and,
 - the particulars (if any) required by the Births Deaths and Registrations Act 1953 to be registered concerning the death.
- 19.5 A coroner is obliged to investigate deaths where there is a reasonable suspicion that the deceased has:-
- died a violent or unnatural death,
 - where the cause of death is unknown or
 - if the deceased died while in custody or state detention as defined by section 1(2) of the Coroners and Justice Act 2009.
- 19.6 The Coroner will also investigate where the deceased has not been seen by the doctor issuing the medical certificate, or during the last 14 days before the death.
- 19.7 The Coroners and Justice Act 2009 conferred on Coroners the power to require a witness e.g. a clinician, nurse, police officer etc. to provide a written statement and to call a witness to appear at an inquest, and to determine the evidence to be heard.
- 19.8 The Claims Manager will liaise with the Coroner following notification of an inquest and will liaise accordingly with staff to provide a written statement, providing guidance as required.
- 19.9 If a staff member is informed of an inquest direct by a Coroner, Coroner's Officer or Police Officer and a witness statement or information is requested in relation to a death, it is the responsibility of the staff member to ensure that it is reported to the Claims Manager immediately. The Claims Manager will, on behalf of the staff member, liaise thereafter with the Coroner and co-ordinate the statement and/or any information that is required.
- 19.10 When a staff member is called upon to attend an inquest, the Claims Manager and an appropriately appointed senior manager will attend the inquest in a supporting capacity.
- 19.11 In instances where there are concerns involving the Trust's reputation, failings in service or care, likelihood of a possible Prevention of Deaths Report being issued or if Article 2 is invoked by the Coroner, the Trust will be required to consider seeking legal assistance from NWSSP Legal and Risk to represent the Trust at the inquest hearing.

20. Information Governance /Confidentiality

- 20.1 The Trust is responsible for ensuring that staff are aware of their obligations and duties to ensure that information, records and disclosure are processed and managed in accordance with applicable legislation, codes of practice, standards and Trust policy.
- 20.2 There is a requirement for all staff to process sensitive personal data, information, documents and records in accordance with the legislation contained within the Data Protection Act 2018, the retained EU General Data Protection Regulations 679/2016 (UK GDPR), Access to Health Records Act 1990, The Freedom of Information Act 2000, Environmental Information Regulations 2004 and the Caldicott Principles. The Trust Data Protection and Confidentiality Policy contains further information.
- 20.3 Staff are required to pay particular attention when transferring and/or communicating any sensitive data, information, documents and records that form part of a concern and must take the utmost care to ensure information is, at all times, safe and protected. When a need exists to exchange any information that forms part of a claim, it is the responsibility of Trust staff to maintain security and confidentiality in order to minimise the risk of loss at all times.
- 20.4 Staff are required to comply with legislation, codes of practice, standards and relevant Trust Policies together with applicable divisional/associated organisational directions and/or guidance, to ensure that suitable precautions are taken to protect against any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to data, information, documents and records whether employee or patient, donor or service user, held on a computer or held manually, regardless of the method of communication, which includes verbal, electronic or written.
- 20.5 Reports and correspondence which do not have, as their sole or dominant purpose, actual or prospective litigation, are likely to be disclosable to parties with or without authorisation from the data subject. This will include incident reports and investigations, complaints or investigations and any associated e-mails.
- 20.6 Trust staff who are requested to disclose records to any legal representative or where the intention to pursue a claim has been indicated by an individual should notify the Claims Manager.
- 20.7 The Claims Manager is responsible for ensuring that all relevant records and information relating to a claim are obtained and protected. Records protection will usually include the clinical record and any supplementary documents (e.g. incident and complaint investigations).

- 20.8 The Claims Manager is responsible for maintaining claims information via the Datix Management System. Access to the database is restricted; any claims that are reported to the Executive Management Board, Quality, Safety and Performance Committee, or sub-committees, are anonymised to protect the confidentiality of data.
- 20.9 Closed files are to be placed in archive storage for a minimum period of 10 years

21. Equality and Impact Assessment

- 21.1 The Trust is committed to ensuring that the Trust does not discriminate against individuals or groups.
- 21.2 The Trust has undertaken an Equality Impact Assessment to ascertain if the Policy and procedures outlined in this document will directly impact on any group in respect to gender, including maternity and pregnancy, marriage or civil partnership issues, race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or any other protected characteristics.
- 21.3 The assessment has found that there is no likely impact to the equality groups highlighted above. Where impact is likely this has been assessed in accordance with national guidance and statute. Where appropriate, the Trust will take action to minimise any direct impact on equality and will ensure that it meets its responsibilities in accordance with human rights legislation.

22. External Agencies

- 22.1 The Trust's Deputy Head of Quality, Safety and Assurance will determine if external agencies should be involved in the claim investigation process as follows:-
- Where the circumstances give rise to a suspicion of an unlawful act, an Executive Director will be responsible for the decision as to whether the matter should be reported to the Police.
 - Where the circumstances give rise to concerns in relation to professional conduct, the appropriate professional lead will be responsible for reporting the matter to the relevant professional body.
 - The Trust Deputy Head of Quality, Safety and Assurance will advise if the matter should be reported to Health Inspectorate Wales (HIW), or other regulatory or statutory body.

22.2 NHS Executive

From the 1 April 2023, the Welsh Government has introduced the NHS Executive made up of the following component organisations:

- Delivery Unit
- Finance Delivery Unit
- Improvement Cymru
- Health Collaborative

The key purpose of the NHS Executive is to drive improvements in the quality and safety of care to achieve better, fairer healthcare outcomes for the people of Wales. The Claims Manager will liaise with the NHS Executive, when required, and will comply with any reporting requirements to fulfil the claims and inquests management function. This will include submitting any reports that could potentially impact upon the Trust's reputation. The Trust is required to ensure that the NHS Executive is made aware of any potential reputational impact from media or press coverage e.g. inquests.

23. Monitoring

- 23.1 The effectiveness of this policy will be reviewed on an annual basis by the monitoring arrangements in place in relation to claims management and the compliance with the WRP Reimbursement Procedures. The Quality and Safety Performance Committee will monitor claims performance via the quarterly Putting Things Right reports and the Trust's Putting Things Right Annual Report, highlighting the position in respect of all claims and the learning identified.
- 23.2 The Claims Policy will be received by the Integrated Quality and Safety Group, Executive Management Board and Quality and Safety Performance Committee for approval and noting.

24. The Duty of Candour

- 24.1 Following the introduction of the Health and Social Care (Quality and Engagement) (Wales) Act 2020, the Duty of Candour is now a statutory requirement which comes into force from the 1 April 2023. It underpins the Welsh Government's commitment to openness and learning, vital for the provision of safe, effective and person-centred health and social care. The aim of the Act is designed to improve accountability, promote responsibility through the development of safer systems, engage staff in the improvement of services, strengthen the delivery of quality care and create an enhanced service user experience, built on trust and mutual understanding.

Although the statutory duty applies specifically to NHS organisations, individual healthcare staff are predominantly representatives of the NHS and are therefore responsible for their interactions with service users, their families and advocates and are required to follow relevant procedures and policies.

The statutory duty of candour places a requirement on NHS bodies to follow a set process, evidencing the series of prescribed actions undertaken when the duty of candour is triggered. It works alongside current governance processes involving:-

- **Management of concerns (both formal and informal)**

The duty is aligned with the Putting Things Right Regulations, updated in 2023. These Regulations will exist alongside the Duty of Candour and will continue to support the Trust's culture of openness and transparency.

- **Compliance with fundamental care quality standards and relevant statutory regulation e.g. Health Care Inspectorate Wales.**

Monitoring and assurance of the Trust's process will continue as a fundamental priority. Where inefficiencies are found in the delivery of care and quality, rapid remedial action will be taken to address deficiencies. This will not only improve our services but put in place necessary safeguards to minimise future risk to the Trust's service users and staff.

- **Effective investigation of, and learning from, concerns**

In compliance with the statutory Duty of Candour and Putting Things Right Regulations, proportionate investigation and learning will remain at the heart of the Trust's commitment to improve the Trust's services and enable learning to be shared. This not only encourages better outcomes across NHS Wales but also ensures staff are able to raise concerns in a safe and protected environment.

- **Statutory and professional duty of candour**

There are two types of duty that involve candour:

- professional
- statutory

Professional Duty - Healthcare professionals are required to comply with their professional duty of candour, which states:

"Every healthcare professional must be open and honest with patients when something that goes wrong with their treatment or care causes, or has the potential to cause, harm or distress".

Statutory Duty - NHS organisations are responsible for regulating the statutory duty of candour, while regulators of specific healthcare professions, such as the General Medical Council (GMC), Nursing (RCN), and Midwifery Council (NMC) will oversee the professional duty.

The new statutory duty compliments the existing professional duty of candour and has the same aims – to encourage openness and learning to improve the quality of our care.

The statutory duty of candour also encompasses specific requirements for 'notifiable safety incidents. When a notifiable safety incident occurs, the professional duty alone will no longer be sufficient to meet the requirements.

24.2 Definitions

Statutory Duty of Candour	To act with openness and honesty with service users or their families/advocates, when a service user is harmed by the provision of healthcare, regardless if a concern is raised.
Professional Duty of Candour	The individual duty professionally owed.
Concern	Refers to a claim, complaint, incident or enquiry.
Openness	Free to express concerns and questions answered honestly.
Transparency	Sharing a true account of performance and outcomes with staff, service users, the public and regulators.
Notifiable adverse outcome	An adverse event which caused, or has the potential to cause, harm to a service user which may be a factor in the duty of candour being triggered.
Apology	Saying sorry. An expression of meaningful sorrow or regret.
Harm	More than minimal harm. Level of harm is defined as: death, severe harm or moderate harm, includes psychological harm.
Healthcare	Provision provided in Wales under virtue of the National Health Service (Wales) Act 2006 for or in connection with:- a) the prevention, diagnosis or treatment of illness;
	b) the promotion and protection of public health;
Illness	Includes any disorder or disability of the mind and any injury or disability requiring medical or dental treatment, nursing or therapy.
Service user	Person to whom healthcare is given by an NHS organisation/provider.
Review	Clarification of an incident and an assessment as to the level of harm that has occurred or could occur to the service user when considering if the threshold for triggering the duty of candour has been met.

Investigation	In-depth analysis and enquiries made to understand what has happened. This may involve a number of investigative techniques and methodologies including, 5 whys, root cause analysis, fish bone tool etc. The investigation will require the need to identify learning.
Once for Wales Datix Cymru	A reporting and management digital platform for concerns, comprising claims/inquests, incidents, redress, feedback (complaints) modules.

It is important to note that the duty is triggered not only when harm is known to have occurred, but also in cases where the circumstances are such that a person could experience harm from an incident or occurrence, at some point in the future.

24.3 Harm that is unintended or unexpected

The Duty of Candour requires that harm must be unintended or unexpected.

Many interventions come with inherent risks. These risks should be identified and discussed with a service user as part of the consenting process. If, for example, a medication has a known risk of adverse reaction, the Duty of Candour will not be triggered in the event that the risk materialises, and the service user has consented to the risk. In this sense, “unexpected harm” has not been identified because the risk is one which was expected as part of the consequence of treatment.

In situations regarding side effects and adverse reactions to medications, the harm threshold of more than minimal, has to be met to trigger the Duty of Candour. The materialisation of a known risk will not trigger the duty. However, complications associated with care that was not discussed as a risk of the healthcare provided, may meet the requirements to activate the trigger.

24.4 Grading Harm

The concept of “more than minimal” harm is not defined in law. The level of harm framework under the Putting Things Right Regulations will apply when determining if the duty of candour is triggered. The trigger will occur when moderate harm or above is identified, or likely, at some time in the future, to cause or potentially cause moderate harm or above, to the service user. The duty will be triggered on:

- Death
- Severe Harm
- Moderate Harm, including psychological harm.

Further information in relation to the Duty of Candour can be found in the Handling Concerns Policy.

25. Resources

- 25.1 The implementation and management arrangements associated with this policy will give rise for the release of investigators to investigate a claim.

26. Implementation

- 26.1 The function of this policy will be maintained by the Corporate Quality & Safety Team.

27. Policy Conformance / Non-Compliance

- 27.1 In the event any Trust employee fails to comply with this policy, the matter may be dealt with in accordance with the Trust's 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 as gross misconduct.

28. Distribution

- 28.1 The policy will be available via the Trust Intranet Site and the Claims Manager. Where staff do not have access to the intranet, the staff member's line manager must ensure that their staff have access to a copy of this policy.

29. Review

- 29.1 The Claims Manager will review the operation of the policy as necessary and at least every 3 years

30. Contact Information

- 30.1 The Claims Manager can be contacted as follows:
HandlingConcernsVelindre@wales.nhs.uk.
Contact telephone number: 02920196161

31. References and Legislation

- 31.1 This Policy complies with:-
- PTR Guidance – Clinical Negligence and Personal Injury Litigation: Claims Handling: Putting Things Right – Guidance on dealing with concerns – Clinical Negligence and Personal Injury Litigation: Structured Settlements
 - Health and Social Care (Quality and Engagement) (Wales) Act 2020
 - The Civil Procedure Rules 1998

- Welsh Health Circular (WHC) (2000) 04 replacing the Welsh Health Circular (WHC) (98) 08
- WHC(99)128 – Handling Clinical Negligence Claims: Pre-Action Protocol
- Welsh Health Circular addendum (WHC 04 (2000))
- The Welsh Risk Pool Services Concerns and Compensation Claims Management Standard
- The Welsh Risk Pool Protocols and procedures including the Case Reimbursement Procedures and periodic reimbursement updates and Welsh Risk Pool Indemnity provisions
- The Trust's Standing Orders and Standing Financial Instructions
- Protocol for Referring Clinical Negligence Claims to Legal & Risk
- Duty of Candour
- The Welsh Risk Pool revised All-Wales Indemnity and Insurance Policy and Scope Document effective from 1 September 2023
- Welsh Risk Pool Procedures (revised)

RESPONSIBILITY AND ACCOUNTABILITY FRAMEWORK – Velindre University NHS Trust

Organisation chart - Concerns Management



Appendix 2

SCHEME OF DELEGATION

Matter Delegated	Approving Officer
<p>Approving individual losses and special payment claims in accordance with current Assembly guidance and Velindre University NHS Trust Model Standing Orders - Reservation and Delegation of Powers 2021: Please see Appendix referred to below</p> <ul style="list-style-type: none"> • Up to £5,000 • up to £100,000 • Over £100,000 and up to £1,000,000 • Over £1,000,000 	<p>Claims Manager & Quality, Senior Quality and Safety Assurance Managers</p> <p>Chief Executive/Executive Director of Nursing Allied Health Professionals and Health Science</p> <p>Trust Board</p> <p>Welsh Government/Welsh Risk Pool</p>
<p><u>Notes:</u></p> <p>These limits relate to damages and/or costs payable</p>	

Extract from Velindre University NHS Trust Model Standing Orders –
Reservation and Delegation of Powers 2021:

LOSSES & COMPENSATION LIMITS

NB All amounts are exclusive of VAT.	DELEGATED LIMITS							
	Trust Limit	Trust Board	Chief Executive	Director of Nursing	Director of Finance	Divisional Directors	Claims Manager / Q&S Manager	Small Claims Panel
	£	£	£	£	£	£	£	£
1. LOSSES OF CASH DUE TO:-								
a) Theft, Fraud etc.	50,000	50,000						
b) Overpayment of Salaries, Wages, Fees & Allowances	50,000	50,000						
c) Other causes, including un-vouched or completely vouched payments, overpayments other than those included under 1b; physical losses of cash and cash equivalents e.g. stamps due to fire (other than arson), accident and similar cause	50,000	50,000						
(2) FRUITLESS PAYMENTS (including abandoned capital schemes)	250,000	250,000						
(3) BAD DEBTS AND CLAIMS ABANDONED:-								
(a) Private Patients	50,000		50,000		10,000			
(b) Overseas Visitors	50,000		50,000		10,000			
(c) Causes other than a) – b)	50,000		50,000		10,000			
(4) DAMAGE TO BUILDINGS, THEIR FITTINGS, FURNITURE AND EQUIPMENT AND LOSS OF EQUIPMENT AND PROPERTY IN STORES AND IN USE DUE TO:-								
(a) Culpable causes e.g. theft, arson or sabotage whether proved or suspected, neglect of duty or gross carelessness	50,000	50,000						
(b) Other causes	50,000	50,000						
(5) COMPENSATION PAYMENTS UNDER LEGAL OBLIGATION	FULL	FULL	100,000					
(6) EXTRA CONTRACTUAL PAYMENTS TO CONTRACTORS	50,000	50,000						
(7) EX GRATIA PAYMENTS:-								
(a) To patients and staff for loss of personal effects	50,000		50,000	50,000	10,000			1,000
(b) For Clinical Negligence (negotiated settlements following legal advice) where the guidance relating to such payments has been applied	1,000,000 (Inc. Plaintiff Costs)	>100,000 – 1,000,000	100,000	100,000	5,000	5,000		
(c) For Personal Injury claims involving negligence where legal advice obtained and relevant guidance has been applied	1,000,000 (Inc. Plaintiff Costs)	>100,000 – 1,000,000	100,000	100,000	5,000	5,000		
(d) Other clinical negligence and personal injury claims including Putting Things Right Arrangements - Concerns	50,000		50,000	50,000			5,000	
(e) Other, except cases of maladministration where there was no financial loss by the claimant	50,000		50,000	50,000				
(f) Maladministration where no financial loss by claimant	Nil							
(g) Patient referrals outside UK and EEA guidelines	Nil							
(8) EXTRA STATUTORY AND EXTRA REGULATORY	Nil							