



Courts and Evidence Policy

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Associated Documentation:

- Investigations and Learning Policy
- Policy for Managing Complaints, Concerns, Comments and Compliments
- Incident and Serious Incident Management Policy
- Freedom to Speak up (Raising Concerns Policy)
- Policy on Being Open & Duty of Candour
- Information Governance Policy
- Data Protection Policy including Procedure for Handling Disclosure Requests under the Data Protection Act (1998)
- Attending an inquest: Guidance for staff
- Writing a witness statement: A guide for Staff
- Investigations by external organisations: the police and the Health and Safety Executive (HSE)
- Giving evidence in the crown or county court: Guidance for staff
- Giving evidence at a Tribunal: Guidance for staff

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Staff Summary

As part of the course of the Trust's activities, employees may be requested to provide evidence in relation to incidents involved in legal proceedings, which may result in attendance at a court hearing.

All employees must comply with legal requirements and any actions arising.

The common types of legal proceedings are listed below:

- Coroner's inquests
- County Court (Civil or Family)
- Crown Court
- Tribunals

All requests for documentation, witness statements and court attendances are received, coordinated and managed by the Trust Legal Services Team. Such requests arise primarily from one of the following:

- Request from HM Coroner
- Request from the police
- Subject Access Request for records
- Complaint
- Serious Incident
- Incident reported on Datix
- Media
- Receipt of a Letter of Claim or where court proceedings are served upon the Trust.

The Trust Legal Services Team will collate and submit all relevant documentation relating to the request within the appropriate pre-determined and agreed timescales.

The Head of Legal Services/Legal Services Manager will authorise all external disclosure of documents and information in relation to legal proceedings. The Head of Legal Services/Legal Services Manager will be responsible for the management of the inquest cases, and act as a liaison between the staff members, police, coroner and Trust Solicitors.

Support and advice is available to all staff involved in an incident where legal proceedings are initiated. Staff must inform the Legal Services Team if they receive any direct requests for information or to attend court.

In order to effectively manage the various legal processes, it is important that cooperation is provided to the Legal Services Team during any legal process. In order to effectively learn lessons from such cases and reduce identified risks for the future benefit of staff and patients, , the Legal Services Team maintain a close liaison with the Quality, Safety and Risk teams in regard to incidents and the Patient Relations Team in regard to complaints.

1.0 Introduction

- 1.1 The Trust recognises the need to provide guidance in relation to the legal processes, legal requirements, and individual responsibilities. The Trust also has a responsibility to provide support and guidance to employees throughout the process.
- 1.2 Involvement in inquests and other types of court cases, complaints, claims and other investigations often require staff to give statements and attend court to give evidence when required. All employees must comply with legal proceedings and actions that arise.

2.0 Purpose

- 2.1 The Courts and Evidence Policy is designed to provide structure and clarity around the process for receiving, investigating, responding and reporting on all requests from the courts to assist in legal proceedings.
- 2.2 This policy and its associated guidance are to advise staff of the functions of the different courts and on the process they will need to follow in the event that they are requested to provide a statement or to attend court to give evidence.
- 2.3 This policy is part of the Trust's internal control system and provides assurance to the Board that robust procedures are in place to mitigate the risks associated with the management of inquests and other court proceedings. Key elements of the process include investigations, data analysis and reports, which can provide a valuable source of learning, in order to improve the quality of care and the safety of staff, patients and others affected by the activities of the Trust.

3.0 Process

3.1 Initiation of request

- 3.1.1 All requests for documentation, witness statements and court attendances are received, coordinated and managed by the Legal Services Team.
- 3.1.2 The Legal Services Team will then request the relevant information from the individual staff members involved. When a request from the Legal Services Team is received it should be complied with in a timely manner, and within the timescales set. The Legal Services Team work to strict deadlines set externally by the courts and judiciary system whereby fines can be imposed on the Trust/and or the individual employee for failure to meet these. Any difficulties meeting the timescales should be communicated at the earliest

opportunity to the Legal Services Team. Requests for information should not be ignored under any circumstance. If a request is not complied with by an individual and a fine is imposed as a result, the Trust reserves the right to make representations for the fine to be imposed on the individual or to recover monies from the individual.

- 3.1.3 If any requests are received directly from an external source, staff must inform their line manager and the Legal Services Team immediately and before responding to the request.

3.2 Statements

- 3.2.1 In general, requests to staff for statements or to attend court will be received via the Legal Services Team. On rare occasions, individuals may be contacted directly. These requests must be referred to their line manager and the Legal Services Team for advice and guidance. There is a standard witness template that should be used unless otherwise advised, and guidance is available in completing it.
- 3.2.2 The Legal Services Team will provide staff with appropriate support relating to the provision of witness statements. This will include providing a copy of the Trust's standard witness statement template that should be used, and relevant documents, for example the Patient Care Record (PCR), the incident log and other applicable documentation. Staff may also wish to seek support from their line manager.
- 3.2.3 All evidence and statements are reviewed by the Legal Services Manager, and in relation to inquests by both the Legal Services Manager and the Executive Medical Director or delegated clinical deputy before being submitted externally to the requesting court. The purpose of this is to ensure that the staff member has included and had access to all relevant factual information and evidence is clearly presented in order to fully assist the court, and identify any organisational risks. The Legal Services Manager can advise and support staff on the presentation and structure of their statement but will not seek to influence content. Additionally or otherwise, statements may be taken and/or reviewed by Trust solicitors.
- 3.2.4 In general, for criminal investigations, statements will be taken by the police in person, or a police MG11 witness statement template will be provided to staff to be completed, and in civil cases approaching trial, witness statements will be taken by solicitors acting for the claimant or the defendant.
- 3.2.5 Individual members of staff who weren't directly involved in an incident may be asked to prepare and present reports giving their opinion of particular facts in relation to an incident or subsequent investigation based upon their own experience and expertise. Members of staff must notify the Legal Services Team for advice if they receive such a request as normally, the provision of

expert reports will not be in the course of their Trust employment, unless directed to senior members of staff with specialist skill or knowledge.

- 3.2.6 Staff who have provided a statement or information in relation to any potential or on-going legal proceedings may be asked to attend court as a witness. Such requests are a legal and contractual requirement and staff asked to go to court to give evidence must do so.

3.3 Attending Court as a Witness

- 3.3.1 All requests to attend court are received, coordinated and managed by the Legal Services Team. There may be some occasions, for example during the claims process that Trust solicitors will communicate directly with the staff member. This should be agreed in advance with the staff member involved, and the Legal Services Team will be kept updated throughout the process.
- 3.3.2 Wherever possible, witnesses will be told in good time of the date and place of the hearing. There may be rare occasions where the request will be received at short notice, for example where there has been an unexpected change throughout the course of the legal proceedings. On these occasions every effort will be made to accommodate this.
- 3.3.3 The Legal Services Team will inform both the employee and their line manager of their requirement to attend at court. They will be provided with the following information:
- Date and time of court attendance
 - Location of the court
 - Information in relation to the support available and guidance documents
 - A copy of the relevant documentation, for example, the witness statement, PCR and call log.
- 3.3.4 Giving evidence in court may be a stressful and daunting experience and every effort will be made to advise and support the member of staff leading up to and during the court proceedings. The level of support and guidance will be provided to staff on an individual need basis, determined by previous experience and the nature and complexity of proceedings. Individuals should always seek to contact the Legal Services Team or their line manager in the first instance, should they be worried or concerned over any aspect of the proceedings and additional support will always be provided.
- 3.3.5 If the case is deemed to be straightforward with no issues for the Trust, as a minimum and if requested, court support will be provided by a line manager. For operational staff this is usually a Clinical Supervisor or Locality Manager. For cases where more complex issues have been identified, a senior member of the Legal Services Team may attend in addition to support the member of

staff and represent the Trust. Should it have been deemed appropriate, a Trust solicitor will attend to represent the Trust and provide support to the staff involved. The solicitor will be instructed on behalf of the Trust.

- 3.3.6 Inquests and most other court cases are usually held in public and members of the press may be present. Any approaches by any member of the media for comment regarding the case should be referred to the Corporate Communications Team, who will have been briefed and who are responsible for dealing with all such matters.
- 3.3.7 Guidance on the court procedure can be provided to staff witnesses before the hearing. In complex cases, they may be asked to attend a pre-meeting with a member of the Legal Services Team or Trust solicitor to help them to prepare for giving evidence.
- 3.3.8 Individuals should be aware that it is a mandatory requirement to attend court when requested. Should any member of staff have problems or concerns about going to court, they must inform their line manager and the Legal Services Team as soon as possible in order that they can provide assistance and advice. In circumstances where there is a request to attend court, a formal witness summons may be issued against that member of staff. Should a member of staff fail to attend court without a good reason, the court could find the member of staff 'in contempt of court' in which a judge can impose sanctions such as a fine or in the most serious of cases, imprisonment.

3.4 Staff Support

- 3.4.1 In addition to line management support, the Legal Services Team will provide information, support, advice and guidance to all staff involved in the process, and will be the link to Trust solicitors in those cases where legal representation has been deemed as necessary.
- 3.4.2 It is important for staff who are involved in any legal proceedings to know that they may raise any queries or concerns with the Legal Services Team who will be happy to assist, but are unable to tell witnesses what to say as their evidence will be given under oath, and must be a factual account which has not been influenced.
- 3.4.3 The Trust recognises that some cases can be on-going for a significant period of time which may cause anxiety and stress for the staff involved. Through this policy and its associated guidance, the Trust will ensure that support will be offered and staff will be kept informed throughout the process by the Legal Services Team. Additional support can be sought from individual line managers and through the Trust's Occupational Health Service.

- 3.4.4 All individuals have a responsibility to seek appropriate advice and support, and to advise, in the first instance, their line manager and the Legal Services Team.
- 3.4.5 In addition to the support structures provided within the Trust, members of staff who are experiencing difficulties associated with the event may also wish to seek assistance from regional and local trade union representatives and professional bodies such as the Nursing and Midwifery Council (NMC) and the Health and Care Professions Council (HCPC).
- 3.4.6 In most cases, the Trust will be named as the body with liability on behalf of its staff for events that occurred during the course of their employment. There are some instances in which individuals may be held personally accountable and liable or a conflict of interest may arise between the position of the individual and the Trust. Should this occur, the member of staff will be advised by the Legal Services Team to obtain separate legal representation, which in some circumstances may be available to access through Trade Union Membership.

3.5 Types of Legal Proceedings

Below are examples of the types of proceedings Trust staff may be requested to assist in. Further details are provided in the associated guidance documents.

3.5.1 Coroner's Inquest

The most common request for staff to provide statements and attend as a witness is in relation to an inquest, which is held in a Coroner's court.

An inquest is a fact-finding inquiry to establish four key questions- who has died, how, when and where the death occurred. It is not a trial. Unlike other courts, whether civil or criminal, there is no prosecution or defence. The Coroner's jurisdiction is inquisitorial. The Coroner and others who are "interested persons" seek the answers to the above questions.

All requests from the Coroner are coordinated and managed centrally through the Legal Services Team. Unless otherwise indicated by the Coroner, all requests for documents, i.e. statements from staff members involved must be provided within 14 days to the Legal Services Team. Under the new Coroner and Justice Rules (2009) which came in to force in June 2013, a Coroner can impose a fine of up to £1000 if the timescale is not met. If a staff member has difficulty in completing the statement in the timescales given it is the responsibility of the staff member to alert and communicate with the Legal Services Team and Line Manager at the earliest opportunity so that assistance can be provided. The Trust reserve the right to invoke the fine on the individual

if there is non-compliance with timescales and genuine concerns have not been communicated in a timely manner as detailed above.

Once the Coroner has received all the information, he will list the inquest date and inform the Legal Services Team who is required to attend the inquest to give oral evidence. A request to attend an inquest may be received via a formal 'summons' or by a more informal request from a Coroner's Officer.

Unless there are exceptional circumstances and non-attendance has been agreed with the Coroner, staff must attend the inquest when requested. In circumstances where staff experience difficulties in complying with this request staff should contact their line manager or the Legal Services Team for advice. Staff should not contact the Coroner's Office directly.

More detailed guidance in relation to attending an inquest can be found under the associated documents and are available on the Legal Services intranet page.

3.5.2 Civil proceedings in the County Court or High Court

County Courts deal with civil (non-criminal) matters. Unlike criminal cases in which the state prosecutes an individual, civil court cases arise where an individual or a business believes their rights have been infringed.

Types of civil cases dealt with in the County Courts include:

- Businesses trying to recover money they are owed;
- Individuals seeking compensation for injuries;
- Landowners seeking orders that will prevent trespass.

The most common reason for attending this court will be in relation to a claim that has been brought against the Trust. Support will be provided by the Legal Services Team, and the solicitors acting on behalf of the Trust.

3.5.3 Family cases in the County Courts

County Courts also deal with some family cases, which will be heard by a specialist family circuit judge.

Family circuit judges deal mainly with two sorts of work. The first is private cases, which are disputes involving parents about their children

The second type of case is public work – when local councils take action to protect children.

3.5.4 Criminal proceedings

The process for criminal cases differs from that for civil claims, as they are investigated by the Police and the evidence is passed to the Crown Prosecution Service (CPS) who decides whether or not the case will proceed.

Staff will frequently be asked to give statements or interviews to the police to assist in the prevention or detection of crime, or the apprehension or prosecution of offenders. All requests in hours should be dealt with via the Legal Services Team. In the event of an emergency request that is received out of hours, dependent on the nature of the request, these will be processed by either the Duty Manager or equivalent Senior Manager within the Emergency Operations Centre (EOC), or a Senior Manager within NHS111 in line with the Standard Operating Procedure which can be found in the associated documentation and on the Legal Services Page on the intranet.

Should proceedings arise against the Trust and/or any employee then the case will be reviewed by the Legal Services Team and assessed to determine whether a conflict of interest arises between the position of the individual and the position of the Trust and in addition, if the individual would be better placed to be separately represented. If this is the case the staff member will be advised to inform their trade union and to seek separate legal advice. It should be noted that this is an uncommon situation. An example would be where the staff member is charged with a driving offence.

Magistrates' court

Most criminal cases (about 95 per cent) are heard in a Magistrates' Court. The magistrates are usually people who live in the local community, sometimes called Justices of the Peace.

Magistrates' Courts are not as formal Crown Courts, the magistrates do not wear wigs and only the ushers (court officials) wear black gowns.

Crown Court

A very small percentage of cases are heard in the Crown Court. There are three situations where a case may be 'tried' at the Crown Court:

1. Serious crimes
2. Cases where the defendant (the person accused of the crime) has asked to have his case tried by a jury
3. Magistrates may send a case to the Crown Court if they feel they do not have the power to set a sentence as severe as the crime deserves

Cases at the Crown Court are tried by a jury. These are 12 people from the general public who listen to the evidence presented during the trial and decide if the defendant is guilty of the crime. The judge makes sure the trial proceeds in a fair way. At the end of the trial if the defendant is found guilty the judge decides the sentence for the crime (for example how long the defendant must spend in prison).

3.5.5 Tribunals

There are a large number of different types of appeals and disputes which are heard in tribunals. Proceedings in tribunals are often relatively informal compared to the courts. Although some types of hearings take place in rooms which look very much like a court (for example in Immigration and Asylum cases) others have the tribunal's judges and members and the user sitting around a table (for example in Social Security appeals).

Tribunal users can represent themselves. If the Trust is called to a tribunal, most commonly for an employment related matter, it is likely that legal representation will be in place.

3.5.6 Professional accountability

In cases where the actions of Trust staff result in disciplinary proceedings by the Trust or professional body, such as the NMC or HCPC, the Trust will not fund or provide legal representation for the case. Individuals are advised to arrange their own cover for such an eventuality.

3.6 Data Collection and Analysis

3.6.1 The Legal Services Team routinely record inquest data related to incident type, number, location and issues identified. The data is analysed to determine themes, trends and lessons learned to inform changes in practice across the Trust.

3.6.2 The anonymised data collected is included in reports containing both quantitative and qualitative data analysis, and reported to Executive groups as required within their respective reporting timescales.

3.7 Links Between the Management of Inquests, Incident and Complaints

3.7.1 In order to effectively learn lessons and to reduce the risks associated with inquests, the Legal Services Team maintains a close liaison with the Quality and Safety team in regard to incidents and the Patient Relations Team in regard to complaints.

3.7.2 It is possible that a request for information from a Coroner may be the first indication that an incident has occurred. Where an inquest case has not

previously been reported as an incident, but should have been, it will be immediately reported in accordance with the Trust's Incident and Serious Incident Management Policy. The investigation as an inquest, and as an incident, will then be graded in line with the Investigation grades (detailed in the Investigations and Learning Policy) and allocation to an appropriate manager to complete the investigation which will proceed as a single process.

- 3.7.3 Where there is an indication that an incident resulting in an inquest may lead to a potential civil claim against the Trust, the Legal Services Manager will notify the NHS Litigation Authority (NHSLA) in advance and apply for NHSLA funding for representation.
- 3.7.4 Where an incident or complaint involving a death of a patient is followed by allegations of negligence, or is identified as carrying a significant litigation risk, this is referred by the Quality and Safety and Patients Relations teams to the Legal Services Manager. The Legal Services Team will undertake a preliminary analysis and will actively inform the Coroner.
- 3.7.5 Incidents, complaints and inquests are discussed collectively by the Incident Review Group which meets on a fortnightly basis. Links between incidents, complaints and inquests are made routinely at this meeting, along with agreed management actions.

4.0 Training Expectations for Staff

- 4.1 Training is delivered as specified within the Trust Training Needs Analysis (TNA) and at the request of departments across the Trust.
- 4.2 Additional bespoke training sessions will be developed and delivered, as required to meet any identified training needs.

5.0 Implementation Plan

- 5.1 The following stakeholders have been consulted in the development, consultation and review of this policy:-
 - Legal Services Team
 - Incident Review Group Members
- 5.2 This Policy (Courts and Evidence Policy) has been reviewed by members of the Incident Review Group and has been recommended to the Trust Management Group for approval.
- 5.3 The latest approved version of this Policy will be posted on the Trust Intranet site for all members of staff to view. New members of staff will be signposted

to how to find and access this guidance during Trust Induction.

- 5.4 Archived documents will be stored electronically within the Document Library archive. A copy of previous versions of the policy will additionally be held by the policy author.

6.0 Monitoring Compliance

- 6.1 Document management and regulatory compliance reports are presented by the Head of Legal Services/Legal Services Manager throughout the year to a range of executive committees. The committees review the reports, note any deficiencies and remedial actions in their minutes. Progress against actions will be monitored as part of routine business and will be subject to the Trust's performance management process.
- 6.2 The effectiveness of this policy is monitored against adherence to external timescales set by the various legislation and judiciary. Key Performance Indicators (KPI) based on the legislative timeframes have been agreed, and performance against these KPIs is monitored through reports to executive committees.

7.0 References

Legislation:

- The Coroners and Justice Act (2009) www.legislation.gov.uk
- The Coroners (Inquests) Rules (2013) www.legislation.gov.uk
- The Coroners (Investigations) Regulations (2013) www.legislation.gov.uk
- The Data Protection Act (1998) www.legislation.gov.uk

Internal Guidance

Further guidance documents, witness statement template and contact details for the Legal Services Team can be found on the intranet page below:

<http://pulse.yas.nhs.uk/StaffHandbook/Pages/Legal-Services.aspx>

Guidance from other organisations:

- Guidance for attending court – <http://www.judiciary.gov.uk/you-and-the-judiciary/going-to-court/>
- The Crown Prosecution Service (CPS) giving evidence: http://www.cps.gov.uk/victims_witnesses/index.html
- Tribunals Service <http://www.justice.gov.uk/about/hmcts>
- Memorandum of Understanding – Investigating patient safety incidents involving unexpected death or serious untoward harm: a protocol for liaison and effective communications between the National Health Service, Association of Chief Police Officers and Health and Safety Executive. NHS, ACPO, HSE
http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_412991

8.0 Appendices

Appendix A – Roles and Responsibilities

Trust Board

The Trust Board is responsible for ensuring that effective systems are in place for the management of inquests and other forms of legal proceedings. The Trust Board seeks assurance regarding the Trust's response to inquests, through the Chief Executive and the Executive Director of Quality, Governance and Performance Assurance.

Quality Committee

The Quality Committee undertakes objective scrutiny of the Trust's clinical governance and quality plans, compliance with external quality regulations and standards and key functions associated with this, including processes to ensure effective learning from adverse events, comprising of incidents, complaints and claims. The Committee scrutinises bi-monthly and annual reports provided by the Head of Legal Services/Legal Services Manager, and supports the Board in gaining assurance on the effective management of inquests.

Incident Review Group

The Incident Review Group (IRG) is a working group that meets on a fortnightly basis, and which is responsible for reviewing and instigating appropriate action to address issues identified in relation to incidents, serious incidents, formal complaints and concerns, claims, coroners inquests and clinical case reviews.

Chief Executive Officer

The Chief Executive Officer is ultimately accountable for the implementation of the process for managing the Trust's involvement in legal proceedings. As the Accountable Officer the Chief Executive provides the Trust Board with assurance regarding the Trust's response and management of inquests and other forms of legal proceedings.

Executive Director of Quality, Governance and Performance Assurance

The Executive Director of Quality, Governance and Performance Assurance has responsibility for ensuring that adequate arrangements are in place to effectively manage inquests and other forms of legal proceedings, and for ensuring that an appropriate system is in place to manage risks arising from these processes. The Director has oversight of all inquests and has the responsibility for providing the Trust Executive Group and Trust Board with updates on significant developments and assurance on the inquest management process.

Executive Medical Director

The Executive Medical Director has oversight of all the Trust inquests and clinical claims and is responsible for providing clinical professional guidance and support for the inquest process.

Head of Legal Services/Trust Solicitor

The Head of Legal Services has overall responsibility for the management of the Legal Services Team, which includes inquest management and that of other legal processes. The Head of Legal Services has responsibility for the collation and analysis of inquest related data and for providing detailed reports to the Incident Review Group and Quality Committee within their reporting schedules, and to Trust Executives, as required. This can be delegated to the Legal Services Manager as required. The Head of Legal Services may act in the capacity of Trust Solicitor and represent the Trust in legal proceedings and has authority to instruct external lawyers where required.

Legal Services Manager

The Legal Services Manager has responsibility for the operational function of the Legal Services Team which includes the management of inquests and other legal processes. The Legal Services Manager will support the Head of Legal Services in the collation and analysis of inquest related data and for providing detailed reports to the Incident Review Group and Quality Committee within their reporting schedules, and to Trust Executives, as required. The Legal Services Manager has delegated authority to instruct Trust Solicitors on behalf of the Trust for representation at court hearings.

Legal Services Team

The Legal Services Team consists of a number of coordinators and administrators, each of which is allocated with specific aspects of legal service responsibilities. They support the Head of Legal Services and Legal Services Manager in the operational delivery of team objectives and in the achievement of mandated performance standards.

All Trust Managers

All managers are required to co-operate with the Legal Services Manager and the Legal Services Team, by responding in a timely manner to requests for any information or support required during the course of their business. Managers may also be asked to participate in the investigation of inquests, and it is expected that they will apply due diligence to this process, provide support to affected staff, and facilitate effective organisational learning and improvement.

All Trust Staff

All Trust staff have a responsibility to co-operate with the Legal Services Team by responding in a timely manner to requests for any information and by active

participation in a legal process. All individuals must inform their line manager and the Legal Services Team of any requests made direct to them. They have a duty to provide a written statement/information as requested by the Legal Services Team, and to appear in court to give evidence if requested by the court.