

ACCESSING LEGAL ADVICE AND SERVICES

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Documents to be read alongside this policy:	<ul style="list-style-type: none"> • NHS Wales Shared Services Partnership Legal & Risk Services – Arrangements for the Provision of Legal Services to NHS Wales from 1 March 2016. • National Procurement Service (NPS) Legal Services by Solicitors Framework Guidance. • Standing Orders. • Scheme of Reservation and Delegation • Standing Financial Instructions
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Executive Summary:
<p>required, they should discuss the matter and the reasons for such a request with their Executive Director. Where it is agreed by the Executive Director that legal advice is required the process outlined in this procedure document should be followed.</p> <p>For more information on how to access legal advice please contact the Head of Corporate Governance on (029 21 836012), email Aaron.Fowler@wales.nhs.uk.</p>

Disclaimer

The latest version of this document is located on the UHB's intranet. Please check the review date and if there are any doubts contact the author.

Proprietary Information

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Engagement has taken place with:

Name	Title	Date Consulted
NHS Wales Shared Services Partnership – Legal & Risk Services		On-going discussions
Management Executive		25 February 2019
Health Systems Management Board		-

Version Control Table:

Changes made as part of latest review:

This procedure has been prepared to reflect the arrangements put in place for the provision of Legal Services to NHS Wales from the 1 February 2016, and to promote a centralised UHB approach for accessing legal services.

Version No	Issue Date:	Summary of Amendments
1	20/02/19	Developed to reflect new NHS Wales arrangements for the provision of legal advice.
2	21/02/19	Amended to reflect comments made by Director of Corporate Governance.
3	28/02/19	Amended to include paragraph on hosted organisations
4	29/11/2019	Amended to re-emphasise the approved procedure for obtaining legal advice.

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1. Introduction and Background

- 1.1 In the course of its wide ranging activities, providing healthcare to the people of Cardiff and beyond, the Health Board and its staff in the course of their duties, need to access legal services from time to time. It is crucial that such services are of a high quality as well as being value for money, with appropriate governance arrangements in place to ensure appropriate, timely and cost effective access. The Health Board has in place a service level agreement with NWSSP Legal and Risk Services (L&R) for the provision of comprehensive legal services. These include commercial contract and property, procurement, employment, health and safety, litigation, corporate governance, information law and complex patient care. In addition, the Welsh Government's National Procurement Solicitors Framework Agreement is able to supply legal services via a range of call-off options, with the support of NWSSP Legal and Risk, where they are unable to make direct provision. Technically the framework expired in August 2019, but has been rolled over while a new procurement exercise is being undertaken.
- 1.2 This procedure outlines the arrangements for accessing legal services.

2. Purpose of this Procedure

- 2.1 This procedure describes the arrangements that should be used by all Cardiff and Vale University Health Board (UHB) staff to secure legal services. It adopts the Public Accounts Committee's recommendation that all NHS organisations should engage with L&R as their 'first port of call' in relation to legal service provision
- 2.2 This procedure also follows the requirements set out in the UHB's Standing Orders, Scheme of Reservation and Delegation and Standing Financial Instructions.

3. Scope

- 3.1 This procedure applies to all staff who may need to access legal advice and services. Handling clinical negligence and personal injury compensation claims and Concerns under Putting Things Right remains the responsibility of the Patient Experience Team and the NWSSP Legal and Risk Team.
- 3.2 This procedure covers all categories of legal activity, however, there may be personal or professional matters which should be directed to the appropriate professional body for legal advice i.e. General Medical Council (GMC). Furthermore, staff can access legal advice from the [Employee Assistance Programme \(EAP\)](#), further information is available on the UHB's intranet site.

4. The Providers of Legal Services

4.1 NWSSP – Legal & Risk Services (L&R):

L&R was established under the auspices of NWSSP by Welsh Government. Its purpose is the provision of comprehensive legal services to NWSSP, and all of the statutory health bodies that fall under its umbrella. It is hosted by Velindre NHS Trust and operates as an “in house” legal provider to NHS bodies in Wales.

4.2 The National Procurement Service (NPS)

The NPS has established a framework contract for public sector legal services. The contract framework is available to use, where L&R are unable to assist.

5. Implementation of the arrangements

5.1 L&R should be engaged as the preferred supplier. If legal services are needed L&R must be instructed in the first instance.

5.2 L&R will support the UHB in accessing legal services under the NPS framework where L&R is not able to assist, for example if there is a conflict of interest. Access to the NPS framework will be managed by the UHB’s Authorised Officer (see 6.2 below) and the nominated contact in L&R.

6. Key Principles

6.1 Responsibility for the management of clinical negligence and personal injury compensation claims remain the sole responsibility of L&R.

6.2 The UHB has nominated an Authorised Officer, the [Head of Corporate Governance](#), who has responsibility for authorising all requests for legal services. Where a request for legal services has been sent direct to L&R by a member of staff, L&R will require the staff member to notify the Authorised Officer as quickly as reasonably practicable before advice will be given (save for the circumstances set out at paragraph 8 below).

6.3 In the first instance, the Head of Corporate Governance is the individual authorised to request legal advice. It might, occasionally be necessary for a member of the Executive Team to contact the legal provider directly, for example when advice is needed out of hours (see below).

6.4 in which case the following individuals have been authorised to request legal advice:

- Chief Executive
- Director of Corporate Governance
- Executive Director of Nursing
- Executive Medical Director
- Executive Director of Finance
- Executive Director of Workforce & Organisational Development The

names of these individuals have been notified to L&R.

6.5 It is important that requests for legal advice are centrally monitored by the Office of the Head of Corporate Governance. Therefore, where authorised individuals listed in 6.4 above request legal advice, the authorised Executive making the request must ensure that the Head of Corporate Governance is made aware of the request in order for it to be subject to central monitoring arrangements.

7. Detailed Procedural Steps

7.1 Where a member of staff identifies a need for legal services they should in the first instance discuss the matter with their Line Manager and then the relevant Executive.

7.2 Following discussion with and approval from the relevant Executive Director (see **Appendix 1**) a 'request for legal advice' proforma (see **Appendix 2**) should be completed and submitted to the Head of Corporate Governance.

7.3 L&R will check to ensure that relevant authorisations have been sought and received prior to providing legal advice (save for the circumstances set out in paragraph 8 below).

7.4 Once the appropriate approval is in place the Head of Corporate Governance (or relevant Executive Director (see paragraphs 6.3 and 6.4 above)) will forward the request to the UHB's L&R contact for advice. L&R will provide legal advice or will access the NPS Framework on behalf of the UHB advising on the appropriate contractor for the subject matter, for example employment legal advice, commercial legal advice.

7.5 The Head of Corporate Governance will review the case and proceed to access the recommended advisor. They will also provide the contact details of the individual seeking advice to the Legal Provider to enable them to liaise directly.

The Head of Corporate Governance will retain a register of all legal advice accessed through the process outlined in this procedure. The Head of Corporate Governance will also receive feedback from L&R on the quality assurance and conclusion of cases, for monitoring purposes.

7.6 Failure to follow this process will result in the cost of legal advice

obtained being charged to the budget of the individual who obtained the advice.

8. Urgent Requests, Free Legal Advice and Accessing Legal Advice Out of Hours

8.1 In a bona fide emergency situation, staff members shall be entitled to contact L&R, for emergency legal advice and assistance without following the procedural steps detailed at paragraph 7 above. Examples of emergency situations envisaged by this paragraph include, but are not limited to:

- Urgent Court of Protection Applications;
- Mental Health Act 1983 emergency detention queries/issues;
- Urgent patient consent issues; or
- Police investigatory power issues.

In such situations staff members are obliged, once emergency legal assistance has been requested, to provide the Head of Corporate Governance with a full breakdown of the legal assistance sought/obtained and details of the L&R contact who dealt with the matter. Failure to notify the Head of Corporate Governance of the request for emergency assistance within 7 calendar days of the initial request will result in the cost of legal advice obtained being charged to the budget of the individual who obtained the advice.

8.2 Free Legal Advice – although technically not part of the NWSSP SLA L&R do not charge for simple advice requests that can be resolved in less than 30 minutes e.g. in a telephone conversation or via a brief email exchange). Staff members may, with the prior approval of the relevant Executive Director (see Appendix 2) contact L&R's nominated officer to access this free advice. Should additional assistance be required following the provision of the free advice, staff members should seek authorisation for additional advice from the Head of Corporate Governance following the detailed procedural steps at paragraph 7 above.

8.3 *Assisting a Patient to Access Legal Advice Out of Hours*– should a member of staff receive a request from a patient for the services of a private solicitor, for example to help them draw up a will they should ask that they wait until normal office hours. Unfortunately it is likely to be difficult to find a solicitor who would be willing to attend the UHB out-of-hours for such matters. Therefore staff need to provide support to patients and ensure that a solicitor attends to their needs at the earliest opportunity.

8.4 *Accessing Legal Advice Out of Hours on behalf of the Health Board* – to access advice on legal matters out of hours, staff must contact the on-call member of the Executive Management team.

9. Billing / Payment Arrangements

9.1 L&R Provider Billing

L&R billing arrangements will be managed via the Shared Services financial procedures.

External Legal Providers invoices will be managed by their internal financial procedures.

9.2 Payment of invoices from NPS Legal Providers

All invoices sent from the Legal Providers will be received by the Head of Corporate Governance for payment in line with their delegated limits. All invoices above the Head of Corporate Governance's delegation will be submitted to the Director of Corporate Governance for authorisation of payment.

10. Arrangements for Hosted Organisations

10.1 Hosted organisations will adhere to the procedural arrangements outlined in this document.

11. Judicial Review

11.1 Should any member of staff be notified that the UHB is to be the subject of Judicial Review they must inform the Head of Corporate Governance immediately and seek further advice on the next step.

12. Equality

12.1 The UHB is committed to ensuring that, as far as is reasonably practicable, the way it provides services to the public and the way it treats its Employees reflects their individual needs and does not discriminate against individuals or groups.

12.2 An Equality Impact Assessment of this procedure has been undertaken. The assessment found that there was no impact in respect of gender (including maternity and pregnancy as well as marriage or civil partnership issues) race, disability, sexual orientation, Welsh language, religion or belief, transgender.

13. Training

13.1 Whilst there are no formal training programmes in place to ensure implementation of this procedure, each Executive Director must ensure that managers and all staff, clinical and non-clinical, are made aware of the procedure provisions and that they are adhered to at all times.

14. Resources

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

15. Implementation & Monitoring

- 15.1 This procedure will be implemented and monitored by the Head of Corporate Governance.
- 15.2 National Health Service Wales Shared Services Partnership - Legal and Risk Services, have the responsibility of monitoring the provision of legal services to NHSWales.
- 15.3 Legal & Risk Services will provide performance reports and matter analyses to the Trust on a quarterly basis.
- 15.4 *Reports to Board* -The Head of Corporate Governance will prepare bi-annual reports to the Board, setting out details of the legal advice sought and received. The reports will also include details of any matters of non-compliance with this procedure.

16. Procedure Conformance / Non Compliance

- 16.1 If any employee fails to comply with this procedure, the matter may be dealt with in accordance with the UHB's Disciplinary Policy.
- 16.2 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 procedure could be considered to be gross misconduct.

17. Distribution

- 17.1 This procedure is available via the UHB's Intranet Site and from the Head of Corporate Governance. Where staff do not have access to the intranet their line manager must ensure that they have access to a copy of this procedure.

18. Review

- 18.1 This procedure will be reviewed to reflect any changes in guidance or legislation. As a minimum it will be reviewed 3 years after the date of approval.

19. Legislation/References

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

20. Further Information

- 20.1 For more information please contact the Head of Corporate Governance on (029 21) 836012, email Aaron.Fowler@wales.nhs.uk



Appendix 1

Authorised Personnel for Approving Legal Advice and Associated Expenditure within their Division *(the Head of Corporate Governance will need to have received approval from the appropriate individual outlined below, prior to instructing advice requests)*

Cardiff and Vale University Health Board

Executive Team:	Main Areas of Legal
Chief Executive	All
Deputy Chief Executive	All
Director of Corporate Governance	All
Executive Director of Nursing	All Clinical Matters Safeguarding Concerns Mental Capacity Mental Act
Executive Medical Director	All Clinical Matters
Executive Director of Finance	Financial Matters Contract and Commercial Law Major IT and Digital Infrastructure Commercial Contracts
Chief Operating Officer	Primary Care Issues
Executive Director of Workforce & Organisational Development	Employment Law and related matters Health and Safety Law
Executive Director of Finance	Estates Matters Capital Contract Matters Planning Law
Executive Director of Public Health	Public Health Matters



Appendix 2

Proforma for Requesting Access to Legal Advice

This form should be completed and sent to the Head of Corporate Governance.

PART A – TO BE COMPLETED BY INDIVIDUAL SEEKING LEGAL ADVICE	
Date request raised:	
Name of the person raising the request:	
Responsible Executive Director:	
Has approval been received from the Executive Director? <i>Yes – (enter date and format received i.e. via email)</i> <i>No – (this is required before advice can be initiated)</i>	
Description of Issue:	
Deadline for Response:	
Contact details for any queries:	
PART B – COMPLETED BY HEAD of CORPORATE GOVERNANCE	
Corporate Governance Directorate Reference Number:	
Date Legal & Risk Services Contacted:	
Name of the Legal & Risk Services contact:	
Legal Provider Reference Number:	

Purchase Order Number Raised:	
Date entered on Legal Advice Register:	
Date Legal & Risk Service response received:	
Summary of Legal & Risk Service advice received:	
Cost of the advice received:	
Details of Invoices Received:	
Which area of law and which external contractor was used:	