



**CLAIMS HANDLING PROCEDURE
FOR CLINICAL NEGLIGENCE CLAIMS**

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Documents to read alongside this Procedure	Claims Handling Policy
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Version Number	Date of Review Approved	Date Published	Summary of Amendments
1	14/06/2012	02/08/2012	Reviewed and updated to UHB document. Supersedes Trust document reference no: 3.

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1.0 Background

- 1.1 This document is designed to set out the procedure for the day to day management of claims received by Cardiff and Vale University Health Board and supports the strategic objectives set out in its Claims Management Policy. It has also been drawn up in accordance with Welsh Health Circular (97)17 “Clinical Negligence and Personal Injury Litigation: Claims Handling”, WHC (99)128 “Handling Clinical Negligence Claims: Pre Action Protocol for the Resolution of Clinical Disputes” and other guidance, as well as Welsh Risk Management Standard 5 (see Appendix A)
- 1.2 The responsibility for the approval of the UHB’s Claims Handling Procedure for Clinical Negligence has been formally delegated by the UHB as set out in paragraph 9.3 of the Claims Policy, via the UHB Quality and Safety Committee to the Concerns/Claims Review Group.

2.0 Potential Claims

- 2.1 Every incident or concern has the potential to become a claim and the quality of investigations undertaken by the University Health Board (UHB) under its Risk Management Policy and Strategy and Incidents and Hazardous Reporting Procedure, will assist in the management of any subsequent litigation.
- 2.2 There will always be some cases of reported concerns that pose a greater litigation risk than others. The Claims Managers should be notified of such cases, of reported concerns which could potentially result in a claim at the appropriate time. This will ensure that all information is gathered at the earliest possible opportunity to enable the UHB to effectively manage any future claim.
- 2.3 The Patient Safety Manager, Concerns Team Manager and Claims Managers will liaise to ensure the pro-active identification of potential claims whilst thorough and robust internal investigations are carried out.
- 2.4 All incidents, concerns and claims are recorded on the DATIX database and linked to facilitate the identification of potential claims and ensure a single seamless investigation.

3.0 Sources from which a Clinical Negligence Claim can be received.

3.1 Disclosure Requests

Data Protection Act 1998

The patient or nominated representative has a legal right of access to all their health records held by the UHB. It is not necessary for the patient or nominated representative to provide a reason for the disclosure.

Voluntary disclosure will only be denied if the relevant Healthcare Professional considered that disclosure would be likely to cause serious harm to the physical condition or mental health of the patient or any other person.

Access to Health Records Act 1990

Requests for access to health records relating to deceased patients have to be made under this Act.

Freedom of Information Act 2000

Patients have a legal right of access to information held by the UHB from which a potential claim could be developed.

3.2 Pre Action Protocol for the Resolution of Clinical Disputes

The claimant's Solicitor will usually be asked to complete the agreed proforma for Pre Action disclosure in order to assist in the consideration of any potential claim that may/may not directly involve the UHB.

This is usually one of the first indicators that a clinical negligence claim is being contemplated against the UHB.

3.3 Letter of Concern – Putting Things Right Initiative

A request for compensation will usually be found at the end of a letter of concern but this matter can be raised at any stage by the individual (in such cases the concern will be processed in accordance with the UHB Concerns procedure). The Claims Managers should normally be informed of all compensation requests. Where a request is to be considered, the designated Claims Manager will be provided with a copy of the full concerns correspondence, a summary of the relevant issues and casenotes so that appropriate legal advice can be obtained before any financial compensation is offered. The relevant Concerns Officer will normally continue to liaise directly with the patient whilst legal advice is obtained. The Concerns Officer will inform the relevant Directorate staff of any decision to compensate a patient following receipt of the necessary external advice. The individual will be formally advised of the UHB's response to their request for compensation by the designated Concerns Officer. The Claims Managers will be responsible for organising any agreed compensation. This will ensure that all settlements are recorded on the LASPaR database that is managed by the UHB Finance Directorate.

3.4 Letter of Claim from the Patient

Every effort will be made by Managers to try and resolve any issues surrounding compensation so as to avoid the need for litigation.

3.5 Letter from the Next of Kin or Appointed Representative

Where an individual has been instructed to act on behalf of another due to incapacity or death i.e with learning difficulties or mental health problems, or a deceased person, the UHB will on confirmation of appropriateness, respond to any compensation claim through direct contact with the patient's designated representative.

3.6 Letter of Claim from a Solicitor

Solicitors who are instructed to act on behalf of a claimant, their representative or their Estate are required to submit a Letter of Claim confirming the grounds upon which a legal claim might proceed. This is known as a Letter before Action. A Statement of claim might accompany a Letter Before Action or be received by the UHB with Court proceedings following a review of a patient's clinical treatment and the acquisition of independent expert advice by their legal representative.

4.0 **Instructing Solicitors**

4.1 The UHB currently utilises the services of NHS Wales Shared Services Partnership (NWSSP) Legal and Risk Services for the Case Management of Clinical Negligence claims received by the UHB.

4.2 The UHB will instruct NWSSP in respect of Clinical Negligence Claims received within the Pre Action Protocol period. NWSSP will provide quarterly updates on the progress of all claims during their duration.

4.3 In respect of Clinical Negligence claims, NWSSP do not invoice for their services, because of the manner in which they are funded by the NHS in Wales. However, NWSSP will request payment of disbursements as and when they are incurred during the course of the claims. Payment of all disbursements will be arranged by the Claims Managers for subsequent approval by the Executive Nurse Director in accordance with the Scheme of Delegation.

4.4 The Claims Managers will have delegated authority to take decisions in respect of the following issues, as where appropriate, guided by the contracted legal advisors to the Board;

- The choice/identity of expert witnesses
- The choice /identity of Barristers/Counsel
- The choice/identity of Costs Draftsmen
- Acquisition of copy records from other parties as necessary.
- Liability where quantum is not excessive and/or there are no external issues to be considered.

5.0 **Pre-Action Protocols**

- 5.1 It is the policy of the UHB wherever possible to complete its investigation and to make a formal determination on issues relating to liability into clinical negligence claims within the Pre Action Protocol period.
- 5.2 The UHB acknowledges that adherence to the Pre Action Protocol promotes better investigation, and better and earlier exchange of information. It also acknowledges, that adherence to the timescales set out in the protocol should ensure that the UHB is in a better position to settle claims earlier without the need for legal proceedings. However, it does acknowledge that where Court proceedings are subsequently issued, and a thorough and timely investigation has been undertaken under the Pre Action Protocol, then such proceedings should run efficiently and to timetable.
- 5.3 All claims are managed in accordance with the relevant Protocol for Clinical Negligence pursuant to the Civil Procedure Rules.
- 5.4 The aim of the Protocol is to encourage settlement of claims without the need for legal proceedings. Settlement is encouraged by promoting openness between parties and where appropriate developing co-operation in the acquisition of expert evidence to determine liability and/or value of the claim.
- 5.5 The overriding objective of civil litigation is to enable the Courts to deal with cases justly. Claims are governed by a set of Court Rules which are designed to ensure that dealing with a case justly will include so far as practicable the following:-
 - 5.5.1 Ensuring that all parties are on an equal footing
 - 5.5.2 Saving unnecessary expense
 - 5.5.3 Dealing with cases in ways that are proportionate to the money involved, the importance of each case, the complexity of the issues and the financial position of each party
 - 5.5.4 Ensuring that cases are dealt with expeditiously and fairly
 - 5.5.1 Allotting cases to an appropriate share of the Court's resources.
- 5.6 All claims should be initiated by a Letter of Claim sent by the claimant to the Defendant. This letter should include sufficient information to enable the UHB to determine when, where and how the claimant was harmed/injured through the alleged negligent act(s), with a summary of the injuries sustained.
- 5.7 In order to successfully claim compensation, the claimant must prove that personal injuries/damages were caused by the negligence and/or breach of statutory duty of the UHB. The claimant has to show that somebody was legally at fault and these reasons are set out in the Letter of Claim usually as "allegations of negligence and/or breaches of statutory duty".

- 5.8. The Letter of Claim should also give an indication of any financial loss or expense incurred and continuing as a result of the harm/injury sustained.
- 5.9 Once a Letter of Claim has been received, the UHB is required to acknowledge this within 21 days of its receipt failing which the claimant is entitled to commence proceedings.
- 5.10 The UHB has a maximum of 3 months to investigate the claim and to respond to the claimant's Solicitors. In its response, the UHB must state whether or not it accepts any fault in respect of the claimant's treatment/care. This is known as "accepting liability".
- 5.11 If liability is not accepted, UHB must provide the claimant with a detailed explanation for its denial. In addition, where there is a denial of fault, then it is necessary to enclose with the Letter of Reply all the documents upon which it intends to rely that are relevant to the issues in dispute. If the denial is rejected, then the claimant will need to commence Court proceedings.
- 5.12 In some cases, the UHB will accept some blame but will maintain that the claimant is partially to blame for the injuries/damages suffered. In such circumstances, the UHB will have to give a full explanation as to why it considers the claimant to be partly to blame, supported by disclosure of relevant documents.
- 5.13 Where liability is conceded, the parties can then focus their attention on valuing the claim. This includes obtaining the claimant's Schedule of Special Damages which would identify any losses or expenses that have been incurred as a consequence of the injury. In addition, medical evidence will normally be obtained to confirm exactly what injuries have been sustained by the claimant, the treatment received and the extent to which the claimant will or will not make a full recovery.
- 5.14 The specific implications for the UHB in relation to compliance with the Pre Action Protocol include the following:-
- Disclosure of all relevant documentation within 3 months of receiving the claim. Standard disclosure lists are set out in the Protocol. The UHB is obliged to provide disclosure of all relevant documentation. Otherwise, it is required to give a detailed explanation as to why any particular documentary evidence cannot be disclosed.
 - The claimant may issue an Application for Pre Action disclosure of documentation. Such Applications can routinely cost between £500 and £1,000 in wasted costs. Furthermore, if the Order for Pre Action disclosure is breached and there is a failure to provide the documentation, the UHB cannot then rely upon that documentation if it is subsequently found.

- The UHB can be penalised in awards of costs and interest especially if non-compliance with the Protocol has led to the commencement of proceedings which might ordinarily have been avoided or any costs incurred unnecessarily.
- Applications can be brought by claimant's for failure to comply with the Protocol which again results in wasted costs of anything from £500 - £1,000. Further costs can be awarded on an indemnity basis which is higher than usual.
- The Court may Order the UHB to pay money into Court if it has without good reason failed to comply with the Pre-action Protocol. Monies paid into Court will act as a security for any damages subsequently paid.
- In certain cases the Court can Order the party in default of the Protocol to pay the costs of the other party on an indemnity basis. This means a full recovery of all legal and other costs at a higher level than usually payable.

5.15 Compliance with the Protocol is essential and cannot be understated. The time limit for the investigation of the claim and provision of documents is limited to 3 months failing which any of these sanctions may be imposed. This could cost the UHB money in wasted costs and prevent it from effectively defending claims through failure to disclose documents within the correct time.

5.16 The UHB will use the Pre-Action Protocol Period to ensure that every effort is made to discuss and negotiate settlement of the claim prior to Court proceedings after a thorough investigation and acceptance of the liability based upon on the expert advice received. Where necessary, the Claims Managers may be required to participate in face to face or mediation type meetings with the claimant and/or their Solicitors to facilitate a negotiated settlement.

6.0 Procedure for Handling Claims

6.1 The Claims Managers will ensure that the following steps are considered and action taken when managing a claim:-

- Acknowledgement of the claim and notification to all parties concerned.
- Open a case file, and register details of the claim on DATIX
- Establish a summary of the claim
- Identify and maintain all records relating to the claim
- Obtain statements from front-line staff involved in the claimant's treatment that is the subject of the claim.
- Gather and collate all relevant information and/or evidence for transmission to the UHB Solicitors

- Obtain in-house or external 'expert' view in conjunction with the UHB's Solicitors as appropriate
- Deal with telephone, email and letter queries from Solicitors, experts, and others
- Develop case Action Plan as appropriate
- Maintain an appropriate claims review system
- After having established a relationship with all staff involved in the claim, maintain regular contact with the responsible Consultant and Division at key stages throughout the lifetime of the claim.
- Identify any resources required e.g. support required for the collation of evidence
- Liaise with our Solicitor over the choice of medical experts.
- Ensure the provision of support to staff who have been involved in the claimant's care that would normally be co-ordinated by the Directorate/ Clinical Director, Head of Department or by their peers.
- Provide witness preparation and support for any individuals who are likely to be called to Court
- Ensure that requests for payment are duly authorised and passed to the Finance Department for processing
- Instruct Solicitors and monitor their involvement and performance
- Assist in the negotiation of out of Court settlements as required.
- Consider all options relating to the use of Alternative Disputes Resolution and/or Mediation as a means to progress claims to a conclusion.
- Liaise with the Welsh Risk Pool and all relevant third parties
- Draft an Annex B/T form (as appropriate) for each settled claim for completion by the relevant Division/Directorate including an Action Plan where necessary.
- Arrange for the inclusion of any particular risk to be included within the UHB's Risk Register.

6.2 Provision of information to claimants will usually include a combination of the following:

- Medical records – with signed consent from the claimant or their next of kin
- Authority to release records from all Consultants named in the records
- Statements from all medical, nursing and other staff involved with the claimant's care at the time of the alleged incident.

6.3 The investigation, management and the conduct of all claims and control of all claims documentation is the responsibility of the Claims Managers.

7.0 Litigants in Person

7.1 The UHB acknowledges that claims management systems should embrace and facilitate more pre action contact with claimants.

- 7.2 In accordance with the Putting things Right Initiative and Regulations, the Claims Managers should be notified of any reported incidents or complaints which could potentially result in a future claim.
- 7.3 Potential claims which are identified from incidents or concerns or where a claimant does not have a Solicitor acting and acts as a litigant in person, will be managed and investigated in accordance with this procedure. The UHB has developed an informal claims settlement process which is set out in the flowchart contained in Appendix C. This informal claims settlement process facilitates more Pre Action contact with claimants where claims are identified from sources other than a request for health records or a formal Letter of Claim.
- 7.4 Every effort will be made during the informal claims settlement process to liaise with the claimant and enter into dialogue with them including face to face discussions where appropriate to try and resolve their claim.
- 7.5 The procedure also provides for the early evaluation of such claims by internal investigation that may involve internal and/or external clinical experts or legal experts. The objective of the informal claims settlement process, is to promote the informal and proactive resolution of claims without the need of litigation which minimises expenditure on legal costs and stress on claimants and staff concerned. Where necessary, the UHB will use Alternative Disputes Resolution including Mediation to facilitate a negotiated resolution for appropriate cases.

8.0 Disclosure

8.1 *Internal Disclosure:*

On receipt of a claim for Clinical Negligence, the designated Claims Manager will make a request for all documentary evidence including clinical records to comply with its obligation under any pre action disclosure that may have been triggered.

The Claims Manager will write to the relevant Manager to relay the request for information as quickly as possible subject to the provision of a Form of Authority for disclosure. Where the Claim is received direct by the UHB, the Medical Records staff will notify the Claims Manager by way of a monthly return of disclosure requests that may have the potential for litigation.

8.2 *Disclosure to Third Parties:*

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

9. **Deadlines for Responding to Claims**

9.1 The tables below sets out the key obligations of the UHB under the pre-action protocols for Clinical Negligence Claims.

Clinical Negligence Protocol	
	<ul style="list-style-type: none"> • Provide a letter of acknowledgement within 21 days of receipt of a letter of a claim
	<ul style="list-style-type: none"> • Provide confirmation that a claim is admitted within 3 months of receipt of the letter of claim
	<ul style="list-style-type: none"> • Provide a detailed letter of response within 3 months of receipt of the letter of claim if following investigation the claim is to be denied • Any documents that the defendant relies upon to support that denial are enclosed with the Letter of Response. The clinical records will ordinarily have been disclosed earlier. However, the UHB must ensure that concerns documents and documents gathered during any internal investigations that were not instigated in contemplation of proceedings have been disclosed. • Where any documentation has become lost, the Claims Manager may ask the relevant Senior Manager to provide a witness statement setting out the searches that he or she has caused to be undertaken.

9.2 Where Court proceedings are subsequently issued, the Claims Manager will ensure that these are managed efficiently and wherever possible, ensure adherence to the time scales laid down by the Court.

10. **Making Decisions on Liability**

10.1 A decision on liability can be made at any time during the course of a claim dependant upon the availability of documentary evidence and/or outcome of the investigations undertaken. The Claims Manager will make every effort, where possible, to negotiate settlement of claims prior to the issue of legal proceedings but it is the objective of the UHB to make responsible and reasonable decisions on liability at the earliest possible stage subject to the acquisition of expert and/or legal advice. The following outcomes will result:

- **Denial**: where the Claims Manager recommends maintaining a denial of liability in respect of a claim, a letter of advice will be provided which can be shared with the responsible Consultant, Clinical Director or Divisional Director as necessary.
- **Concession**: the Claims Manager will consult with the relevant clinical staff to ensure that they have an opportunity to comment on advice that

a claim should be conceded and an admission of liability made. In cases of high value, potential for a precedent to be set or likelihood of adverse media interest, the Claims Manager will seek authority from the Executive Nurse Director and/or designated Executive Director before a formal concession is made. The Claims Manager will seek ratification from the Executive Nurse Director when submitting a request for funds to settle the claim.

- Alternative Dispute Resolution: at any stage of a claim, consideration can be given as to whether any alternative dispute resolution could be employed to try and resolve a claim. Such cases that the Claims Manager deems is appropriate, will be discussed with the UHB's Solicitor before any decision on settlement is taken.
- Referral to the Welsh Government: this will be undertaken by NWSSP on behalf of the UHB. However, the conduct of such claims will remain with the UHB who will be required to notify the Welsh Government of the following cases:-
 - Where the estimated level of damages on a claim is likely to exceed £1 million.
 - Where any claims involve novel, contentious or repercussive payments or issues or include potential class actions or in actions where an adverse incident would set an unfortunate precedent for the NHS as a whole.

11. Court Proceedings

11.1 Where proceedings are issued and served upon the UHB, the Claims Manager will ensure that the Acknowledgment of Service form is forwarded to the UHB Solicitor for filing at the Court within the fourteen days of being served with the proceedings. Following service of the Claim Form, the UHB have a strict deadline of 28 days in which to provide its Defence or to obtain an extension of time thereto by way of its Solicitor.

11.2 The Claims Manager will liaise with the UHB Solicitor to ensure that Court proceedings are managed efficiently and comply within the Court's timetable.

11.3 Where a claim is also the subject of a concern, the UHB will continue with the concerns investigation and response until such time as Court proceedings are formally served upon the UHB. Pending such action, the Claims Manager and the designated Concerns Officer will work together to ensure that appropriate investigations and responses are undertaken.

12. Assessment of Quantum and Settlement

12.1 Assessment and settlement of damages may occur at the same time as an admission of liability. However, more usually they will follow at a later date

when further evidence in relation to the claimant's condition and prognosis have been gathered and or a Schedule of Special Damages has been served.

12.2 Quantum will be assessed using the Judicial Studies Board Guidelines and relevant case authorities obtained from Lawtel or Kemp & Kemp. In some cases, the UHB may seek independent expert evidence from a variety of disciplines to assist in the valuation of damages that normally includes Counsel.

12.3 In managing claims from Litigants-in-person, the Claims Manager will provide a breakdown showing how the quantum has been calculated. This will include a special damages calculation based upon the information provided by the litigant-in-person and evidence to support the calculation of general damages including copy documentation which may include:-

- Judicial Studies Board Guidelines
- Lawtel
- Kemp & Kemp
- Decided Case Authorities.

12.4 In the event that the offer is not acceptable to the litigant-in-person, the Claims Manager will offer to instruct an independent Barrister to value quantum on the basis of the above and other relevant information. The UHB would agree to abide by the decision of the chosen Barrister as a pre-condition.

12.5 To show impartiality, the UHB will provide a list of Counsel specialising in the relevant subject area, drawn from Chambers which are not used by the UHB. The list can be supported with the CVs of each Barrister and a copy of the proposed instructions should be provided to the litigant-in person for consideration and agreement before submission.

12.6 The choice of Barrister will be made by the litigant-in-person and the UHB and the decision will be binding on both parties.

12.7 This process is set out in flowchart contained in Appendix E.

13. Delegated Limits for the Settlement of Claims

13.1 The delegated limits within the UHB accord with its Standing Financial Instructions. An up to date copy of Standing Financial Instructions are available on the UHB Intranet or from the Director of Governance.

13.2 Amounts of over £1 million require the prior authorisation from the Welsh Government of any proposed concessions or settlements.

13.3 The Welsh Risk Pool has delegated authority from Powys LHB to settle claims to a maximum of £25,000 where that claim directly relates to the

activities of the former Trust from 1/4/95. This authority is varied in relation to claims emanating from the former Health Authorities for which the UHB has legal and accounting responsibilities. Such claims will be authorised and discharged by the Welsh Risk Pool in accordance with the WRP Reimbursement Procedures to a maximum sum of £999,999.00. Claims above this figure will be approved by the Welsh Government.

14. Claims That Proceed To Trial /Mediation

In the event of a claim proceeding to Trial or Mediation, arrangements will be made for the staff concerned to be properly prepared. Our Solicitor will always attend a Trial or a Mediation.

It is usual for the Claims Manager to also attend in order to represent the UHB and be on hand if settlement negotiations subsequently take place and/or to provide support to the witnesses.

Prior to going to Trial or Mediation, the Claims Manager will ensure that:

- All witnesses have been fully briefed
- The delegated limits for negotiating any settlement have been identified
- The casefile is complete and easy to follow

All original documentation, including medical records and x-rays will be made available.

15. Review Of Claims

The Claims Managers will operate a bring forward system to ensure that all claims are regularly reviewed. This review will include:

- 15.1 Chasing information requested from the responsible Consultant(s), Clinical Directors, Directorate Managers, Heads of Department and Senior Nurses.
- 15.2 Considering the valuation and anticipated timing of expenditure on claims that will include financial estimates provided by the UHB's Solicitors that will be held within DATIX. The accuracy of financial information held on the claims database will be reviewed at least once every quarter.
- 15.3 Archiving inactive claims following the receipt of legal advice.
- 15.4 The claims database will be the primary source of information from which litigation reports will be generated to identify any particular trends/areas of concern so as to compare their relationship with complaints and other performance indicators.

Any recommendations for changes in clinical practice will be forwarded to the Concerns/Claims Review Group and where appropriate the relevant Divisional Quality & Safety Group and/or by the Quality and Safety Committee.

15.5 All payments made in respect of clinical negligence claims will be entered onto the Losses and Special Payments Register. This function will be undertaken by the UHB Finance staff following the receipt of information from the Claims Managers.

15.6.1 The Executive Nurse Director may wish to select particular claims for detailed discussion at the Concerns/Claims Review Group.

16. Learning Lessons from Claims and Events

16.1 The UHB makes constructive use of information that arises from clinical negligence claims and that any remedial action is taken to prevent or minimise the risk of further occurrence.

16.2 In order to reduce the risks of the UHB, every claim will be closely reviewed, with the co-operation of the responsible Consultant, Clinical Director and Divisional Director to identify any systematic failures or clinical practice matters that lead to the claim.

16.3 Root cause analysis following an internal investigation maybe undertaken to reveal any latent factors that led to a claim, ensuring that remedial action is identified and implemented to address any care issues/shortfalls.

16.4 To initiate the process, the Claims Manager will provide a copy of the Letter of Claim to the relevant Divisional Director who may decide that an internal case review should be carried out. This review will identify any failings in care and a plan of action will be developed to address any shortcomings as part of the lessons learnt process. The Claims Manager will be available to provide the necessary information to assist a case review. The relevant Manager, in association with the clinical staff concerned will be responsible for initiating an internal review of a claim and will undertake any remedial action within their Team/Department/Directorate/ Division as necessary and inform the Claims Manager of any agreed action.

16.5 The Divisions will establish Divisional / Directorate Quality and Safety Groups that have responsibility to review claims in their area by focussing on the following:

- failures in patient care systems that lead to the claim
- identifying any remedial action that is required
- ensuring that agreed remedial action is undertaken
- remedial action is audited and monitored

16.6 The Directorate Quality and Safety Groups will report the outcome of claim reviews to their respective Divisional Group that will include lessons learned, best practice and address any case management issues that could be rectified in the future. It will also review and advise on any actions previously undertaken.

- 16.7 Such information and any agreed Action Plans will be provided to the Claims Manager and used to complete Annex B documentation upon the conclusion of the claim.
- 16.8 The process includes the Claims Review Process and is shown in Appendix D.

17. Concerns Claims Review Group/Quality and Safety Committee

- 17.1 From a governance perspective, all claims reviewed by a Directorate with agreed action will be reported to the respective Divisional Quality and Safety Group who will be required to ensure that all necessary remedial action emanating from poor patient care has been identified, appropriate actions taken and the learning lessons loop has been closed.
- 17.2.1 Reports from Divisions on lessons learned and action plans will be submitted and considered as appropriate by the Clinical Negligence Assessment Team and/or the Concerns/Claims Review Group.

18. Using Risk Registers

- 18.1 Learning from claims will occasionally identify risks that cannot be eradicated or minimised or confirm outstanding requirements for remedial action to be completed. Such risks will be notified to the relevant Manager for inclusion into the relevant Risk Register and will be reported to the Concerns/Claims Review Group.
- 18.2 Where a decision is made not to include a risk in the Risk Register by the relevant Manager then the Concerns/Claims Review Group should be notified of the reasons for the refusal.

19. Claims for Reimbursement on the Welsh Risk Pool

- 19.1 The Welsh Risk Pool was established to assist NHS Organisations in risk management and the settlement of civil claims. Each NHS organisation will pay a monthly contribution into a central fund managed by the Welsh Risk Pool from which the reimbursement of settlements (including costs) above an agreed threshold, are made.
- 19.2 All submissions will be made within the agreed timescales laid down by the Welsh Risk Pool.
- 19.3 The Welsh Risk Pool receives notification from NWSSP Legal and Risk Services of all UHB claims including an assessment of potential liability, quantum and estimated conclusion.

- 19.4 Where settlements are made which exceed the current threshold of £25,000 the UHB will be able to seek reimbursement of all costs incurred above the threshold. The Claims Manager will be responsible for the organising the completion of a **WRP1 Claim form, a Cost Schedule and an Annex B/T form** for submission to the Welsh Risk Pool. Reimbursement will normally be made within ten days after the Advisory Board's approval of payment of any claim.
- 19.5 The Claims Manager will ensure that the UHB complies with the requirements of the current WRP Reimbursement procedure.

20. Audit

- 20.1 In order to comply with the requirement of the WRP Claims Management Standard, the UHB's Internal Audit Service will undertake an annual audit of 25% or 25 of all settled claims (whichever is the fewer number) that have been the subject of the WRP Reimbursement procedure.
- 20.2 This audit will ascertain the accuracy of reports, costs, compensation claims and, further to ascertain that claims/refunds have been dealt with in accordance with the Welsh Risk Pool Reimbursement procedure.

21. Indemnity

- 21.1 The UHB has vicarious liability for all its employees when providing core activity and services during the course of their employment.
- 22.2 Welsh Office Circular (98)8 sets out the UHB's responsibilities in connection with the indemnification of staff involved in clinical negligence claims. The main points are summarised as follows: -
- The UHB will not seek to recover any proportion of costs from Healthcare Professionals or others covered by NHS Indemnity or from any other private indemnity policies they may have
 - The NHS bodies will not be responsible for a Healthcare Professionals private practice even if this is performed in an a NHS Hospital. It is therefore advisable that Professionals who might be involved in work outside his/her UHB employment should have professional liability cover
 - Where any Health Professionals are involved in the care of private patients in the NHS setting they would normally be doing so as part of their employment contract and would therefore be indemnified by the NHS.

22. Support for Staff Involved in Claims

- 22.1 The UHB will ensure that members of staff who are involved in claims will be supported through the entire process.
- 22.2 Initially the relevant Line Manager(s) will provide support in liaison with Claims Managers.
- 22.3 The extent of the Claims Manager's involvement will be dependent upon the issues surrounding each claim that could include staff meetings to discuss the claims process, visits to Courts, attending moots (mock trials) and the provision of training on how to give evidence in Court.

23. Reporting Arrangements

Internal Reporting

- 23.1 The Board has delegated its reporting responsibilities to the Quality and Safety Committee as the duly authorised Committee to receive claims information and reports on behalf of the Board. The Committee is assisted in the process by the establishment of a Concerns/Claims Review Group.
- 23.2 The Quality and Safety Committee will receive appropriate and relevant reports of the work of the Concerns/Claims Review Group. Also during the year the Committee will receive updates on progress with implementation and learning resulting from concerns/claims management. A Chair's summary report of each meeting will be submitted to Committee.
- 23.3 In addition, the Committee will receive an Annual Report on litigation and trends that will satisfy the requirements of WHC (97)17 and include information on:
- The UHB's claims profile and claims management record
 - Key issues and/or major developments affecting the Board
 - Number of claims
 - Aggregate value of claims in progress
 - Details of any major claims
 - Progress and likely outcome of ongoing claims including expected settlement dates
 - Value of claims settled and final outcomes
 - Relevant trends
 - Information regarding remedial action as appropriate
- 23.4 In the interim, the Executive Nurse Director will ensure that the Board is kept informed of any significant and major developments through the preparation of a Briefing Note by the Claims Manager.

- 23.5 The Claims Manager will provide quarterly reports to Divisional Quality and Safety Group on the management and status of claims affecting their Directorates which will include liability and quantum.
- 23.6 The Claims Managers will provide ad-hoc reports as required by any UHB Directorate or Department.

External Reporting Procedures

23.7 *Welsh Government*

The Claims Manager will ensure that any claims with damages estimated to exceed the UHB's delegated authority of £1 million are reported to the Welsh Government and that prior approval is obtained in advance of liability being conceded and/or a claims being settled.

- 23.8 In addition, the Claims Manager will monitor the nature and type of claims received to ensure that any claims which are novel, contentious or repercussive are reported in advance of settlement to the Welsh Government and any required approvals are obtained at relevant stages. These may include claims, involving unusual and/or new features which if not correctly handled might set an unfortunate precedent for other NHS litigation or which appears to represent test cases for potential claims actions or cases which although not formally part of a class action appear to be very similar in kind to concurrent claims against other NHS bodies. In such cases, the Claims Manager will contact the Welsh Government for advice regarding their management.

23.9 *Welsh Risk Pool*

In addition, to the WRP Reimbursement Procedure, the UHB is required to ensure that the WRP are provided with the following information each quarter:

- The value of the claims that are likely to exceed £25,000
- The conclusion of any claim with aggregate costs below £25,000

NWSSP Legal and Risk Services claims database will be made available for use by Welsh Risk Pool as required.

23.10 *NPSA*

Where a claim, with an incident date post-dating 1st January 2004, has been identified as a patient safety incident but was not previously reported through the incident reporting process, the Claims Manager will notify the relevant Manager to ensure that a report is sent retrospectively to the National Patient Safety Agency (NPSA) via the National Reporting and Learning System (NRLS).

24. Claims Review Procedure

- 24.1 The Welsh Risk Pool (WRP) is required to identify a minimum number of 30 claims for reimbursement made to the WRP for review within each financial

year. The purpose of the review is to consider the manner in which an incident, complaint and subsequent claim was handled by the UHB, whether lessons were learned and practices made safer with the primary purpose being to identify good practice for the benefit of all NHS organisations. The review may take the format of either:

- A Follow up Review: a follow up recommendation is made when there are particular issues around implementation of remedial action that the Advisory Board wishes to be clarified. A follow up review will consider action taken by the UHB in respect of an outstanding item. As a consequence it may focus upon the remedial action and monitoring set out in sections 14 and 15 of the Annex B Checklist but was not formally in place at the time of the submission of the claim to the WRP.
- Claims Review: this review has a significantly wider scope than the follow up process. The Advisory Board having considered the claim have taken the view that there are aspects of the claim that would benefit from further review. It is likely to involve a detailed review of the circumstances and background to the claim with an analysis of remedial action and monitoring defined within sections 14 and 15 of the Annex B checklist. In addition, it may be used to identify good practice which can usefully be disseminated across all NHS Organisations in Wales. If there are residual uncertainties that prevent a recommendation to approve the claim being made, a review can then be taken in respect of that aspect of the claim which gives rise to any concerns.

24.2 *The Initial Arrangements:*

Where the WRP wishes to undertake a claim review, the UHB will receive a letter addressed to the Chief Executive and copied to the Claims Manager. The letter will contain:

- A request for information and documentation pertinent to that previously contained within the Annex B at the time of the original submission of the claim.
- An indication as to whether the request is for a Follow up Review or a Claims Review.
- Confirmation as to whether the WRP Assessor is intending to undertake a site visit or a remote review.

24.3 The UHB will acknowledge receipt of the request within 14 days advising the WRP Assessor who will be the nominated point of contact for the effective operation of the review. This may include the provision of direct contact details for relevant members of staff involved in the review.

24.4 The Claims Manager or nominated contact will then proceed to collate or delegate responsibility for the collation of the documentation and information

requested by the WRP Assessor. In the event of any difficulties retrieving or obtaining information, documentation or the co-operation of members of staff, the Claims Manager will invoke the Escalation procedure contained herein at paragraph 25.0.

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

24.6 The WRP Assessor will contact the Claims Manager or nominated contact to arrange a mutually convenient date to conduct a visit and will identify any staff who need to be interviewed.

24.7 *During the Site Visit:*

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

- Organise a location suitable for the Assessor and any interviewees for the conduct of the review which should include a power point for computer use.
- Liaise with and arrange to escort the Assessor on arrival
- Ensure that all documentation that has been previously communicated is available. This may include the claims file, patient records, policies, procedures/care pathways, and or audit
- Ensure that all staff who need to be seen are available for the period of the claims review and can be contacted and released for interview.

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

24.9 *Reports:*

The Assessor will draft the report and send a copy to the Claims Manager for dissemination and comment by appropriate staff. Any comments, discussion points or requests to amend the report should be forwarded to the WRP within one calendar month of the date of receipt of the report. In the absence of any comment within this timescale, the WRP will assume that there are no comments and will issue the report as final document.

24.10 The final report will be presented to the Concerns/Claims Review Group for information and where appropriate review.

24.11 Following issue of the final report, the content is abridged and anonymised by WRP and reported to the Advisory Board. The Advisory Board will either accept the report with no further action or request a follow up in cases where further action has been identified. Copies of the report will then be presented at a meeting of Risk and Claims Managers Network.

25. Escalation Procedure

- 25.1 In furtherance of the strategic objectives set out in the Claims Handling Policy, the UHB acknowledges the merits associated with the timely, prompt and thorough investigation of claims and supports the Claims Managers in this process.
- 25.2 In the event that a Claims Manager experiences delays in obtaining a prompt or satisfactory response to an information request, assistance or documentation, the matter in the first instance will be referred to the relevant Clinical Director for input and action. If further problems remain then the Divisional Director will be contacted for assistance.
- 25.3 It is the responsibility of the Claims Manager to determine what constitutes a reasonable timescale for receipt of a satisfactory response.
- 25.4 In the event of non-compliance, the matter will be referred to the Concerns/Claims Team Manager / Assistant Director of Patient Safety and Quality and the Executive Nurse Director for input and action. The Claims Manager will be guided on an appropriate course of action and timescales for action.

26.0 File Closure

26.1 There are several ways in which a claim may be closed:

- Settlement
- Discontinued
- Formal withdrawal
- Statute barred
- Inactivity

26.2 In conjunction with the WRP Finance Officer, the Claims Manager will ensure the completion of the File Closure form (Appendix B) that confirms that all staff involved have been contacted and thanked for their involvement and assistance, and notified the outcome of the claim. The File Closing form will be completed included within the Claim File which will then be archived.

Documentation List

References & Legislation:

This Policy/procedure complies with the following: -

- The Civil Procedure Rules 1998
- WHC (97)/7- Clinical Negligence and Personal Injury Litigation-Structured Settlements
- WHC (97)/17- Clinical Negligence and Personal Injury Litigation- Claims Handling
- WHC (99)/128- Claims Handling Clinical Negligence Claims – Pre-Action Protocol
- WHC (2000)13-Risk Management and Organisational Concurrence.

Welsh Risk Pool Standard 5: Claims and any other relevant standards

Welsh Risk Pool Rules and Procedures

The UHB's Standing Orders and Standing Financial Instructions.

Pre Action Protocol for the resolution of clinical disputes

NHS Redress (Wales) Measures 2008 and NHS (WALES) Regulations 2011.

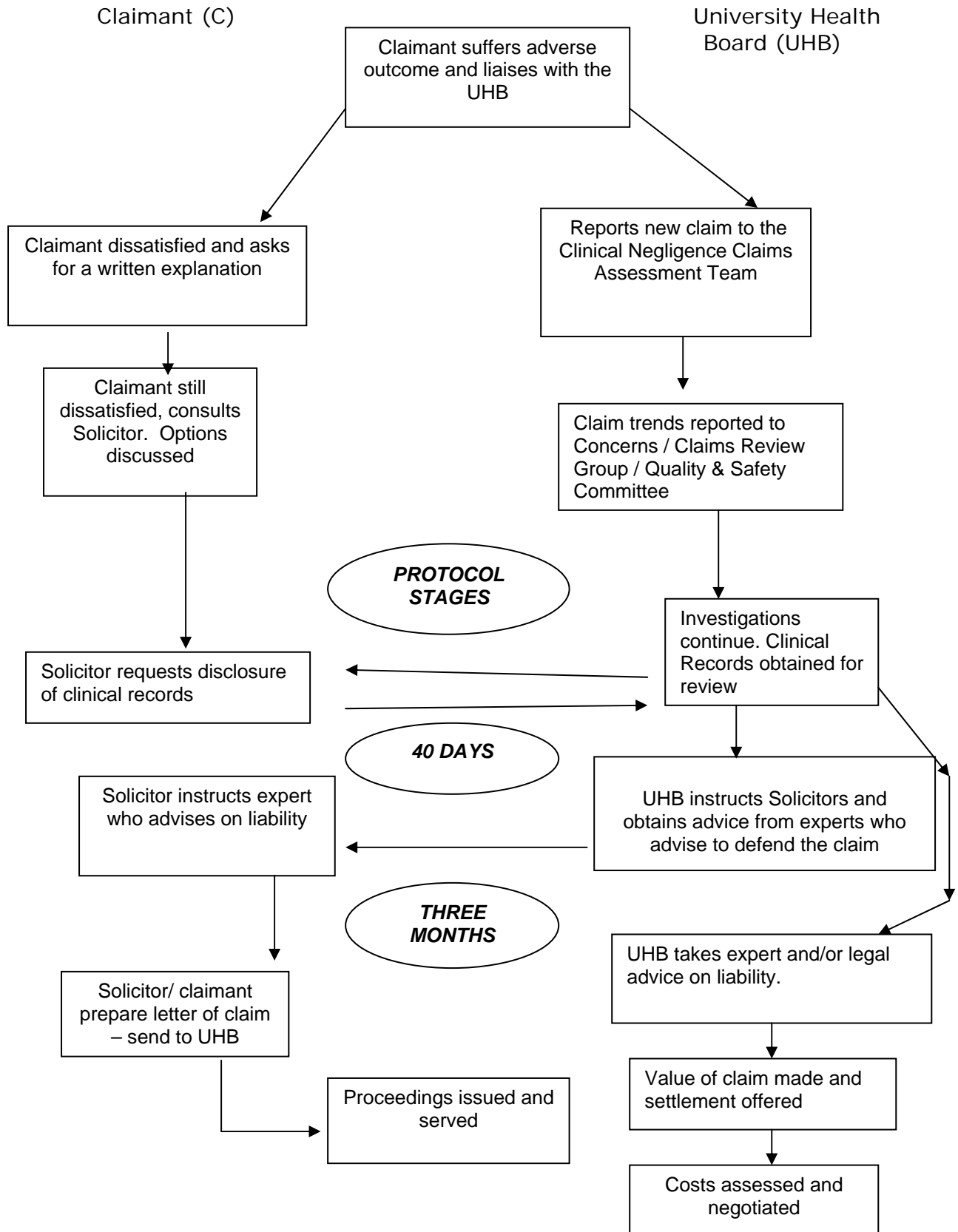
FILE CLOSING FORM

File Name :
 File Reference :
 Health Body :

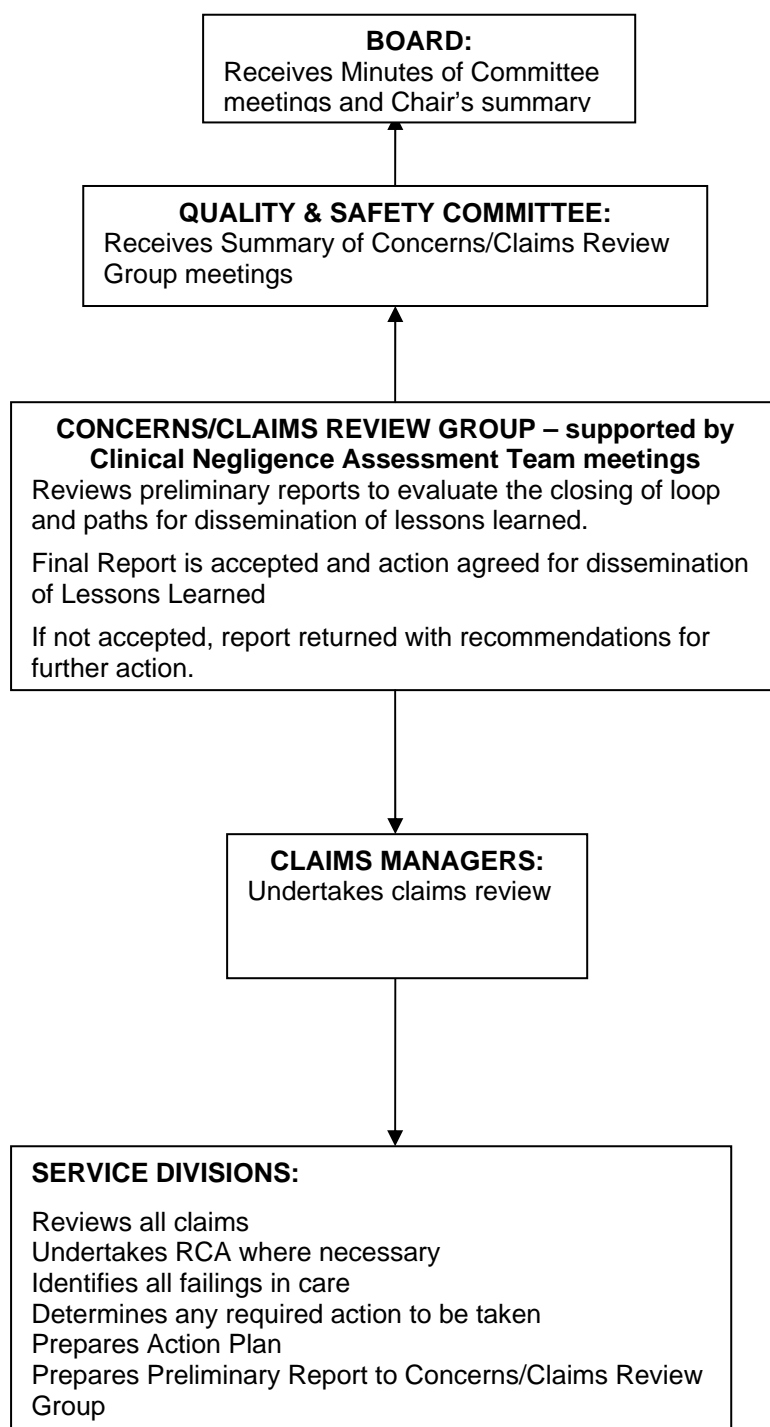
<i>Management Information</i>	
Date Claim Received	
Date File Opened	
Date File Closed	
Duration of Management	
Outcome	
Authorisation to Settle	
Reimbursement Information	
Annex B	
All Witnesses advised of Outcome	
Electronic file moved to closed folder and index updated	
<i>Financial Information</i>	
Damages - Generals - Specials	
Claimant's Legal Costs	
Defence Legal Costs	
C&D Finance Advised	
Advisory Board notified	
Damages to Claimant's Costs Ratio	
NHSLA Target	
Damages to Defence Costs Ratio	
Damages to Costs Ratio	

Signed off by:

**ILLUSTRATIVE FLOWCHART OF THE STAGES OF A CLAIM
INITIAL STAGES**



**FLOWCHART TO TRACE THE PATH OF LEARNING LESSONS PROCESSES
AND THE PROVISION OF ASSURANCE TO THE BOARD**



Informal Claims Settlement Process

