

Policy for Accessing External Legal Advice

Reference No:	P_CoG_06
Version:	5
Ratified by:	LCHS Trust Board
Date ratified:	13 July 2021
Name of author:	Deputy Director of Corporate Governance
Name of approving committee:	Audit Committee
Date Approved:	19 May 2021
Date issued:	July 2021
Review date:	July 2023
Target audience:	All Staff
Distributed via:	Website

Protocol and Procedure for Accessing External Legal Advice

Version Control Sheet

Version	Section/Para/ Appendix	Version/Description of Amendments	Date	Author/Amended by
1		Version 1	December 2011	Bev Wormald
2		Version 2	July 2014	Bev Wormald
3		Version 3	May 2016	Corporate Assurance Manager
4		Version 4	August 18	Interim Trust Board Business Manager
5		Full review	March 2021	Deputy Director of Corporate Governance
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				

Copyright © 2021 Lincolnshire Community Health Services NHS Trust, All Rights Reserved. Not to be reproduced in whole or in part without the permission of the copyright owner.

Contents

Version Control Sheet	Error! Bookmark not defined.
Contents.....	3
Monitoring Template.....	Error! Bookmark not defined.
Equality Analysis	Error! Bookmark not defined.

Policy for Accessing External Legal Advice

Procedural Document Statement

Background Statement

The aim of this protocol is to ensure staff have guidance on the likely circumstances where access to legal advice would be required and also the appropriate procedures to follow.

Responsibilities

This protocol applies to all employees of the organisation; Non-executive Directors and contracted third parties (including agency staff).

Training

There are no training implications.

Dissemination

All staff will be able to access copies of this protocol via the 'Policies' section of the Lincolnshire Community Health Services' website at:

<http://www.lincolnshirecommunityhealthservices.nhs.uk>.

Notification of new or updated procedural documents will be made to all staff via the monthly Trust Team Brief.

Resource implication

The correct adherence to this protocol will minimise expenditure in relation to legal advice.

Consultation

The Trust Leadership Team have approved the approach to the management of access to legal advice.

Policy for Accessing External Legal Advice

Introduction

- 1 When considering the use of external solicitors for legal advice/services, it is important to strike a balance between the sensible use of public funds and the need to minimise risk to the organisation.
- 2 The aim of this protocol, therefore, is to ensure staff have guidance on the likely circumstances where access to legal advice would be required and also the appropriate procedures to follow.
- 3 This protocol relates to all legal or potential issues other than Clinical Negligence matters. Any Clinical Negligence allegations, claims or potential claims are the subject of separate procedures and should be direct to Deputy Director of Corporate Governance.

Scope

- 4 This protocol and procedure applies to:
 - All employees of the organisation;
 - Non-executive Directors
 - Contracted third parties (including agency staff)

Example Situations

- 5 It is inevitable that situations may occur where it is necessary or appropriate to seek legal advice. It may be a routine issue relating to the management of the organisation (e.g., property leases, etc.), the creation of formal agreements by LCHS with one or more organisations committing us to working with each other to support common goals (e.g. a Memorandum of Understanding or Provider Collaborative), or it may be relating to potential litigation against the organisation which can be costly and damaging to its reputation. In such cases, early intervention may prevent situations escalating.
- 6 Reasons to seek legal advice may include the following:
 - A situation may arise that has not been encountered before and is beyond the technical knowledge of any internal subject expert.
 - To obtain confirmation that the organisation's thinking or intended action is correct and legal.
 - To enable the organisation to formally state that legal advice has been obtained.
 - Where an individual has advised that they have involved solicitors or intend to do so.
 - There is a significant financial, contractual, clinical or reputational risk to

the organisation.

- 7 Occasionally, staff may be required to provide witness statements or give evidence relating to specific cases. Such cases are handled according to the claims policy for any clinical negligence cases and should be referred directly to the Deputy Director of Corporate Governance.

For all other cases the Practitioner Performance Manager or Deputy Director of People (as appropriate) should be consulted, who will assist staff and accompany them through the process.

Authority to Access

- 8 The Chief Executive, all Directors, the Deputy Director of Corporate Governance, the Deputy Director of Innovation of and Deputy Director of People can directly access the organisation's approved solicitors.
- 9 All others should discuss their requirements with their Director or the Deputy Director of Corporate Governance prior to contacting any solicitors to ensure approval is received. The Deputy Director of Corporate Governance can advise which solicitor should be contacted for a particular issue and may have knowledge of similar advice already having been provided which could save unnecessary expenditure.

Accessing Solicitors

- 10 LCHS has arrangements with the following solicitors for legal advice-

- NHS Governance- Hempsons
- Employment Law and HR issues- Hempsons
- Contracting- Hempsons
- Property Law- via procurement

In some circumstances other law firms may be more appropriate to use. The condition of use would include that they are a member of the local procurement framework.

- 11 Any guidance or advice should, ideally, be given in writing. Copies of the advice should be forwarded to the Deputy Director of Corporate Governance to maintain a central register. In the unlikely event that legal advice is required out-of-hours, this should be accessed via the relevant Director-on-call rota.

Advice When Contacting Solicitors

- 12 If the input of solicitors is to be effective, it is important that they are given clear, accurate information regarding the situation in question. It may be helpful to consider the following prior to contacting the solicitors:

- Is the nature of the situation regarding a Clinical Negligence allegation,

claim or potential claim? If yes, then refer to Deputy Director of Corporate Governance.

- Have you contacted the organisation's 'specialist'? Depending on the nature of the advice required, help may be available in-house. For example, Health and Safety Lead, Human Resources/Workforce Lead (i.e., for employment issues), Security Lead, Estates Lead, Clinical Lead, etc.
- The Deputy Director of Corporate Governance may have knowledge of similar advice already having been provided.
- Collate any relevant documentation.
- Prepare a brief outline of the main events, including details of parties involved, dates of meetings or incidences, records of conversations, etc.
- Establish any relevant information regarding individuals involved (eg, age, date of employment, contractual relationship etc).
- Precise nature of query, i.e., what exact information/outcome do you need.

13 Although communication with solicitors for the seeking or provision of legal advice is generally covered by legal privilege (ie, exempt from disclosure under the Freedom of Information Act 2000), care should be taken not to include personal opinions or statements that may be discriminatory or defamatory – keep all communication factual.

Verification of Accounts and Invoices

14 Where staff have accessed legal advice, the activity will be recorded on the relevant company's invoices. As solicitor charges usually relate to time spent in conversations or correspondence written, it is helpful to retain a note of dates and timings of any advice given, along with brief details of the advice that was given.

15 LCHS holds a central budget for legal advice. The Deputy Director of Corporate Governance holds the central budget for all legal advice except that which is Human Resources/Estates.

Monitoring Arrangements

16 The Deputy Director of Corporate Governance, Deputy Director of Innovation and Deputy Director of People maintain a log of all advice that has been received and its associated cost. All Directors/designated leads will receive a copy of the financial statement concerning their expenditure as submitted by the providers of legal services for verification purposes.

Appendix 1 Equality Analysis

NB - It is the responsibility of the author / reviewer of this document to complete / update the Equality Analysis each time it has a full review and to contact the Equality Diversity and Inclusion Lead if a full equality impact analysis is required

Equality Impact Analysis Screening Form

Title of activity	LCHS Governance Manual – 1. Standing Orders		
Date form completed	08.03.2021	Name of lead for this activity	Catherine Leggett

Analysis undertaken by:		
Name(s)	Job role	Department
Catherine Leggett	Deputy Director of Corporate Governance	Chief Executive's Office

What is the aim or objective of this activity?	The Trust will on occasion need to access Legal support and advice regarding the services we provide and partnership relationships.
Who will this activity impact on? <i>E.g. staff, patients, carers, visitors etc.</i>	Unlikely to impact.

Potential impacts on different equality groups:

Equality Group	Potential for positive impact	Neutral Impact	Potential for negative impact	Please provide details of how you believe there is a potential positive, negative or neutral impact (and what evidence you have gathered)
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Marriage & civil partnerships	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Pregnancy & maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Sexual Orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Additional Impacts (<i>what other groups might this activity impact on? Carers, homeless, travelling communities etc.</i>)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

If you have ticked one of the above equality groups please complete the following:

Level of impact

	Yes	No
Could this impact be considered direct or indirect discrimination?	<input type="checkbox"/>	<input type="checkbox"/>
If yes, how will you address this?		
N/A		

	High	Medium	Low
What level do you consider the potential negative impact would be?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If the negative impact is high, a full equality impact analysis will be required.

Action Plan

How could you minimise or remove any negative impacts identified, even if this is rated low?
N/A
How will you monitor this impact or planned actions?
N/A
Future review date: December 2021