

Policy for Accessing External Legal Advice

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Name of approving committee/responsible individual:	Trust Leadership Team
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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
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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 the Trust Board Business Manager.

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.) 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 Trust Board Business Manager.

For all other cases the Practitioner Performance Manager or Head of Workforce (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 Trust Board Business Manager, the Head of Estates, Deputy Director of Workforce and Transformation and Head of Workforce can directly access the organisation's approved solicitors.
- 9 All others should discuss their requirements with their Director or the Trust Board Business Manager prior to contacting any solicitors to ensure approval is received. The Trust Board Business Manager 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 Trust Board Business Manager 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 Trust Board Business Manager.
 - 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 Trust Board Business Manager 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 solicitors 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 Trust Board Business Manager holds the central budget for all legal advice except that which is Human Resources/Estates.

Monitoring Arrangements

16 The Trust Board Business Manager, Head of Estates and Head of Workforce 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.

NHSLA Monitoring Template

Minimum requirement to be monitored	Process for monitoring e.g. audit	Responsible individuals/group /committee	Frequency of monitoring /audit	Responsible individuals / group / committee (multidisciplinary) for review of results	Responsible individuals / group / committee for development of action plan	Responsible individuals / group / committee for monitoring of action plan
Review of Invoices	Reconciliation of monthly invoices from solicitors	Trust Board Business Manager	Monthly	Trust Board Business Manager	Trust Board Business Manager	Trust Leadership Team

Equality Analysis

Protocol and Procedure for Accessing External Legal Advice

Equality Analysis Carried out by:
Date:

Anna Pridmore
July 2018

Section 1 – to be completed for all policies

A.	Briefly give an outline of the key objectives of the policy; what it's intended outcome is and who the intended beneficiaries are expected to be	This policy 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		
B.	Does the policy have an impact on patients, carers or staff, or the wider community that we have links with? Please give details	No		
C.	Is there is any evidence that the policy\service relates to an area with known inequalities? Please give details	No		
D.	Will/Does the implementation of the policy\service result in different impacts for protected?	No		
	Yes	No		
	Disability		X	
	Sexual Orientation		X	
	Sex		X	
	Gender Reassignment		X	
	Race		X	
	Marriage/Civil Partnership		X	
	Maternity/Pregnancy		X	
	Age		X	
	Religion or Belief		X	
	Carers		X	
	If you have answered 'Yes' to any of the questions then you are required to carry out a full Equality Analysis which should be approved by the Equality and Human Rights Lead – please go to section 2			
The above named policy has been considered and does not require a full equality analysis				
Equality Analysis Carried out by:	Anna Pridmore, Interim Trust Board Business Manager			
Date:	July 2018			

