1. Background/Introduction

Circular HSC(SQSD)5/10 issued on 10 March 2010 required the HSC Board to have a clearly documented policy and procedure for handling claims in compliance with the guidance. The Governance and Audit Committee subsequently approved a HSCB policy and procedure in October 2010. That document has been reviewed and this is the updated version of that policy and procedure for the HSC Board. Equality implications have been considered in the development of this revised policy and procedure and articulated within the document itself.

This policy is supplemented by and should be cross-referenced with HSC Board Administration Process for the Handling of Clinical Negligence Claims.

2. Purpose

The Chief Executive of the HSC Board is accountable for the management of outstanding legacy clinical negligence claims regarding the HSS Boards.

The policy and procedure demonstrate that the HSC Board is complying with the mandatory requirements set out in Circular HSC(SQSD)5/10 and clarifies HSCB processes in respect of:

- Procedures for handling claims;
- Authorisation to approve settlements and payments
3. Procedure For Handling Claims

The HSC Board must ensure that a responsible officer is identified for each procedure.

For the purposes of this policy and procedure, the Claims Director is the Head of Corporate Services, the Claims Manager is the Complaints and Litigation Manager and the Claims Administrator is the Band 5 in Corporate Services to support to this function.

The Directorate of Legal Services (DLS), will liaise with the Trusts on behalf of the HSC Board in respect of requests for records and reports from clinicians.

All requests for authority to engage independent experts*, instruct Senior Counsel, approve settlements and payments in respect of settlements will be referred by DLS to the Claims Director/Claims Manager at the HSC Board.

Note: the HSC Board has delegated authority for the engagement of independent experts to the Claims Managers in the Northern Trust and Western Trust, and the PHA Consultant in the Southern Office in respect of Northern, Western and Southern legacy cases respectively.

The Claims Director/Claims Manager HSC Board will liaise with DHSSPS in respect of all proposed settlements in excess of £250,000. The Chief Executive will be advised of all cases requiring approval for settlement by DHSSPS, (for those in excess of £1,000,000, Department of Finance and Personnel (DFP)).

There will be regular case review meetings to consider legacy Board claims on a regional basis between HSC Board representatives, DLS, Northern and Western Trusts Claims Managers and PHA Consultants. These meetings will include consideration of those cases where authorities are required, cases which are listed for hearing, cases where clinicians reports and independent expert evidence has been received and settled cases. DLS will provide an Agenda and relevant papers in advance of the meeting.

The Public Health Agency provides medical consultancy input in this area of work.
<table>
<thead>
<tr>
<th>Procedure</th>
<th>Responsible</th>
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<tbody>
<tr>
<td>Setting up a record of the claim and maintaining a claims review system.</td>
<td>Claims Administrator</td>
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<td>Establishing, when needed, an objective account of the original incident.</td>
<td>DLS together with the Trust.</td>
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<tr>
<td>(Obtaining, when needed, reports from clinicians involved in the treatment). The incident must be properly investigated in a timely manner.</td>
<td>DLS together with the Trust.</td>
</tr>
<tr>
<td>Identifying and securing all records related to the incident.</td>
<td>DLS together with the Trust.</td>
</tr>
<tr>
<td>Establishing and maintaining contact with all staff involved in the original incident.</td>
<td>DLS together with the Trust.</td>
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<td>Obtaining an in-house ‘expert view’ of the claim and, if appropriate, securing suitable external expert witnesses.</td>
<td>DLS together with the Preliminary Advisory Group consisting of PHA consultancy input and the Claims Director/Manager.</td>
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<tr>
<td>Initial valuation of the claim.</td>
<td>DLS and Board Advisory Group</td>
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<td>Instructing solicitors, briefing Counsel and monitoring their costs.</td>
<td>Claims Manager/ DLS to brief Junior Counsel at Statement of Claim stage or earlier if instructed and monitor costs.</td>
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<td>Negotiation of out of court settlements within delegated limits which apply.</td>
<td>Claims Director/Manager, DLS Solicitor together with Counsel and with advice as appropriate from PHA consultant.</td>
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<td>(For large settlements, in particular those over £250,000, where the plaintiff is agreeable) evaluation of the costs and benefits of structuring the settlement, negotiation of the</td>
<td>Senior Counsel in conjunction with Accountants and DLS. The Chief Executive will be advised of all cases requiring DHSSPS/DFP approval</td>
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details and preparation of the Value for Money report for DHSSPS.

Procedures to identify any processes or aspects of practice requiring remedial action, including systematic review of all cases after closure.

Clear allocation of responsibility for carrying through any remedial action required and for disseminating any wider lessons, both within a Trust and, where appropriate, more widely.

Arrangements for analysis of claims against the Board, in particular, of trends and emerging patterns and the implications for any policies of the Board.

Arrangements for regular reporting to the Governance and Audit Committees or Board, both in aggregate and on individual claims.

Board policies taking account of any relevant Protocols or Practice Directions issued by the Courts in NI.

Claims Manager will report bi-annually to SMT and Audit Committee.

Claims Director/Manager involving the PHA consultant, to advise the Chief Executive of the Trust concerned, and share any wider lessons with other Trusts.

Claims Manager compiles a bi-annual report to include recent trends for presentation to SMT and Audit Committee.

Claims Manager.

Claims Manager.

4. Approval and Authorisation Processes for Settlements and Payments

Delegated Responsibility for Approval of Settlement Levels

Claims Director/Manager must be contacted by DLS in respect of all potential settlements.
Written approval must be obtained from the designated senior authorised officer prior to settlement negotiations by defence solicitors. The approval officer limits are:

<table>
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<tr>
<th>Role</th>
<th>Limit</th>
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<tr>
<td>Claims Manager</td>
<td>Up to £75,000</td>
</tr>
<tr>
<td>Claims Director</td>
<td>Up to £150,000</td>
</tr>
<tr>
<td>Chief Executive or Director Acting as</td>
<td>Up to £250,000</td>
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<tr>
<td>Chief Executive</td>
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If a case has a potential settlement in excess of the Board’s delegated limit of £250,000, the Claims Manager will activate the procedures as set out in Annex C of HSC(SQSD)5/10 which requires that all settlements above this limit must be submitted to Finance Policy and Accountability Unit (FPAU), DHSSPS, for prior approval.

If the potential settlement is in excess of £1 million, FPAU will seek the approval of the Department of Finance & Personnel (DFP) on behalf of the Board.

Requests for approval submitted to FPAU must include the following:

- Completed and signed form (Annex C Appendix 1 of the circular) containing case information and confirmation of compliance with claims handling procedures.
- A copy of correspondence received from Senior Counsel advising the potential outcome of the case and the recommended settlement amount. The recommended upper amount must be clearly stated in correspondence from Counsel (as opposed to DLS). A copy of any relevant forensic accountant’s reports may be requested at the Department’s discretion before approval is granted.

In line with HSC (SQSD) 5/10, the HSC Board will suggest to Senior Counsel making use of structured settlements in cases in excess of £250,000.

On settlement of a case exceeding delegated limits, the HSC Board is required to notify FPAU of the outcome through submitting:

- a letter from its legal advisor stating its liability and the final settlement amount.
- the final report of Senior Counsel on the case
• evidence of the acceptance of the settled amount, signed by the plaintiff’s solicitor.

The Claims Director/Claims Manager/Claims Administrator should document all telephone and any other conversations linked to this process and follow up with correspondence, so that there is a clear decision making trail between the HSC Board and DHSSPS.

Delegated Responsibility for Approval of Legal Payments

The HSC Board has a hierarchy of approval for legal payments which reflects the approved settlement levels:

- Claims Manager: Up to £75,000
- Claims Director: Up to £250,000
- Chief Executive or Director Acting as: Over £250,000
- Chief Executive

5. Legal Payments Verification

There must be independent confirmation of settlements actually being reached/damages awarded. This can be in the form of

1. An original letter from the Plaintiff’s solicitor confirming the settlement amount or
2. Signed Terms of Settlement or
3. a Court Order.

There must be:

- a written authority sent to DLS from the HSC Board confirming authority to settle.

- direct involvement of the HSC Board in negotiations in all cases (approval is obtained from Board before any settlement is agreed and the HSC Board are kept informed as to the progress of negotiations)

All bills received for Costs and Fee Notes should be on original headed stationery, showing VAT registration if applicable.

All payments should be authorised by a designated senior officer (as above) prior to payment.
All payment calculations are subject to verification by DLS prior to submission to HSC Board for payment.

Invoices should quote unique case reference numbers that can be matched to HSC Board records.

All payments should be attributable to a specific case and for particular work.

All third party payments should be made directly to third parties, to their solicitor, or into court, upon receipt of letter from DLS enclosing required settlement verification and required approval from the designated officer.

A Form of Receipt should be signed to confirm that payments to third parties have been received.

6. Claims Database

The Claims Manager should ensure that the Claims Administrator maintains a Central Claims Database with the information captured as set out in Annex A of HSC(SQSD)5/10.

The HSC Board will be required to submit a summary of this information annually to the Department by 30 June each year and in addition to provide to the Department, on a quarterly basis, a specified subset of this information to include cases opened/closed and payments made during the quarter.

7. Procedure For Review of Cases

DLS on behalf of the HSC Board should review each ongoing clinical negligence case on at least an annual basis in line with HSC (SQSD) 5/10. The review must examine cases:-

- To review the base data held for each case to ensure no duplication of records.
- To consider suitability of immediate closure of all cases held without contact/action on behalf of the plaintiff for 3 years or more.
- To consider the expected value of compensation and associated costs and expected settlement date in line with accounting guidance.
8. Procedure for Review of Settled Cases

DLS, HSC Board and PHA medical consultants will review settled cases and determine any actions/recommendations/lessons learned as appropriate in respect of cases that have been settled at the review meetings.

9. Reporting Arrangements

The Audit Committee will receive twice yearly reports/reviews of the handling of clinical negligence cases.

The Claims Director or the Chief Executive will bring any issues to the Senior Management Team, as appropriate.

The Board should also be advised, as necessary, of any novel or contentious issues during confidential proceedings.

10. Clinical Negligence Accounting Arrangements

The HSCB pays Clinical Negligence settlements and related fees as they arise in accordance with HSC (SQSD) 05/10. The cash funding is drawn as Grant in Aid from the DHSSPS as part of the normal day to day draw down procedures.

The cost of Clinical Negligence provisions is covered by the issue of non-cash RRL from the Department.

Provisional information is included in the monthly monitoring return to the DHSSPS as it is extremely important for budgets/forecasts to be as accurate as possible.

Provisions are prepared in accordance with IAS 37. They are recognised when the Board has a present legal or constructive obligation as a result of a past event; it is probable that the Board will settle the obligation and a reliable estimate can be made of the obligation.

Original Policy Approved: 11 October 2010
**Equality, Good Relations and Human Rights Screening Assurance Statement**

Having considered the aim and objective of the Policy for the Handling of Clinical Negligence Claims, I am satisfied that there is no scope to promote equality of opportunity or good relations and there is no risk of adverse impact with regard to this policy. A full screening exercise is not deemed necessary as this is an administrative procedure for handling claims.

Approved Lead Officer:  
Liz Fitzpatrick  
Position:  
Complaints and Litigation Manager  
Policy/Decision Screened by:  
Liz Fitzpatrick  
Signed Date  
3 July 2012