

Ref: FOI/CAD/ID 2918

Please reply to:
FOI Administrator
Trust Management
Service Centre
Maidstone Hospital
Hermitage Lane
Maidstone
Kent
ME16 9QQ
Email: mtw-tr.foiadmin@nhs.net

25 July 2016

Freedom of Information Act 2000

I am writing in response to your request for information made under the Freedom of Information Act 2000 in relation to external legal advice.

- 1. How many members of staff are directly employed at the Trust at present as of 24 August 2015?*
- 2. What was your external legal advice expenditure from 01/04/2014 to 31/03/2015?*
- 3. What is your budget for external legal advice for the current financial year?*
- 4. Please provide the list of the solicitors instructed for external legal advice from 01/04/2014 to 31/03/2015.*
- 5. Please provide the full structure of your legal services team (titles of the positions- no names are required).*
- 6. Please provide your Trust's policy which relates to the process of provision of internal legal advice to the members of staff within your Trust.*
- 7. Please provide the name of the software or system which you use for the claims management.*
- 8. Please provide the annual cost of your claims management system.*
- 9. Please provide the name of the software or system which you use for the complaints management.*
- 10. Please provide the annual cost of your claims management system.*
- 11. How many active Coroner's Inquest cases are you managing at your Trust as of 24 August 2015?*
- 12. How many active clinical negligence claims against your Trust as of 24 August 2015 (claims reported to the NHSLA)?*
- 13. How many active clinical negligence claims against your Trust as of 24 August 2015 (claims not reported to the NHSLA)?*
- 14. How many active Employer's Liability claims against your Trust as of 24 August 2015 (claims reported to the NHSLA)?*
- 15. How many active Employer's Liability claims against your Trust as of 24 August 2015 (claims not reported to the NHSLA)?*
- 16. How many active Public Liability claims against your Trust as of 24 August 2015 (claims reported to the NHSLA)?*

17. *How many active Public Liability claims against your Trust as of 24 August 2015 (claims not reported to the NHSLA)?*

18. *Please attach a relevant policy and a flowchart which describe the process of how your legal services team communicates the lessons learned from the claims and coroner's inquests to the relevant teams across the Trust, to ensure the effective risk management and prevention of similar incidents and to improve care provided.*

19. *Please provide two, most recent, monthly claims management/ legal services reports. If you do not have monthly reports please provide two most recent quarterly reports.*

1. 9945 – Including bank and volunteers, 9494 – Excluding volunteers, 5805 – Excluding bank and volunteers.

2. Jan-Dec 2014 £290,923

3. Our Legal budget for 15-16 was £465,215

4. Maidstone & Tunbridge Wells NHS Trust receives a number of requests for details relating to the professional lives of our staff from private individuals and organisations, some of whom are involved in recruitment and marketing. We are aware that approaches from some of these organisations, as a result of any disclosure on our part, may lead to damage and distress to individuals whose roles and responsibilities would not normally be public facing or a level where the expectation would be that this information should be in the public domain. On very rare occasions it might be considered in the public interest to disclose some information but in such cases the views of the individual staff concerned is always sought.

The Trust has therefore decided that in future all such requests will normally be refused using the limitations available under Section 10 and Section 11 of the Data Protection Act 1998.

The information you have requested is therefore exempt under Section 40 of the Freedom of Information Act 2000.

5. Structure chart attached

6. Standard Operating Procedure for Obtaining Legal and/or Specialist Advice. This procedure is currently under review due to appointment of Trust solicitor. The current copy is attached.

7. Datix

8. £25,726.20. Includes Complaints/incidents/claims

9. Datix

10. This system is a Trust wide system used by other departments and not individualised for claims. It is paid from central funds

11. 36

12. 223

13. 312

14. 21

15. 0

16. 8

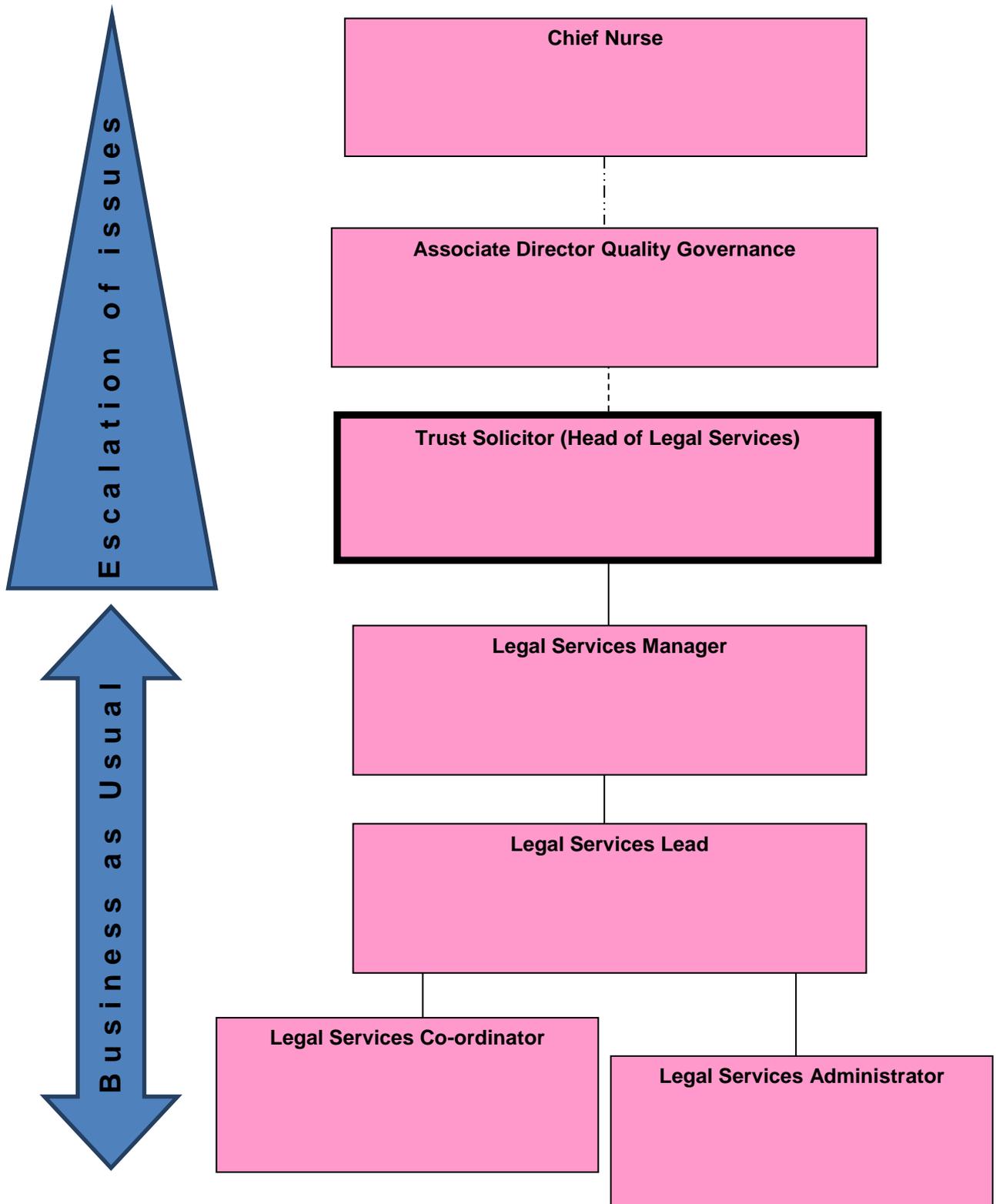
17. 0

18. Current Legal Services Policy is under review following Governance Structure changes

19. The Legal Team is part of a central governance department and information is collated centrally and shared internally through Governance Committees. The department provides monthly reports to Directorates giving claims learning which is shared in a unified Clinical Governance Committee. An Annual report on themes and trends is provided.



MTW Legal Services



MAIDSTONE AND TUNBRIDGE WELLS NHS TRUST

**Standard Operating Procedure for
Obtaining Legal and/or
Specialist Advice**

Requested/ Required by:	Standards Committee
Overarching policy:	Claims Policy and Procedure, Management of Legal [RWF-OPPPCS-NC-CG30]
Main author:	Patient Safety and Risk Manager
Other contributors:	Safeguarding Vulnerable Adults Matron Trust Ethicist
Document lead:	Patient Safety and Risk Manager Contact Details: 01892 634056
Directorate:	Corporate
Specialty:	Clinical Governance
Supersedes:	n/a – new SOP
Approved by:	Trust Ethics Committee, October 2012 Standards Committee, August 2013 (updated)
Ratified by:	n/a
Review date:	August 2015

Document history

Requirement for document:	To ensure all staff have clear understanding of who and how to access specialist advice or legal support.
Cross references:	<ul style="list-style-type: none"> • Mental Capacity Act 2007
Associated documents:	<ul style="list-style-type: none"> • Maidstone and Tunbridge Wells NHS Trust. <i>Data Protection Policy and Procedure</i> [RWF-OPPCS-NC-TM5] • Maidstone and Tunbridge Wells NHS Trust. <i>Information Governance Policy and Procedure</i> [RWF-OPPCS-NC-TM9] • Maidstone and Tunbridge Wells NHS Trust. <i>Freedom of Information Act 2000 Policy and Procedure</i> [RWF-OPPCS-NC-TM2] • Maidstone and Tunbridge Wells NHS Trust. <i>Health Records Policy and Procedure</i> [RWF-OPPCS-NC-TM31] • Maidstone and Tunbridge Wells NHS Trust. <i>Disclosure of Person Identifiable Information to Police Procedure</i> [RWF-OPPCS-NC-TM7] • Maidstone and Tunbridge Wells NHS Trust. <i>Being Open Policy</i> [RWF-OPPPCS-NC-CG2] • Maidstone and Tunbridge Wells NHS Trust: <i>Consent to Examination or Treatment Policy and Procedure</i> [RWF-OPPPES-C-SM5] • Maidstone and Tunbridge Wells NHS Trust: <i>Mental Capacity Act and Deprivation of Liberty Safeguards Policy and Procedure</i> [RWF-OPPPCS-C-NUR1]

Version Control: *Details of approved versions*

Issue:	Description of changes:	Date:
1.0	First iteration of SOP	August 2013

Obtaining Legal and/or Specialist Advice

Change in Process

It is important we can all access legal advice as and when required. Being able to quantify usage and identifying the type of legal advice given within the Trust allows us to ensure appropriate training and information sharing is undertaken Trust wide, which to date has been limited.

The Head of Quality and Governance has overall accountability for the Legal Services budget which is managed day to day by the Patient Safety and Risk Manager. It is proposed that only designated Senior Managers request external advice (see **Appendix 6**). The Senior Manager would then contact the Legal Services Team who will instruct on their behalf.

For general advice or specialist advice, staff should follow the attached pathways conferring with, in clinical cases, the multidisciplinary team and lead consultant first. A specialist advisor is then involved if the issue needs escalating. In respect of Workforce, Estates, contract or general legal advice, staff should contact their senior designated manager who again will liaise with the Legal Services Team.

Standard operating procedure for obtaining specialist/legal advice

Aim

Dealing with patients and relatives in relation to the provision of clinical care, as well as the management of staff that provide the delivery of that care and in conjunction with those who handle aspects relating to fabric and facilities of the organisation, can often present staff with challenging decisions whether ethical, moral, legal or statutory. In order to provide staff with appropriate advice and support as and when required, standard operating procedures have been created to make this work effectively.

Seeking internal advice

Not all advice is sought externally from legal advisors. The Trust has a number of highly trained individuals who specialise in particular medico-legal areas. In the event that staff are unable to reach a decision or require additional advice, these specialist practitioners (specifically trained) may be contacted to assist.

Seeking external advice

Obtaining external legal advice is limited to authorised individuals within the organisation (see **Appendix 6**). This must be co-ordinated through the Legal Services Team who record where advice is sought, for whom, timescales required by and the cost. This will ensure that any external advice is appropriately sought (i.e. cannot be obtained internally) and monitored from both a quality but also a financial perspective.

If the advice you require is for an emergency and out of hours, the on-call Executive Director will contact the out of hours legal advice team as necessary. However, the details of this should be forwarded to the Legal Services Team for recording and monitoring.

Types of advice

The reasons for contacting a legal firm are various but can include: -

- Obtaining legal advice in relation to very complex medico-legal issues
- Reviewing complex responses to complaints or to the Ombudsman
- Provision of legal opinion on policies and procedures
- Commencing legal action/handling a legal action
- Workforce cases relating to employment tribunals, discrimination cases, disputes with external locum agencies
- Estates issues, leases, tenancies, building works
- Complex contracts

See Appendix 4a, 4b and 4c for appropriate pathways.

Specialist advisors

As previously identified there are a number of specially trained staff who will be able to offer advice and assistance in relation to certain aspects of the clinical/nursing care of the patient. A list of contact details is attached at **Appendix 5**. It is important to ensure that the clinical advice pathway attached at **Appendix 4c** is followed. This will ensure that the patient's whole multidisciplinary team will be involved in complex medical decisions from the

outset. If after convening a meeting to discuss the issue of concern or to address the question asked, answers are still outstanding, the specialist will be able to advise further. In the event that a consensus of opinion cannot be reached, or the matter needs to be taken through a court application, then external advice may be sought.

If the advice of solicitors is required within during the hours of 9am – 5pm, this should be obtained through the Legal Services Team, or if outside these hours via the on-call senior manager or Executive Director.

If staff are unable to reach one of the individually named specialists then further assistance should be sought via the Legal Services Team 9am – 5pm.

Examples of specialist topics:

- Ethical issues (for example: end of life decisions/DNAR/nutrition/mental health)
- Data protection / information governance
- Mental Capacity Act/Deprivation of Liberty Safeguards/Safeguarding Vulnerable Adults
- Consent clinical
- Claims, litigation, inquests and police
- Security management
- Access to records
- Child protection
- Court orders

1. Clinical concerns

- i. When a concern/dilemma is identified regarding decisions involving patient care or treatment, the consultant/lead in charge of the patient's care should convene a multidisciplinary meeting. The concern should be addressed and all views considered, including those of the patient and relatives. If the matter is relatively straightforward, i.e. which consent form needs to be completed; can the patient verbally consent to the procedure; a call to the legal services department will suffice.
- ii. If the matter is more complex, additional specialist advice may be needed and the lead consultant or decision-maker should contact the appropriate specialist from **Appendix 5** for assistance.
- iii. If the issue cannot be resolved, external legal advice may be required. This can be gained via the Legal Services Team using the proforma at **Appendix 7**. In the case of emergencies direct liaison with the Trust solicitors can be arranged.
- iv. Once instructed the advice will be directed to the Consultant or lead which should be fed back to the multidisciplinary team. A copy of all advice should be given to the Patient Safety and Risk Manager.
- v. Invoices will be directed to the Legal Services Department and Directorate Managers/consultants will confirm that advice was adequate and timely, countersign the invoice and return to the Patient Safety and Risk Manager for authorisation.
- vi. For urgent advice out of hours, contact should be made with the most Senior Manager on call who will have access to an out of hours legal service. (In these instances, notification to the Legal Services Team should be made on the next working day)
- vii. Quarterly reports regarding advice sought will be forwarded to the Directorate Managers and Executive Directors for information

2. Non- clinical concerns

- i. For any matter where legal advice is required that is not based on a patient's clinical care, contact with the Legal Services Team should be made by the designated/authorised manager to request legal advice.
- ii. Internal advice will be given immediately. If the issue cannot be resolved, external legal advice may be required (see **Appendix 4a and 4b**). This can be gained via the Legal Services Team using the Proforma at **Appendix 7**. In the case of emergencies (need to clarify), direct liaison with the Trust Solicitors can be arranged.
- iii. Invoices will be directed to the Legal Services Department and Directorate Managers will confirm that advice was adequate and timely, countersign the invoice and return to the Patient Safety and Risk Manager for authorisation.
- iv. For urgent advice out of hours, contact should be made with the most Senior Manager on call who will have access to an out of hours legal service. In these instances, notification to the Legal Services Team should be made on the next working day.

- v. Quarterly reports regarding advice sought will be forwarded to the Directorate Managers and Executive Directors for information

APPENDIX ONE

Process requirements

1.0 Implementation and awareness

- Once approved the document lead or author will submit this SOP document to the Clinical Governance Assistant who will activate it on the Trust approved document management database on the intranet.
- A monthly table of Trust publications will be produced by the Clinical Governance Assistant; this will be published on the Bulletin Board (Trust intranet) under “Trust Publications”, and a notification email circulated Trust wide by the COMMS team.
- On receipt of the Trust wide Bulletin Board notification all managers should ensure that their staff members are aware of the new publications.

2.0 Review

This SOP will be reviewed 2 years after approval, or sooner should changes in practice or legislation require.

3.0 Archiving

The Trust approved document management database on the intranet retains all superseded files in an archive directory [obsolete register] in order to maintain document history.

APPENDIX TWO

CONSULTATION ON: Standard operating procedure for obtaining legal and/or specialist advice

Consultation process – Use this form to ensure your consultation has been adequate for the purpose.

Please return comments to: Patient Safety and Risk Manager

By date: November 2012

Name:	Date sent dd/mm/yy	Date reply received	Modification suggested? Y/N	Modification made? Y/N
Chair of Ethics Committee	Sept 2012	Sept 2012	Y	Y
	Oct 2012	Oct 2012	Y	Y
Ethics Committee members	Sept 2011	Discussed at meeting Nov 2011		
	Oct 2012	Discussed at		

		meeting Oct 2012		
Medical Director	Sept 2011			
	Oct 2012			
Head of Quality and Governance	Sept 2011	Sept 2011	Y	Y
	Oct 2012	Oct 2012	Y	Y
Trust Ethicist	Sept 2011	Sept 2011	Y	Y
	Oct 2012	Oct 2012	Y	Y
Matron, Safeguarding Adults				
Consultant – Care of the Elderly (PM)	Sept 2011			
	Oct 2012			
Consultant – Care of the Elderly (GN)	Sept 2011			
	Oct 2012			
Matron, Safeguarding Adults	Sept 2011	Sept 2011	Y	Y
	Oct 2012	Oct 2012	Y	Y
Legal Services Team (Maidstone)	Sept 2011	Sept 2011	N	
	Oct 2012	Oct 2012	N	

The following staff have consented to have their names published in this document and its appendices:

	Date		Date
Karen Davies	28/08/13	Glenn Douglas	n/a
Christine Steele	28/08/13	Paul Bentley	n/a
Meral Hart	28/08/13	Angela Gallagher	n/a
Dr Peter Maskell	28/08/13	John Headley	n/a
Dr George Noble	28/08/13	Terry Coode	n/a
Jo Howe	28/08/13	Avey Bhatia	n/a
Dr Charles Bailey	28/08/13	John Kennedy	n/a
Wendy Bates	28/08/13	Paul Sigston	28/08/13
Gail Spinks	n/a	Wilson Bolsover	28/08/13
Di Peach	28/08/13	Graham Russell	28/08/13
Donna-Marie Jarrett	n/a	Jeanette Rooke	28/08/13
Ron Faulds	28/08/13	Lesley Martin	28/08/13
Claire Roberts	n/a		

The role of those staff being consulted upon as above is to ensure that they have shared the policy for comments with all staff within their sphere of responsibility who would be able to contribute to the development of the policy.

APPENDIX THREE

Equality Impact Assessment

In line with race, disability and gender equalities legislation, public bodies like MTW are required to assess and consult on how their policies and practices affect different groups, and to monitor any possible negative impact on equality.

The completion of the following Equality Impact Assessment grid is therefore mandatory and should be undertaken as part of the policy development and approval process. Please consult the Equality and Human Rights Policy on the Trust intranet, for details on how to complete the grid.

Please note that completion is mandatory for all policy development exercises. A copy of each Equality Impact Assessment must also be placed on the Trust's intranet.

Title of Policy or Practice	Standard operating procedure for obtaining
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	legal and/or specialist advice
What are the aims of the policy or practice?	Dealing with patients and relatives in relation to the provision of clinical care, as well as the management of staff that provide the delivery of that care and in conjunction with those who handle aspects relating to fabric and facilities of the organisation, can often present staff with challenging decisions whether ethical, moral, legal or statutory. In order to provide staff with appropriate advice and support as and when required, standard operating procedures have been created to make this work effectively.
Identify the data and research used to assist the analysis and assessment	
Analyse and assess the likely impact on equality or potential discrimination with each of the following groups.	Is there an adverse impact or potential discrimination (yes/no). If yes give details.
Males or Females	No
People of different ages	No
People of different ethnic groups	No
People of different religious beliefs	No
People who do not speak English as a first language	No
People who have a physical disability	No
People who have a mental disability	No
Women who are pregnant or on maternity leave	No
Single parent families	No
People with different sexual orientations	No
People with different work patterns (part time, full time, job share, short term contractors, employed, unemployed)	No
People in deprived areas and people from different socio-economic groups	No
Asylum seekers and refugees	No
Prisoners and people confined to closed institutions, community offenders	No
Carers	No
If you identified potential discrimination is it minimal and justifiable and therefore does not require a stage 2 assessment?	
When will you monitor and review your EqIA?	Alongside this policy/procedure when it is reviewed.
Where do you plan to publish the results of your Equality Impact	As Appendix Three of this policy/procedure on the Trust approved document management

Assessment?	database on the intranet.
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FURTHER APPENDICES

The following appendices are published as related links to the main policy /procedure on the Trust approved document management database on the intranet (Policies and Guidelines):

No.	Title	Unique ID
4a	Obtaining external legal advice: non complex legal issues	RWF-OPPM-CORP154
4b	Obtaining external legal advice: non-clinical issues- Workforce / Estates / Procurement / Complaints / Information Governance	RWF-OPPM-CORP155
4c	Obtaining external legal advice: complex cases pathway	RWF-OPPM-CORP156
5	List of specialist advisors	RWF-OWP-APP707
6	List of authorised personnel to instruct solicitors directly	RWF-OWP-APP708
7	Request for external legal advice proforma	RWF-OPF-CS-NC-CORP1