

<b>Access to Legal Services</b>	<b>Register No: 08087</b> <b>Status: Public</b>
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<b>Consulted With</b>	<b>Post/Committee/Group</b>	<b>Date</b>
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<b>Policy to be followed by (target staff)</b>	Executive and Non-Executive Directors, All Trust Staff
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### Document Review History

Review No	Reviewed by	Review Date

It is the responsibility of staff to ensure that they are accessing the most up to date version of this document and that will always be on the internet

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## **1. Introduction**

1.1 Throughout the every day running of NHS bodies, there are a number of legal matters that arise, covering many aspects of law, including:

- NHS Governance and Public law
- Healthcare Law, including clinical negligence
- Employment law
- Contract and commercial law
- Property law
- Corporate Finance

Whilst this is not intended as an exhaustive list, it seeks to give some indication of the breadth of legal issues which will inevitably need to be managed within every NHS organisation.

1.2 To provide some context, in 2007/08, NHS payouts, solely in relation to clinical negligence cases, amounted to £90.7 million, more than double of the amount spent in 2003/04.

1.3 Whilst the Trust recognises the value in ensuring that it limits the amount of resource spent on legal services and will attempt to manage 'legalistic matters' internally where possible, it is inevitable that there will be occasions where external, independent advice and/or support is required.

1.4 This policy is designed to ensure the provision of an efficient and cost-effective legal service for the Trust and to ensure that all members of staff understand what they need to do should such an issue arise.

## **2. Scope**

2.1 This policy is intended to apply to all members of staff including Executive Directors. The policy will also apply to Non-Executive Directors where legal advice is required with regard to their work with the Trust.

2.2 In addition, the Trust's preferred supplier of legal services is expected to comply with this policy in providing their service to the Trust.

## **3. Equality and Diversity**

3.1 MEHT is committed to the provision of a service that is fair accessible and meets the needs of all individuals.

## **4. Appointing the Trust's Legal Advisers**

4.1 The provision of the Trust's legal services will be in accordance with the standard terms of the Healthcare Purchasing Consortium (HPC) contract. Under the HPC contract, the Trust should appoint a preferred provider of legal services through a 'bidding' process. The panel designated to choose the Trust's preferred legal advisers needs to include:

- Director of Finance or a Deputy
- X1 Executive Director (if the Director of Finance is not on the panel)

- Trust Board Secretary (or nominated deputy)
  - Head of Contracts/Commercial Services
- 4.2 The performance of the Trust's preferred legal advisers will be subject to quarterly performance reviews. The term of the agreement between the Trust and the appointed solicitors firm will be for a 12-month period, with the parties retaining the option to extend the agreement for a further 12 months on a 'rolling' basis.
- 4.3 The Trust's preferred solicitors shall supply legal services which include but are not limited to the giving of advice, the drafting of agreements or instruments and the conduct of proceedings with any proprietary or preliminary work relating thereto, concerning any interest of the Trust arising out of or connected with the areas of law identified in Section 2 of the service level agreement between the parties.
- 4.4 In performing its duties under this agreement, the contractor agrees to comply with all relevant Trust policies and procedures that have been brought to its attention, including the Trust's Access to Legal Services Policy.

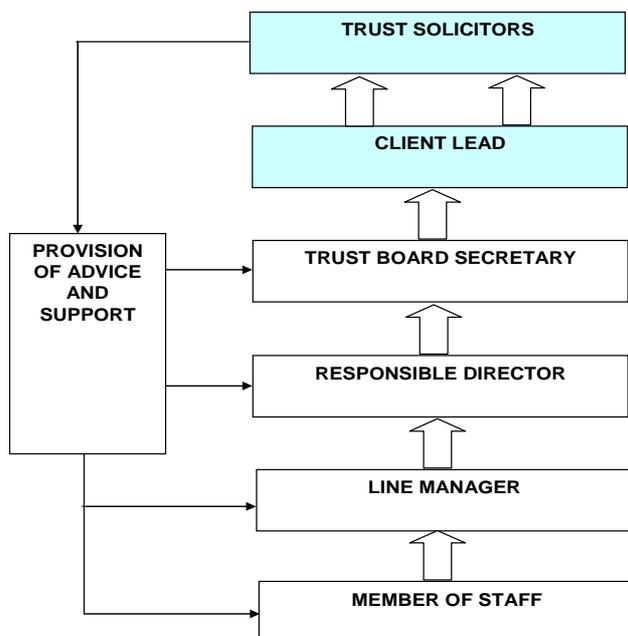
## **5. Guidance**

- 5.1 Where a potential legal query arises, members of staff should usually seek advice from their line manager in the first instance. Line managers must make a decision on whether the issue can be managed at a local level or whether it is of a severity/importance requiring the involvement of the lead Director<sup>1</sup> of their particular area of work.
- 5.2 Where the issue reaches the appropriate Director, they must decide, in liaison with the Trust Board Secretary, whether the matter requires external legal opinion or support. Where the matter requires legal support, the Director should instruct the Trust Board Secretary to obtain legal support on the particular issue.
- 5.3 The Trust Board Secretary will:
- Assign a reference number to the piece of legal work
  - Make contact with the 'Client Lead Solicitor' to advise of the necessary work.
  - Keep a log of the work requested by date and eventual legal cost.
  - Where appropriate, allow the 'involved' individuals to have direct liaison with the Trust's legal advisers.

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<sup>1</sup> For the purposes of this Policy, Director includes all with 'Director' in their ordinary job title and is not exclusive to Executive Directors; (e.g. Service Directors, Clinical Directors etc.).

**Table 1- The Process for Obtaining Legal Advice**



- 5.4 It is the responsibility of the Client Lead to ensure that legal work referred from the Trust is handled by appropriate individual/s and at an appropriate level. To this end, the Client Lead Solicitor will advise the Trust Board Secretary as to the ‘risk rating’ to be attached to each piece of legal work, as prescribed by the HPC service level agreement.
- 5.5 The risk rating signifies the complexity of work required, subsequently indicating the level (‘banding’) of personnel required to under take the work on behalf of the contractor.

**Table 2- The Risk Rating System**

Risk Level	Risk Rating	Solicitor Personnel Banding
INSIGNIFICANT	1	3 to 8
MINOR	2	3 to 8
MODERATE	3	3 to 8
MAJOR (Complex)	4	1, 2
EXTREME (Complex)	5	1, 2

- 5.6 Any activity which has been identified with a Risk Rating of either 4 or 5 will be dealt with by personnel with a Banding of either 1 or 2. Where activity/advice has a risk rating of 1 to 3, the Solicitor’s firm and the Trust will then identify the appropriate level of personnel/Banding. This activity must then be charged at the equivalent banding even if a more Senior person undertakes such work unless agreed in writing by the Trust.
- 5.7 The Solicitor’s firm and the Trust will ensure that if any new information or circumstance comes to light/occurs, that this will be immediately notified to the other party. The Risk Rating may then be reviewed by the parties resulting in an agreed amendment to the Risk Rating and potentially the Banding of personnel applied by the Solicitor’s firm. Any amendments to the rating or banding of personnel must be agreed in writing.

- 5.8 In addition to the allocation of a risk rating, it is the responsibility of the Trust Board Secretary to provide guidance to the Trust’s legal advisers on the level of ‘touch’ required for each piece of work. ‘Touch’ signifies the level of thoroughness and intensity required for a particular area of work. There are three types of ‘touch’:

**Table 3- The Touch System**

Touch	Description
LIGHT	This requires the advising solicitor/s to briefly ensure that the Trust is complying with all relevant law/guidance and take a cursory look at the Trust’s greatest liabilities/risks related to the piece of work.
MEDIUM	This requires either a detailed analysis of a small legal issue or a cursory look at a substantial legal matter. This will occasionally require more than one solicitor’s input.
HEAVY	This requires a thorough analysis of the legal problem and is likely to involve a long-term project requiring in-depth review of legislation/case law/guidance, potentially involving multiple solicitors.

- 5.9 Where the Trust Board Secretary position is vacant or the postholder is away from the Trust, the Director of Finance will nominate an individual to undertake the above duties on an interim basis. Where no individual has been nominated, the Head of Commercial Services will undertake the Secretary’s tasks as outlined in this policy.

## 6. Non-Compliance

- 6.1 Non-compliance with this policy will be treated as a disciplinary matter and escalated to an appropriate Director for action.
- 6.2 Where legal advice is obtained outside of this policy, this will be funded by the originating department and will not be covered by the Trust’s central legal budget.
- 6.3 In exceptional circumstances, it may be necessary for urgent legal advice to be sought without going through the normal escalation procedures where the legal issue is **highly confidential or highly sensitive**. In such circumstances, the Chairman of the Trust retains a right to directly commission the obtaining of legal advice, either of his own motion or on behalf of another individual employed by the Trust.

## 7. Audit

- 7.1 This effectiveness of this policy will be continually audited through the quarterly performance audit of the Trust’s solicitors and in any event be subject to yearly review.

## 8. References

HPC Model Service Level Agreement, 2008