

Legal Services and Claims Management Policy

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Purpose	This policy seeks to ensure financial probity in respect of access to legal services and to ensure that claims are handled in line with national guidance.
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Ratified by: (Name of responsible Committee)	Executive Management Team
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Target audience:	<ul style="list-style-type: none">• All Board, Committee and Sub Committee members and any working groups formed to undertake work on behalf of the ICB;• ICB employees

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Document control:		
Date:	Version Number:	Section and Description of Change
27 March 2023	1	Feedback from D Atkinson on content
27 April 2023	1	Feedback from K Disley in line with scheme of delegation
11 July 2023	1	Feedback from K Disley in line with updated scheme of delegation
14 Feb 2024	2	Flexibility added to the policy to enable urgent access to external legal services in specific circumstances
10 June 2024	2	Corporate email address updated.

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1. Introduction and Background

- 1.1 The Lancashire and South Cumbria Integrated Care Board (hereafter referred to as the ICB) may from time to time require a professional or formal opinion regarding the substance or procedure of the law in relation to a particular factual situation.

2. Purpose / Aims and Objectives

- 2.1 This policy explains the circumstances when legal advice may be required and the process for obtaining such advice, both from within the ICB and, if appropriate, from external legal advisors. This policy seeks to ensure financial probity in this regard, to create an audit trail, and to comply with external scrutiny.
- 2.2 This policy outlines the steps to be taken for litigation and claims, and seeks to ensure all claims are managed appropriately, logged, resolved, and that any learning can be identified.

3. Scope of the Policy and Definitions

- 3.1 This policy applies to:

- All Board, Committee and Sub Committee members and any working groups formed to undertake work on behalf of the ICB;
- ICB employees

These are collectively referred to as 'individuals' hereafter.

- 3.2 This policy should be read in conjunction with the ICB Scheme of Reservation and Delegation and Standing Financial Instructions which can be found in the ICB Governance Handbook at the following location:
[LSC Integrated Care Board :: Corporate Governance Handbook \(icb.nhs.uk\)](https://www.lsc.nhs.uk/governance)

4. Principles

- 4.1 This policy sets out the framework for the provision of legal support and advice to the ICB, and for the management of claims in order to ensure that:
- Staff are aware of the process that must be followed when legal support and advice is required.
 - The ICB receives high quality advice at a reasonable cost.
 - Expenditure is kept within budgetary restraints.

- Requests are appropriate and the advice is not already available from another source.
- All claims are managed in line with national guidance.
- Learning is obtained from any substantiated claims.

5. Roles and Responsibilities

5.1 ICB Board

The ICB Board is accountable for ensuring that the ICB has effective processes for handling requests for legal support and advice.

5.2 Chief Finance Officer (CFO)

The CFO will have overall accountability for establishing and maintaining the organisation's access to legal services and will keep the Board informed of major developments as appropriate.

5.3 Directors

Directors are responsible for ensuring value for money and that legal services are accessed appropriately for their department. They must follow this policy when agreeing external legal spend. Directors must ensure they remain within the sign off limits described in the Scheme of Delegation. Directors must also adhere to the procurement route as outlined at Appendix C.

5.4 Director of Corporate Governance

The Director of Corporate Governance has the overall responsibility for the management of legal advice, litigation and claims management.

5.5 Head of Governance

The Head of Governance is responsible for the maintenance of this policy and the coordination of, and guidance for legal advice, litigation and claims management.

5.6 Line Managers

Line managers are responsible for being aware of the policy and seeking guidance and approval before seeking legal advice.

5.7 All Staff

Staff and other individuals covered by the scope of this policy are responsible for making themselves aware of the policy, seeking advice and acting in accordance with the policy.

Policy Detail

6 Legal Advice

6.1 At times it may be necessary for staff to access advice from external solicitors to support decision making. Managers are to consider the following:

- Is legal advice absolutely necessary?
- Can the requirement be satisfied by in-house resources?

6.2 Reasons to seek legal advice may include:

- A situation that has not been encountered before and is beyond the technical knowledge of any internal subject expert.
- Confirmation that a proposed or intended action is correct and lawful.
- Disputes that may lead to legal action if not resolved at an early stage, e.g. contractual challenges and disputes.
- Where another party has involved solicitors.

7 Accessing Legal Advice

7.1 If legal advice is to be effective, it is important that clear, accurate information regarding the situation in question is provided. It may be helpful to consider the following prior to seeking legal advice:

- Does the matter relate to a claim or potential claim? If yes, then please contact the Governance team first at:
lscicb.corporategovernance@nhs.net
- Have you contacted the internal subject expert? Depending on the nature of the advice required, help may be available in-house or from partner organisations. For example, the People Team for employment issues. Appendix B contains internal sources of advice.

7.2 If, after considering the above, external legal advice is required, staff should liaise with a director ahead of submitting a request for approval to the discretionary spend panel.

7.3 The director must remain with the scheme of delegation approval limits and procurement route.

7.4 If approval is granted by the discretionary spend panel, the corporate team must be advised to initiate the logging of this advice. The staff member should ensure that they only access those solicitors accredited on the Crown Commercial Service: Crown Commercial Service - CCS. Once the solicitor has

been agreed, the individual should provide the governance team with the name, reason for advice and expected costs by email to: lscicb.corporategovernance@nhs.net . The governance team will then log the request for advice, and ensure oversight of access to legal services across the ICB.

7.5 The ICB procurement rules require the individual to obtain quotes at certain financial thresholds as outlined at Appendix C prior to appointing an external legal firm. If the individual believes there are extenuating circumstances to this process, they must consult with the Head of Procurement and Contracting prior to appointing external legal advice.

7.6 The following staff groups are exempt from the requirements of submitting a request to the ICB discretionary panel if urgent access is required to legal advice and without urgent access detriment would be caused; safeguarding, Special Educations Needs and Disabilities, Continuing HealthCare, Deprivation of Liberty Safeguards, and instances where an urgent legal challenge has been received. If under this exemption urgent external legal advice is accessed without seeking approval from discretionary spend panel, this must still adhere to the requirements of the operational scheme of delegation and sections 7.3, 7.4 and 7.5 above.

7.7 The staff member requesting advice should:

- Ensure that you are clear about the issue you need advice on and the sequence/chronology of events (it may be helpful to write this down in advance if you are seeking verbal advice).
- Ensure that you have any relevant documents/information to hand and can email or upload them if required.
- Ensure that any verbal request for advice is followed up in writing as soon as possible (e.g. by email) confirming the scope of advice that is required.
- Request an estimate of costs before engaging a legal advisor, except in urgent cases where an estimate must be sought and agreed as soon as possible, with a ceiling cost applied, and the ICB Scheme of Delegation must be followed
- Copy the written request for advice to the Director and ask for the advice provided and any changes in the estimated costs to be shared with the Director.
- Copy the estimate of costs to the Director so that later invoices can be approved.
- Provide regular updates to the governance team if a legal case is ongoing.

7.8 A decision tree for accessing legal advice can be found at Appendix A.

8 Litigation and Claims Management

- 8.1 All claims received into the organisation must be reported to the Head of Governance who can be contacted via the governance team in the first instance using the following address: lscicb.corporategovernance@nhs.net .

9. Triggers for invoking the claims procedure

- 9.1. The ICB should consider activating the claims procedure in the following circumstances:
- Receipt of legal proceedings, a letter of claim or a letter indicating a likely claim from patient, member of the public or employee or from a solicitor;
 - a request for a copy of medical records is received;
 - an adverse incident which could lead to a claim for compensation;
 - a complaint which could lead to a claim for compensation;
 - a human rights issue;
 - an issue involving media attention;
 - a request for records pursuant to the pre-action protocol for clinical negligence disputes which intimates a claim against the ICB;
 - a verbal accusation of negligence/liability from a patient/relative;
 - other matters identified through the risk management process.
- 9.2. It is therefore important that all staff understand the need to report such triggers to the Head of Governance at the earliest opportunity.

The Head of Governance will ensure that:

- The relevant pre-action protocol, including the timescales for acknowledgement and response, is followed upon receipt of a claim;
- Potential claims to NHS Resolution are reported in accordance with their reporting guidelines;
- Comprehensive, accurate and up to date records exist for all clinical and non-clinical claims;
- Initial investigations are made and a preliminary analysis is undertaken of all potential and actual claims; Contact is established and, as necessary, maintained with both current staff and former relevant staff;
- In-house expert and clinical advice are obtained as necessary;
- The relevant Executive and Chief Finance Officer are informed of

significant developments and any other matters of concern and that approval for settlement of claims is sought;

- Staff involved in the litigation process are provided with appropriate support;
- The lessons learnt in the process of claims management are communicated appropriately in the context of future service provision;
- The ICB's designated communications lead is informed as necessary where there is a possibility of publicity or media interest.

10 All Staff

- 10.1 Anyone receiving a claim or potential claim must pass the correspondence directly to the Head of Governance without acknowledgement, as many deadlines run from the date of acknowledgement.
- 10.2 The co-operation of all staff is essential to allow early assessment of the merits of claims and plan their future management. In clinical negligence cases, the view of healthcare professionals and key staff involved in the treatment which has given rise to the claim must be considered carefully by the manager/s investigating the claim together with the advice of NHS Resolution, before a decision is made to settle or contest the claim.

11 Reporting of legal cases and claims

- 11.1 The Audit Committee will be kept informed of any major developments relating to the management of claims, and escalate to the board as appropriate.
- 11.2 If the claim requires external legal advice which falls outside of the ICB indemnity cover with NHS Resolution this must be approved by a director, and no work should begin until a quote for the work has been agreed. Section 7 of this policy should also be followed.
- 11.3 The Audit Committee will be made aware of situations, recommendations or activities that could have significant legal consequences via the Chief Finance Officer. The Chief Executive may raise significant matters directly with the Board.

12 Equality and Health Inequalities Impact Risk Assessment (EHIIRA)

- 12.1 An Equality Health Inequality impact and risk assessment has been completed and is held on file.

13 Implementation and Dissemination

13.1 This policy will be available electronically on the ICB website and it is the responsibility of individual staff to comply with this policy.

14 Training Requirements

14.1 There are no specific training requirements as part of this policy. The Head of Governance will provide advice on any aspect of this policy.

15 Monitoring and Review Arrangements

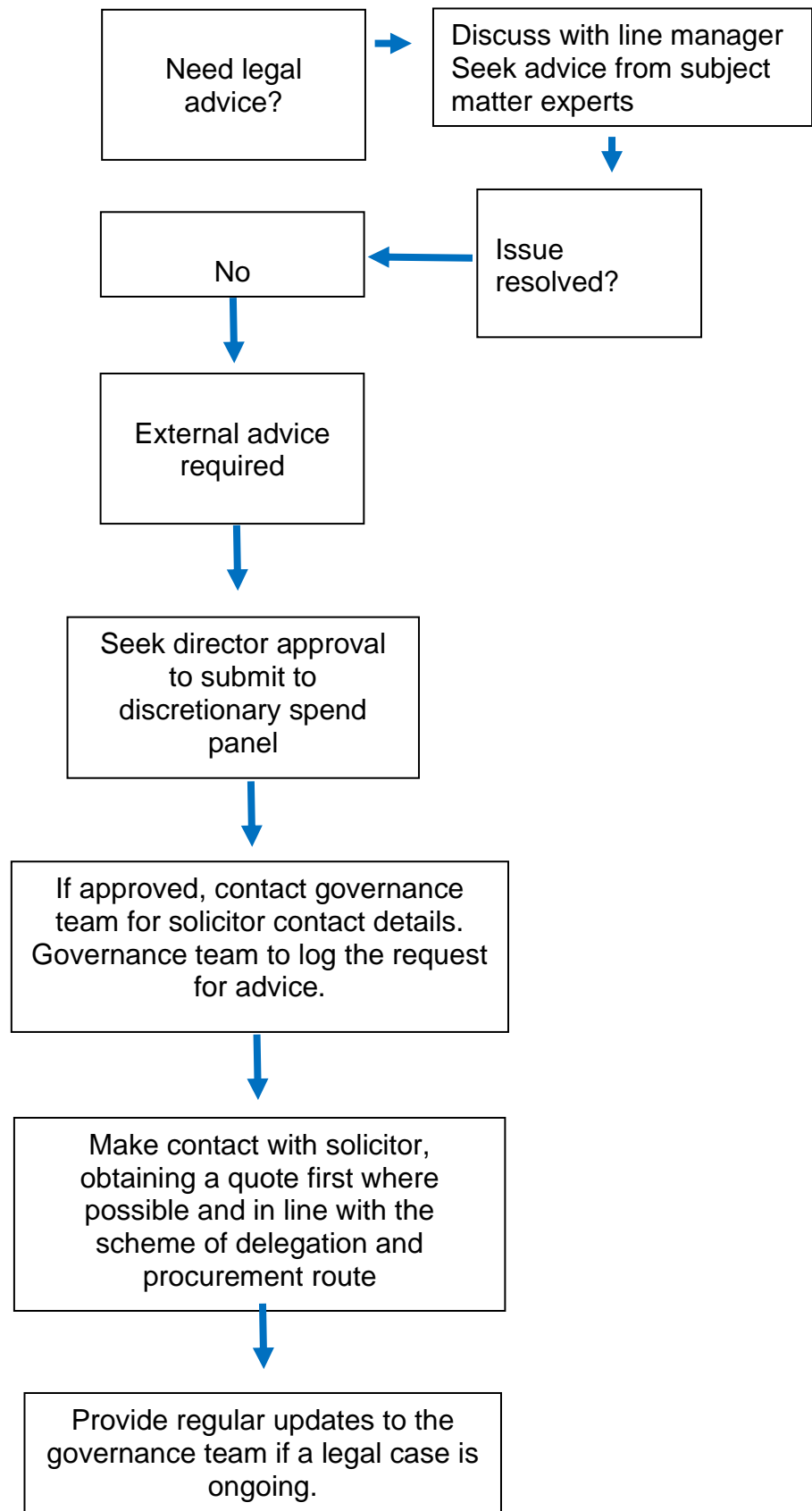
15.1 The policy will be monitored annually for accuracy and against any new guidance as it is published.

16 Consultation

16.1 List of Stakeholders Consulted:

Date	Name of Individual or Group	Designation	Were comments received, considered and incorporated Yes/no	If not incorporated record reason why
30.05.23	Debra Atkinson	Director of Corporate Governance	Yes	NA
23.03.23	Katherine Disley	Director of Operational Finance	Yes	NA
15.01.12	Professor Sarah O'Brien Katherine Disley	Chief Nursing Officer Director of Operational Finance	Yes	NA
05.03.24	Debra Atkinson	Director of Corporate Governance	Yes	NA

Appendix A – Decision tree for accessing legal advice



Appendix B – Sources of advice

Internal subject matter experts

Subject matter	Expert
Clinical issues	Chief Nurse and/or Medical Director
Complaints	Chief Nurse
Mental Health Act	Medical Director
Safeguarding	Chief Nurse
Contracts	Chief Finance Officer
Information governance	Chief Digital Officer
Freedom of Information	Chief Digital Officer
Human Resources	Chief People Officer
Corporate Governance / Constitution	Director of Corporate Governance
Property	Director of Strategic Estates

Appendix C – Procurement route

PROCUREMENT ROUTE	
The quote/tender requirement for each contract shall be determined by the total contract value. The contract value of each contracting opportunity must be a genuine pre-estimate of the total contract value, inclusive of VAT (i.e., three-year contract of £50,000 per year = total contract value of £150,000). Contract values must not be deliberately split/disaggregated to avoid the need to consider competition.	
To comply with the procurement regulations, and to ensure equity to all sectors, the ICB will ensure full compliance with the following thresholds:	
Contract Value (over the full term of the contract)	Quote/tender requirement
Less than £20,000	One written quote
	No formal process is required, although best value for money should be sought at all times and purchases should be from a reputable source.
	ICB to have oversight with advice sought from local contract leads or ICB directly if required.
Between £20,000 and £75,000	A minimum of three quotations must be sought.
	Quotations should be in writing but not subject to formal receipt process and can be posted or emailed.
	ICB to have oversight with advice sought from local contract leads or ICB directly if required.
Between £75,000 and the Public Contracts Regulations threshold, applicable at the time.	A minimum of three tenders must be sought.
	All opportunities must be advertised on the Contracts Finder Procurement Portal.
	Tender process to be conducted using an e-tendering platform.
Equal to or above the Public Contracts Regulations threshold, applicable at the time.	Prior approval must be sought from the ICB.
	Compliance with the Public Contract Regulations 2015 (as amended). This includes Competitive tendering process via Find a Tender Service and Contracts Finder.
Any contract value where a relevant and appropriate Framework Agreement or Dynamic Purchasing System exists	Sign-off must be sought from ICB beforehand.
	Direct award or further competition according to the terms of each Framework Agreement or Dynamic Purchasing System
PUBLIC CONTRACT REGULATIONS 2015: THRESHOLDS FROM 1 JANUARY 2022	
Public works contracts	£5,336,937
Public supply and services contracts	£213,477
Light Touch Regime for Services	£663,540
There should be consultation with the Finance team to confirm the applicability of VAT when calculating the expected value of a contract and with procurement team to validate assumptions as to which threshold applies.	
Wherever possible the ICB should procure supplies and services through NHS and public sector framework agreements. Such frameworks can offer a compliant procurement route to direct award or a pre-qualified supply base through which further competition may be conducted, in accordance with the framework terms of use.	
The ICB must adhere to NHS England Policy and Guidance for procurement of Management Consultancy Services and Agency Staff.	
All procurement processes must have the relevant governance process sign off before commencement and the contract award must be authorised in accordance with the ICBs' Scheme of Reservation and Delegation	