



CLAIMS POLICY

NWAS Claims Policy

Author: Healthcare Governance
Date of Approval: 26th September 2007
Date of Issue: 1st October 2007

Page:
Version:
Status:
Date of Review:

Page 1 of 15
1
Trust Board Approved
Within Six Months



<u>Recommending Committee:</u>	Risk Management Sub-committee
<u>Approving Committee:</u>	Trust Board
<u>Approval Date:</u>	26th September 2007
<u>Version Number:</u>	1
<u>Date of Development:</u>	August 2007
<u>Date of Issue:</u>	1st October 2007
<u>Review Date:</u>	Within Six Months
<u>Responsible Executive Director</u>	Medical Director
<u>Responsible Manager</u>	Assistant Director, Healthcare Governance
<u>Competent Manager</u>	Legal Services Co-ordinator
<u>For Use By:</u>	All Staff



Claims Policy

Contents

	Page
Introduction	4
The Policy Context	4
Definitions	5
Responsibilities	6
Management of Claims	8
Claims from Third Parties involved in an accident with a NWAS vehicle	8
Claims from a NWAS employee or agent of the Trust following an accident while acting on behalf of the Trust	8
Claims from a patient following injuries sustained whilst in our care	9
Claims from a member of the public or contractor following an accident on Trust premises	9
Claims for Damage/Loss to Trust premises and contents	9
Claims for Clinical Negligence - Reporting Requirements	9
Procedure for the management of claims (algorithm)	10
Pre-Action Protocol	11
Receipt of Claims	11
Acknowledgment of Letter of Claim	11
Investigation of a Claim	12
Request for Records and Untoward Incidents Reports	12
External agencies	13
Communicating the Decision on Liability	13
Information requirements	14
Reporting arrangements and lessons learned	15
Review	15



Introduction

The North West Ambulance Service NHS Trust aims to provide the best possible ambulance and pre-hospital care services to the population of North West England.

The aim of this policy is to ensure that all claims received by the Trust and arising from involvement of the Trust's staff, vehicles or premises, including Clinical Negligence, Employee Liability, Public Liability, liability to Third Parties and claims arising from Road Traffic Collisions (RTCs) are processed.

Claims may be indications of unsatisfactory standard of events, therefore claims management gives the Trust an opportunity to learn and improve the patient's experience.

The policy context

In April 1999, the Civil Procedure Rules were introduced as a major reform to the handling of civil legal claims within England. These rules are regularly amended and updated and now contain 76 separate rules and practice directions, together with 9 Pre-Action Protocols.

The overriding objectives of the rules are to deal with cases justly, so far as is practicable:

1. ensuring that the parties are on an equal footing
2. saving expense
3. dealing with the case in ways which are proportionate –
 - a. to the amount of money involved
 - b. to the importance of the case
 - c. to the complexity of the case
 - d. to the financial position of each party
4. ensuring that it is dealt with expeditiously and fairly
5. allocating it to an appropriate share of the court's resources, while taking into account the need to allot resources to other cases

The changes affected all claims for compensation, e.g.

- Accidents to staff at work
- Accidents to patients/public
- Clinical negligence
- Road traffic collisions
- Any claim where it is alleged that NWAS is in breach of contract, statutory duty or guilty of some other civil wrong which gives rise to an action for damages or an injunction or other civil remedy.

This policy has been drawn up in line with guidance from the Department of Health.



This Trust recognises the need to ensure appropriate handling of claims, as they occur and the importance of taking action to recognise such claims through sound risk management. It accords with the requirements of the NHS Litigation Authority guidance and schemes.

The NHS Litigation Authority administers the Risk Management Standards for the provision of Pre-Hospital Care in the Ambulance Service. This includes the liability to third parties scheme and the property expenses scheme. The details of which are available from the NHSLA, www.nhsla.com

Definitions

- **Claim** – Allegations of negligence and demand for compensation made following an adverse clinical/non clinical incident resulting in personal injury and or damage to property or any incident which carries significant litigation risk to the Trust
- **Clinical Negligence Scheme for Trusts (CNST)** – covers all clinical negligence claims against member NHS bodies where the incident in question took place on or after 1 April 1995. Incidents before this date are covered by the Existing Liabilities Scheme (ELS)
- **Liabilities to Third Parties Scheme (LTPS)** – covers employers liability claims for injuries sustained in the workplace, public liability claims for personal injury sustained as a result of alleged negligence by Trust employees, product liability claims and cover for professional negligence by employees and liabilities of directors.
- **Property Expenses Scheme (PES)** – covers accidental loss of, destruction of or damage to any property owned by or the responsibility of the Trust.

2. Responsibilities

The Board

The Board is responsible for ensuring Trust processes and procedures are sufficiently robust to protect the Trust from claims.

The Board shall receive reports on a regular basis on all aspects of claims management and will support all appropriate recommendations arising from claims.

Executive Directors

NWAS Claims Policy

Author: Healthcare Governance
Date of Approval: 26th September 2007
Date of Issue: 1st October 2007

Page:
Version:
Status:
Date of Review:

Page 5 of 15
1
Trust Board Approved
Within Six Months



The Chief Executive has ultimate responsibility for clinical negligence and personal injury claims made against the Trust.

Specific responsibility for management of claims made against the Trust lies with the *Legal Services Coordinator*.

Legal Services Coordinator

The *Legal Services Coordinator* has the responsibility for:

- The management of processing claims
- Notifying the financial controller of claims that may result in a financial liability
- Ensuring procedures are in place to ensure the Trust responds to any litigation issues
- Ensuring that effective working relationships are in place with the NHS Litigation Authority and the Trust's motor insurers.
- ensuring the Trust takes proper account of the lessons learnt from such claims through the Trust Incident Review Group.
- Ensuring claims are processed effectively.
- Undertaking agreed procedures to do this and working with relevant managers to ensure investigation of claims is undertaken and evidenced and information is gathered to ensure that the claim is managed appropriately.
- ensuring the NHS Litigation Authority and the Trust's motor insurers have the necessary information to reach a mutual decision on liability.
- will have overall responsibility for reporting to the NHSLA and Trust motor insurers and for advising Managers and Executive Directors on claim issues
- ensuring all relevant stakeholders, i.e. SHA / Lead PCT / other Trusts are notified as necessary
- ensuring all documentation relating to claims are kept in a safe and secure environment.
- review new claims received by the Trust and ensure the instigation of the investigation process of each claim by the relevant manager.
- ensuring claims are risk assessed on receipt and recorded.
- Receiving outcomes of investigations to enable the decision on liability to be reached in conjunction with the NHSLA.
- reviewing the Trust's position with regard to claims received and make recommendations for their management to the NHS Litigation Authority and Motor Insurers.
- undertaking a review of completed claims to ensure lessons are learnt and make recommendations on steps to prevent reoccurrence to relevant managers.
- monitoring the status of all claims ongoing within the Trust and ensure



- appropriate action is being taken.
- making recommendations to the Executive Team with regard to the risks to the Trust from claims received.
 - Ensure that the procedure for approval of claim payments in line with the Trust's Scheme of Delegation is followed.
 - recommending potential training interventions as the result of a claims review.
 - Continually reviewing policy and procedural arrangements for claims management, ensuring they meet the appropriate risk management standards.
 - monitoring the implementation of recommendations and report to the Risk Management Sub Committee when actions are completed or provide a report when recommendations have not been implemented.

All Managers' responsibilities

- Report and investigate **all** complaints / incidents **likely** to give rise to claims in accordance with the Incident Reporting and Investigation Policy.
- Work in conjunction with appropriate managers and Healthcare Governance Department as appropriate.
- Inform the *Risk and Safety Manager* so that risks can be included on the Area Risk Register and where necessary the Risk and Safety Manager will refer to the Trust Risk Register.
- Retain all evidence
- Pass on any Pre-Action Protocol letters, letters of claim, Court Proceedings and all other related correspondence from third parties unanswered to the *Legal Services Coordinator at Headquarters* **IMMEDIATELY by fax and then post.**

If the Protocol time scale is not met, cost penalties will be attached and unnecessary litigation may result. The Trust has 14 days from the date of service in which to lodge an acknowledgement with the court. Should the Trust not comply with this timescale, the claimant has the right to request a judgement in default (Court ruling) against the Trust in respect of the whole claim regardless of the evidence for failure to comply with court proceedings.

4. Management of Claims

NWAS Claims Policy

Author: Healthcare Governance
Date of Approval: 26th September 2007
Date of Issue: 1st October 2007

Page:
Version:
Status:
Date of Review:

Page 7 of 15
1
Trust Board Approved
Within Six Months



Type of Claims

The details of the Claim are forwarded to the Trust's insurers with an accompanying letter requesting that they deal with this matter on the

Trust's behalf: -

A) **Claims from Third Parties involved in an accident with a NWAS vehicle**

To the motor insurers as a motor claim.

B) **Claims from a NWAS employee or agent of the Trust following an accident while acting on behalf of the Trust**

To the NHS Litigation Authority as an employer's liability claim (under the Liability to Third Parties Scheme).

A completed LTPS form should also be forwarded to the NHS Litigation Authority

If, however, the accident occurred on a NWAS vehicle, the following should apply: -

- if the Claimant was the attendant – forward to the motor insurers as a motor claim
- if the Claimant was the driver forward to the NHS Litigation Authority as an employer's liability claim.
- It should be noted that an accident need not necessarily involved a road traffic collision. An injury could be sustained during patient handling taking place inside the ambulance.

C) **Claims from a patient following injuries sustained whilst in our care**

This would be deemed to be clinical negligence and should be forwarded to the NHS Litigation Authority (under the Clinical Negligence Scheme for Trusts).

A completed CNST claim report form should also be forwarded to the NHS Litigation Authority.

If the injuries were sustained as the result of an RTC involving a NWAS vehicle, then this will be forwarded to the motor insurers as a motor claim.

D) **Claims from a member of the public or contractor following an accident on**

NWAS Claims Policy

Author: Healthcare Governance
Date of Approval: 26th September 2007
Date of Issue: 1st October 2007

Page:
Version:
Status:
Date of Review:

Page 8 of 15
1
Trust Board Approved
Within Six Months



Trust premises

Managed under the Public Liability Scheme under the liabilities for third parties scheme. Claims to be referred to the NHS Litigation Authority with relevant copy documentation and a completed LTPS Report Form.

E) **Claims for Damage/Loss to Trust premises and contents**

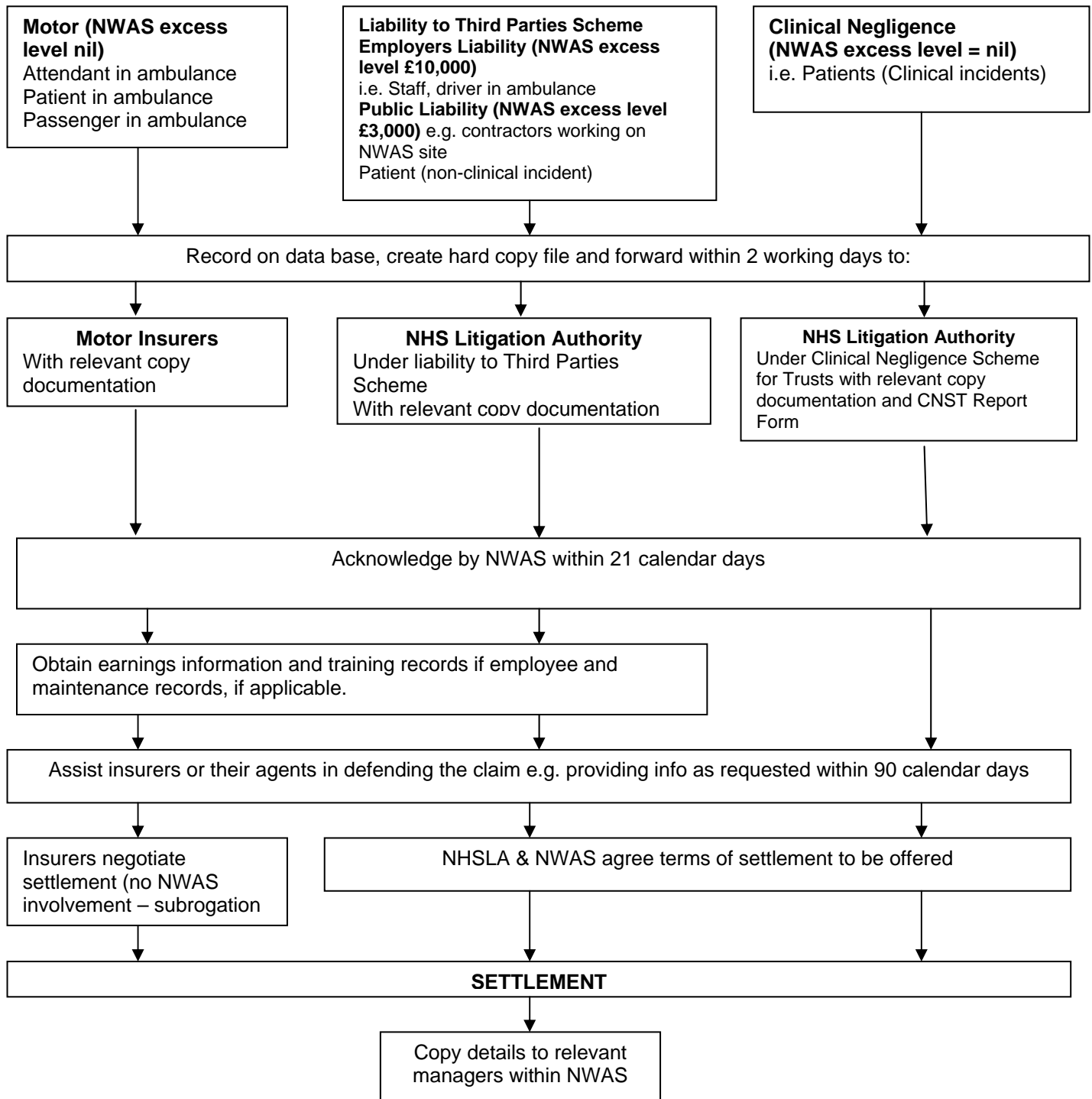
Managed under the Property Expenses Scheme. Claims over the excess of £20,000 (buildings) and £20,000 (contents) to be referred to the NHS Litigation Authority with relevant copy documentation and a completed NHSLA report form.

F) **Claims for Clinical Negligence - Reporting Requirements**

- Requests for disclosure of medical records to be processed within 40 days;
- Check that sufficient initial information has been provided by patient or adviser and request more if necessary;
- Collect, retain, paginate and index relevant records;
- Undertake preliminary analysis;
- Have system in place for identifying adverse incidents, significant litigation risks etc;
- Report relevant cases to the NHSLA within 2 months of request for records or sooner **if event is serious**;
- All letters of claim and Part 36 offers to be notified to the NHSLA immediately;
- Acknowledge letters of claim within 14 days;
- Detailed response due within 3 months;
- All legal proceedings to be notified immediately.



Procedure for the management of claims (in line with NHSLA guidance)





5. Pre-Action Protocol

The parties to a claim for personal injury must follow the appropriate **PRE-ACTION PROTOCOLS**. The purpose of the protocol is to ensure greater pre-action communication between the parties by establishing a timetable for the exchange of information relevant to the dispute and by setting standards for the content of correspondence.

The protocol provides opportunities for improved communication and the supply of information between parties with a view to leading to pre-action settlements. Therefore, the procedures put in place a pre-litigation stage through which **all** cases of employers, public and motor liability together with medical negligence claims must pass.

Receipt of Claims

Letter of Claim

Claimant's solicitors must let defendants have certain minimum levels of information in a formal letter of claim. The letter of claim sent by the Claimant's solicitor should provide certain minimum levels of information as set out within Annex A of the Pre-Action Protocol. The intention is that it allows the Trust to:

- Identify the most important avenues of enquiry
- Understand the basis of the claim being made
- Make a broad assessment of the value of the claim

Letters of Claim received at NWAS sites should be sent by fax and post, unanswered to Ambulance Headquarters for the attention of the *Legal Services Coordinator* immediately to ensure appropriate time scales are met.

Acknowledgment of Letter of Claim

There is a requirement to acknowledge the Letter of Claim within 21 days of it being posted by the solicitor. Failure to do so can result in the solicitor issuing proceedings.

Thereafter, the Trust's appointed legal advisers have 3 months in which to carry out liability investigations and convey a decision on liability. If liability is disputed, the reason for any repudiation has to be explained and supporting documentation provided.

The rules require that parties attempt to reach agreement on the choice of mutually agreeable experts thus reducing the number and costs of reports.



6. Investigation of a Claim

Most claims arise from incidents which have been reported under the Incident Reporting and Investigation Policy. It is essential that there is a joint approach to the collation of information for response to claims by the relevant Risk and Safety Manager/Clinical Governance and Safety Manager and the *Legal Services Coordinator*, in order to obtain documentary and witness evidence from the original incident investigation.

On receipt of information, consider further action as follows:

- No further action necessary, satisfied that corrective action has been taken to prevent a recurrence.
- Initiate the complaints procedure
- Discuss with clinical staff and patient to ensure patient is fully aware of incident/action etc
- Implement an incident review in line with the Incident Reporting and Investigation Policy
- Take advice from Trust's solicitors
- Notify insurers/NHSLA if property or liability involved
- Involve *Risk and Safety Manager* to ensure records relating to RIDDOR reports, investigation reports are made available.

The *Assistant Director, Healthcare Governance* should be informed of all claims relating to clinical negligence, and will ensure the Medical Director is made aware of these claims. Consideration for advice and support from the *Assistant Director, Healthcare Governance* and Medical Director should be given by the Investigation Officer.

7. Request for Records and Untoward Incidents Reports

On receipt of a request for health records, a basic investigation will be instigated to establish evidence of:

- An adverse outcome/serious untoward incident
- A verbal or written complaint made by the patient

The investigation of any claim will follow the principles detailed in the Incident Reporting and Investigation Policy and should only be undertaken by Managers who have completed either the Incident Investigation or Root Cause Analysis training courses.

Where a request for access to records is made by a solicitor acting for a third party, or the event of one of the above occurring, the following action will be taken, as appropriate:

NWAS Claims Policy

Author: Healthcare Governance
Date of Approval: 26th September 2007
Date of Issue: 1st October 2007

Page:
Version:
Status:
Date of Review:

Page 12 of 15
1
Trust Board Approved
Within Six Months



- Obtain patient Form of Authority
- Obtain relevant records of the incident
- Request statements from staff involved
- Forward all disclosable records to claimant's solicitor

8. External agencies

During the management and investigation of the claim, consideration for the use of external agencies and experts should be given by the Legal Services Coordinator. This can be at the request of the investigating manager or the Healthcare Governance Department and is intended to ensure a full and comprehensive investigation and management of issues is undertaken. This may relate to clinical expertise, use or testing of equipment or specialist technical advice or the need to eliminate bias as part of an investigation. The Legal Services Coordinator shall liaise as necessary with the Assistant Director of Healthcare Governance to facilitate the use of external agencies. Any costs, which may be incurred, need to be approved in accordance with the scheme of delegation.

9. Communicating the Decision on Liability

The Trust's decision on liability must be communicated within 3 months of the acknowledgement of the Letter of Claim and will be:

- An admission of liability
- A partial admission of liability
- A full repudiation

On either of the second two, the Trust will also need to provide documentation to support its case.

The Trust's insurers make the initial decision on liability and inform the Legal Services Coordinator. In some cases, discussion will be required between the insurers and the Trust to reach the final decision on liability.

Trust excess levels

- Public Liability has an excess of £3,000
- Employer's Liability has an excess of £10,000
- Buildings has an excess of £20,000
- Contents has an excess of £20,000



(From **1st April 2007** the multiple Delegated Limits that decide the PES Limit of Cover will be abolished and one single Limit of Cover of **£1,000,000** will apply for all Members.

The Buildings excess level will remain at £20,000, but the multiple Contents excesses will be streamlined to reflect the single Limit of Cover and a single Contents excess of £20,000 will apply for all Members.)

These adjustments will apply to claims where the incident is on or after 1st April 2007. (NHSLA Payments under the liabilities to Third Parties Scheme. March 2007

The Trust's Financial Controller will monitor the provision that has been or needs to be made for claims and will liaise with the Trust's Director of Finance.

When a decision is made on liability the Risk & Safety Manager should be informed so that the Trust Risk Register can be amended to include new information such as liability limits, new risks identified etc.

10. Information requirements

It is essential that information is retained on all incidents and claims, and kept in a secure, well documented manner. This information will include for example: -

- Copy of Incident/Road Traffic Incident report form
- Witness Statements
- Health & Safety Practitioner's report
- HSE documents
- Photos / sketches or plans
- Videos taken by NWAS or obtained from other sources (must be clearly identifiable). Any surveillance undertaken requires the permission of the Chief Executive.
- A copy of appropriate risk assessments completed before the incident and details of changes made after the incident
- Post incident investigation report detailing all recommendations made
- Details of the implementation of those recommendations
- Earnings information

The *Legal Services Coordinator* has responsibility for ensuring all information relating to claims is retained appropriately.

Full guidance on information requirements is available in the Incident Reporting and Investigation Policy.



11. Reporting arrangements and lessons learned

The Trust and Area Incident Review Groups will have the responsibility of identifying any further actions as a result of claims against the Trust which have not previously undertaken. The Legal Services Coordinator remains responsible for the reporting of claims information Area/Trust Incident Review Groups.

The Trust's Incident Review Group will provide regular reports to the Trust Board and Risk Management Sub-Committee. The Area Incident Review Group will identify trends and emerging patterns as a result of claim issues, and identify risk management issues.

Lessons identified from claims issues will be addressed through the Area Incident Review Group, and actioned appropriately.

Information relating to personal identifiable information or details regarding specific claims are exempt from disclosure under the Freedom of Information Act.

12. Review

This Policy will be reviewed annually or earlier if national guidance or policy requires it, the next review process will commence in March 2008.

This policy will be reviewed by:

1. The Trust Board
2. The Executive Management Team
3. Area Management Team(s) and Business Groups
4. Health, Safety and Security Sub Committee
5. Risk Management Sub Committee
6. Clinical Governance and Safety Sub Committee