

Livewell Southwest

**Disclosure of Health Records, Giving Statements,
Reports and Inquest and Court Proceedings
Policy**

Version No.2

Review: May 2019

Notice to staff using a paper copy of this guidance

The policies and procedures page of LSW intranet holds the most recent version of this document and staff must ensure that they are using the most recent guidance.

Author: Information Governance, Records, Policies and Data Protection Lead

Asset Number: 525

Reader Information

Title	Disclosure of Health Records, Giving Statements, Reports and Inquest and Court Proceedings Policy. V.2
Asset number	525
Rights of access	Public
Type of paper	Policy, procedures, guides, flowcharts and forms for the disclosure of health related records
Category	Non clinical
Document purpose/summary	<p>Staff and Interested Others This document describes the procedure to be followed by all Livewell Southwest staff upon receipt of a request for release of health records, statements, reports, and Coroner and Court Proceedings.</p> <p>General Public Appendices A, B, D and E will be of particular interest to the public. They include public advice and the forms needed to make a request for records.</p> <p>Third Party Requests This policy explains the process for external organisations to follow including the Police, Coroner, Social Services, CICA, Solicitors, Insurance Companies and Government Departments.</p>
Author	Information Governance Lead
Ratification date and group	9 th May 2016
Publication date	12 th May 2016
Review date and frequency (one, two or three years based on risk assessment)	3 years after publication, or earlier if there is a change in evidence.
Disposal date	The PRG will retain an e-signed copy for the archive in accordance with the Retention and Disposal Schedule, all copies must be destroyed when replaced by a new version or withdrawn from circulation.
Job title	Head of Corporate Risk and Compliance and Data Protection Officer
Target audience	All staff employed by Livewell Southwest, general public and third party requestors
Circulation	<p>Electronic: LSW Intranet and LSW website</p> <p>Written: Upon request to the Policy Ratification Secretary on ☎ 01752 435104.</p>

	Please note if this document is needed in other formats or languages please ask the document author to arrange this.
Consultation process	Prepared in discussion with Risk Team, Child Protection Team, Safeguarding Adults Team, Caldicott Guardian, Mental Health Act Officer, Complaints & Litigation Manager, Workforce Development, Bevan Brittan Legal Team.
Equality analysis checklist completed	Yes
References/Source	<ul style="list-style-type: none"> • Data Protection Act 1998 • Access to Health Records 1990 • Department of Health: Guidance for Access to Health Records Requests under the Data Protection Act Version 2 - 2003 • Department of Health: Record Management Code of Practice • Freedom of Information – Codes of Practice reissued July 2009 • Plymouth Records Office and National Archive websites • Freedom of Information Act and policies • Police and Criminal Evidence Act 1984 • Crime and Disorder Act 1998 • Children Act 1989
Associated documentation	<ul style="list-style-type: none"> • Risk Management Strategy • Incident Reporting and Investigation Policy • Information Technology Security Policy • Information Governance Policy • All clinical policies • Clinical Record & Note Keeping Policy • Complaints (Handling and Resolution of) Policy • Serious Incidents Requiring Investigation (SIRI) Policy <p>This list is not exhaustive; please refer to the policies listed on Intranet</p>
Supersedes document	Disclosure of Health Records, Giving Statements, Reports and Inquest and Court Proceedings Policy V.1.1
Author contact details	By post: Local Care Centre Mount Gould Hospital, 200 Mount Gould Road, Plymouth, Devon. PL4 7PY. Tel: 0845 155 8085, Fax: 01752 272522 (LCC Reception).

Document review history

Version no.	Type of change	Date	Originator of change	Description of change
0.1	New policy	Feb 2012	Health, Safety and Security Management Advisor	New document – an amalgamation of two previously approved documents, together with update in legislation and conformity to corporate standards.
1	Ratified	May 2013	Policy Ratification Group	Ratified.
1.1	Extended	May 2015	Risk Management Advisor	Extended no changes
2	Reviewed	April 2016	Head of Corporate Risk and Compliance IG Lead	Reviewed to update to Livewell Southwest Updated reference to Health & Corporate Records Policy Updated location of Data Protection Service

Contents		Page No
1	Introduction	7
2	Purpose	7
3	Duties	8
4	Definitions	9
5	Right of Access	11
6	Providing Access	12
7	Informal Access	13
8	Formal Access	13
9	Access Limitations	13
10	Charging Arrangements	14
11	Mental Health Act 1983	15
12	Criminal Proceedings and Police Interviews following an Incident (Contemporaneous Witness Interviews and Statements)	15
13	Flow Chart – Request for Staff Appearance from Coroner or Court	17
14	Flow Chart – Request for Report or Statement from Coroner, Police, CPS, CICA, Insurance Companies or Solicitors for criminal or civil proceedings	18
15	Civil Proceedings	18
16	Coroners Proceedings	19
17	Employment Tribunals	21
18	Children’s Proceedings	21
19	Safeguarding Adults	22
20	Internal Investigations – SIRI, Security & Fraud and Complaints	22
21	Support for Staff	23

22	Monitoring Compliance and Effectiveness	23
Appendix A	Procedure for Formal Request for Health Records	25
Appendix B	Access to Health Records – Information for Applicants	26
Appendix C	Access to Health Records – Information for Staff	29
Appendix D	DPA 1998 – Subject Access Request Form (about a living person)	31
Appendix E	Access to Health Records Act 1990 - Subject Access Request Form (about a deceased person)	36
Appendix F	Requests for Personal Information Not Held in Patient’s Health Records	40
Appendix G	Preparing Statements and Reports Guidance and Template	41
Appendix H	Coroner’s Inquest Risk Assessment Form (for use by Risk Management Team)	46
Appendix I	Appearing in a Civil Court	47
Appendix J	Appearing in a Criminal Court	49

Disclosure of Health Records, Giving Statements, Reports and Inquest and Court Proceedings Policy

1 Introduction

- 1.1 This policy relates to all requests for health records, statements and reports related to patients of Livewell Southwest (hereafter referred to as “LSW”). This policy also relates to requests for appearance by staff at Coroner’s Inquests and Court Proceedings. The Data Protection Act 1998 supersedes the Access to Health Records Act 1990 and applies to both manual and electronically held personal data in respect of a living individual.
- 1.2 This policy supports the process of risk management across LSW by providing guidance for staff who are involved in litigation processes. The policy identifies managerial and clinical leadership, accountability systems and working practices to enable probity, quality assurance, quality improvement and patient safety.
- 1.3 Requests for records, statements and reports can come from the following individual/organisations, but is not limited to these:
 - Patient/Relative/Person with Lasting Power of Attorney
 - Solicitor acting for LSW or patient
 - Police
 - Coroner
 - CPS (Crown Prosecution Service)
 - Insurance Company
 - CICA (Criminal Injuries Compensation Authority)
 - Government Agency
 - LSW Managers/Workforce Development conducting investigations
 - Representative from the Care Quality Commission
 - Advocacy
 - Mental Health Tribunal
 - Any doctor or approved clinician acting on behalf of a nearest relative
 - Secretary of State
- 1.4 Any health records relating to a deceased person is still subject to the provision of the Access to Health Records Act 1990.
- 1.5 This policy does not directly relate to the release of records for the Safeguarding Children Team - please see Section 18.

2 Purpose

- 2.1 The policy describes the mechanisms, process and charges for obtaining health records, statements and reports.
- 2.2 The policy provides process and guidance for staff who are requested to attend coroner’s inquests or Court Proceedings.

3 Duties

- 3.1 The **Chief Executive** has overall responsibility for the maintenance of the policy and its procedures in support of the law.
- 3.2 The **Caldicott Guardian** has the responsibility for ensuring that LSW adheres to the Caldicott Principles, maintaining the confidentiality of any information owned and disclosed by LSW. The Caldicott Guardian also has the responsibility to inform the Data Commissioner of any breach of the Data Protection Act.
- 3.3 The **Risk Management Team** in addition to the **Data Protection Officers (DPO)** are responsible for:
- a) Logging all requests for health records, statements, reports and requests for appearance at Coroner's and Court Proceedings;
 - b) Supporting and advising staff, in addition to the member of staff's line manager, in the preparation and content of requested statement / report, which may include the disclosure of patient information;
 - c) Supporting staff when requested to attend Coroner's inquest / Court Proceedings, which may include involving LSW's solicitors and may involve the disclosure of patient information;
 - d) Involving the DPO to ensure the correct legal processes are followed for any request, which involves disclosure of patient information in accordance with the Data Protection Act;
 - e) Ensuring that all staff are aware of the process for disclosure of health records, statements, reports, Coroner and Court Proceedings;
 - f) Informing the Communications Manager at an early stage if there is a potential for media interest.
- 3.3 The **Data Protection Officers** are responsible for:
- a) Managing the day-to-day requests for disclosure of health records under the Data Protection Act 1998/Access to Health Records Act 1990;
 - b) Checking all requests and ensuring that appropriate consent has been provided before disclosure is made;
 - c) Provide advice and assistance to staff, in carrying out their duties in relation to the Data Protection Act / Access to Health Records Act;
 - d) Provide advice to members of the public in support in relation to requests made under the Data Protection Act / Access to Health Records Act;
 - e) Liaising with third parties requesting the disclosure of health records owned by LSW;

- f) Providing evidence to assure the LSW Board that DPA requirements have been upheld.

3.4 **All Staff** are responsible for:

- a) Advising the Coroner's Office (or Police if death occurs outside normal working hours) of a patient death in hospital where there is some doubt as to the cause of death; the death was sudden or unexpected; there were suspicious circumstances or a doctor has not seen the deceased recently enough to certify the cause of death;
- b) Informing the Risk Management Team of any report made to the Coroner or Police;
- c) Forwarding any request for statement, report or request for appearance at Coroner or Court Proceedings to Risk Management Team;
- d) Complying with the Health & Corporate Records Policy ensuring that information can be accessed in line with the requirements of the Data Protection Act and Schedule 1 of the Police and Criminal Evidence Act 1984;
- e) Responding to any request from the DPO or Risk Management Team in a timely manner.

3.5 **Managers** are responsible for:

- a) Informing Risk Management Team as soon as possible if a member of staff is summoned by the Coroner, Police or CPS;
- b) Supporting their staff through any Coroner or Court Proceedings;
- c) Ensuring that any requests for disclosure of health records, statements, reports are forwarded to the DPO.

4 Definitions

4.1 **Access to Health Records Act 1990** - This Act of Parliament governs the principles and arrangements required for the maintenance and appropriate disclosure of personal information about deceased patient health records.

4.2 **Appointee/Personal Representative** - An appointee / personal representative is a person or organisation entrusted with managing the daily finances of vulnerable individuals in the UK.

4.3 **Appropriate access and legal right of access to records** – A patient or a person with the appropriate permissions may not be entitled to see all of the information held in the health record(s), examples include:

- a) Third party information;
- b) Information the consultant feels will have a significant detrimental effect on either the patient's mental health and safety or that of others.

4.3.1 In all ways, we always seek to protect the patient's best interests, however, if a patient is unhappy with any decisions made, the patient has the option of requesting the Information Commissioner Office to look into the matter.

4.4 **Court of Protection Powers** - The Court of Protection has the powers to:

- a) Decide whether a person has capacity to make a particular decision for themselves;
- b) Make declarations, decisions or orders on financial or welfare matters affecting people who lack capacity to make such decisions;
- c) Appoint deputies to make decisions for people lacking capacity to make those decisions;
- d) Decide whether a Lasting Power of Attorney (LPA) or Enduring Power of Attorney (EPA) is valid;
- e) Remove deputies or attorneys who fail to carry out their duties;
- f) Hear cases concerning objections to register an LPA or EPA and make decisions about whether or not an LPA or EPA is valid.

4.5 **Data Protection Act 1998 (DPA)** - This Act of Parliament governs the principles and arrangements required for the maintenance and appropriate disclosure of personal information.

4.6 **Lasting Power of Attorney**

4.6.1 Health records are confidential, and members of the patient's family are not allowed to see them, unless the patient provides written permission, or they have the appropriate power of attorney.

4.6.2 A lasting power of attorney is a legal document that permits the appointment of someone to make decisions for specific patients, should that patient become incapable of making decisions themselves. The person appointed is known as the "Attorney". An Attorney can make decisions about the patient's finances, property, and welfare. It is very important that the patient trusts the person appointed as their Attorney, so that they do not abuse their responsibility. A legal power of attorney must be registered with the Office of the Public Guardian before it can be used. Refer to the Mental Capacity Act Code of Practice Chapter 7 for further information.

4.6.3 If a request is received to view the health records of someone who has died, the individual will be required to apply under the Access to Health Records Act 1990. Under this Act the individual is only permitted to apply for the records of a deceased person if they:

- a) Are their personal representative - this can be substantiated by production of a Grant of Probate or Letters of Administration issued by the Probate Registry;

- b) Are their Executor (the person named in a will who is in charge of dealing with the property and finances of the deceased person);
- c) Are their Personal Administrator;
- d) Have a claim arising from their death.

4.6.4 To access the records of a deceased person, an individual must go through the same process as a living patient.

4.7 **Prosecution Service** – The Crown Prosecution Service (CPS) was set up in 1986 to prosecute criminal cases investigated by the police in England and Wales. In undertaking this role, the CPS:

- a) Advises the police on cases for possible prosecution;
- b) Reviews cases submitted by the police for prosecution;
- c) Where the decision is to prosecute, determines the charge in all but minor cases;
- d) Prepares cases for court;
- e) Presents those cases at court.

4.8 **Third Party** - A generic legal term for any individual who does not have a direct connection with a legal transaction, but who might be affected by it.

4.9 **Witness Summons** - A witness summons is a document that is presented to the LSW by a Court that makes clear that it requires a witness to:

- a) Attend court to give evidence;
- b) Produce documents to the court;
- c) Both; on either a date and time fixed for the hearing or such date as the court may direct.

4.10 **Statement / Report** – A declaration (written or oral) providing an account of events, facts, etc, signed and dated by the individual providing the account. Its purpose is to provide evidence which may be used in Coroner / Court Proceedings.

4.11 **Inquests** – A legal enquiry into the cause of sudden, violent or unexplained death.

5 Right of Access

5.1 The right of access to data is principally for the data subject. He/she may also authorise another person to make an application on his or her behalf (i.e. a relative or solicitor). Any application to disclose confidential information to a third party must

be accompanied by written authorisation. The DPO will ensure that appropriate written authorisation has been received before forwarding to the appropriate health professional to gain their consent to release (this process may involve contacting the health professional to check whether the patient has the capacity to consent).

- 5.2 There are circumstances where information can be disclosed without consent.
- a) Children's Act 1989;
 - b) Crime and Disorder Act;
 - c) Coroner;
 - d) Risk to public.
- 5.3 Where a child is aged above eight and capable of understanding and consenting then their personal consent is required for the disclosure of Health Records.
- 5.4 For former patients living outside the UK and who once had treatment during their stay here, under the Data Protection Act 1998 they still have the same rights to apply for access to their UK health records. Such a request should be dealt with as someone making an access request from within the UK.
- 5.5 Where a patient / client is incapable of managing their affairs, and the Court has appointed the applicant, it may be appropriate for the records to be disclosed. However, an applicant with Power of Attorney or Lasting Power of Attorney does not have an automatic right to request access to a person's confidential record. Refer to Mental Capacity Act Chapter 16 for further guidance.
- 5.6 Similarly, where a person has died, the Personal Representative and any person who may have a claim arising out of a person's death, has a legal right of access to the "relevant" part of the deceased's record.
- 5.7 Access by any person other than the patient / client can be denied if the holder of the record were of the opinion that the information was provided in the expectation that it would not be disclosed to the applicant.

6 Providing Access

- 6.1 Under the Data Protection Act and Access to Health Records Act, records are normally provided within 21 days of payment being received.
- 6.2 There are occasions where processing a request may take up to 40 days or more, these include complex requests, requests involving numerous volumes or where additional time is required by the appropriate health professional to consider the disclosure.

7 Informal Access

- 7.1 Any person currently receiving care can informally request access to view their records. The health professional responsible must check through the records in line with the criteria for Access Limitations (see Section 9) before providing access.
- 7.2 A suitably convenient date, time and place must be arranged for the applicant to view their records and they can choose to be accompanied by a friend or advocate during this process. In addition, a member of staff must be nominated to accompany the applicant during the disclosure to ensure the security of the records and assist with any basic questions of interpretation. Questions that are more complex should be referred back to the author of the record for a response within a reasonable time scale.
- 7.3 The applicant is entitled to an explanation of any terms, which he / she does not understand.
- 7.4 Note taking and copying is **strictly prohibited**.

8 Formal Access

- 8.1 All formal requests for access will be administered centrally by the DPO and a record of the application will be held for a defined period, in the case of LSW that period is ten years.
- 8.2 Applications from persons who are currently not receiving care or by a third party acting on their behalf must be sent to the Data Protection Office, Hatfield House.
- 8.3 Any application by a third party must be accompanied by the patient's written authority.
- 8.4 See Appendix F – Access to Health Records – Information for Applicants.

9 Access Limitations

- 9.1 This section is crucial to the disclosure of any health record to an applicant under the Data Protection Act and **must** be adhered to in all cases. LSW staff are individually responsible for any breach of confidentiality under the Act (i.e. disclosure of third party information).
- 9.2 Under the Act, the applicant will be entitled to inspect, or be supplied with an extract rather than the whole record where the following conditions apply:
 - a) Where, in the opinion of the holder of the record, giving access would disclose information likely to cause serious harm to the physical or mental health of the patient / client or any other individual.
 - b) Where, in the opinion of the holder of the record, disclosure of information relating to or provided by an individual other than the patient / client who would be identified from that information.

10 Charging Arrangements

- 10.1 Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, a patient / third party can be charged up to a maximum of £50 to receive a copy of health records (see 10.5 – Charging Schedule below). All payments must be made via the DPO.
- 10.2 Statements and reports will be charged in line with the clinical time taken to complete and any applicable administration fees. All payments must be made via the DPO.
- 10.3 Where a request for a specialist report (i.e. Expert Witness Report) is made to a Consultant or other Specialist Healthcare Professional, a private fee can be charged where the data subject is **not** under the care of LSW. For private work of this type, any reports **must** be compiled in the professional's private time, not using LSW resources (including administration time). **The professional must ensure that they have appropriate personal insurance in order to cover them for private work of this type as LSW Liability Insurances will not cover them.**
- 10.4 Private fees **must** not be collected for reports requested for patients under the care of LSW.
- 10.5 Charging Schedule:

Type: Record	Charge	Rationale
Paper records	£50	Legally set limit
Copy of electronic record – any number of pages	£10	Legally set limit

Type: Record	Volume	Charge	Rationale
Access to view records in their current location (reasonable requests normally up to one hour)	One hour's supervised access	No charge	
Records amended or added to in the 40 days preceding the date the request was received.	Not applicable	No charge	
Agencies excluded from charging including: War Pensions, Department of Work and Pensions (DWP), Court Order, Coroner's Request.	Not applicable	No charge	Limitation applies
Record requests in	Not applicable	No charge	In support of a

compliance with
Sections 10 and 11 of
the Children Act
Reduced charges

		child's best interest
1	In those cases where an applicant claims "financial hardship" because of the application fee, the matter should be referred to the Risk Management Team, who will consider a reduced or waived charge.	
2	The decision to either waive or reduce the charge should be based on an assessment of the applicant's financial status. Evidence of this (i.e. a copy of the applicant's Income Support Book) may be required.	
3	Reduced charges will not apply to repeat requests.	

11 Mental Health Act 1983

- 11.1 All requests from solicitors or persons appointed by a patient, requiring access to records to enable them to represent patients at Mental Health Review Tribunals or manager's meeting must be addressed to the Deputy Mental Health Act Manager, Glenbourne. The request must be accompanied with signed consent from the patient and must state whether a third party will also require access to the records (i.e. for an independent medical report). Records are not to be removed or photocopied, but must be viewed on the ward. The Mental Health Act Assistant in the Health Records Department will obtain permission to view the records from the patient's Responsible Clinician and place a copy of the request, consent and permission in the patient's file.
- 11.2 Representatives from the Mental Health Review Tribunal may, under the Tribunal Procedure Rules 2008, request to see records and take such notes and copies as required for use in connection with the application.
- 11.3 Independent Mental Capacity Advocates (IMCAs) or Independent Mental Health Advocate (IMHAs) have legal rights to view some of the clinical records. Refer to the Mental Capacity Act Code of Practice 10.26 and 20.25 for further information.
- 11.4 Access to appropriate clinical records by approved representatives, advocates and solicitors will be managed via the Mental Health Act Administration Office.

12 Criminal Proceedings and Police Interviews Following an Incident (Contemporaneous Witness Interviews and Statements)

- 12.1 Staff are most likely to be asked to provide evidence to the Police following an incident of suspected crime involving a service user, visitor or another member of staff or following a security incident. Police Officers will request statements from

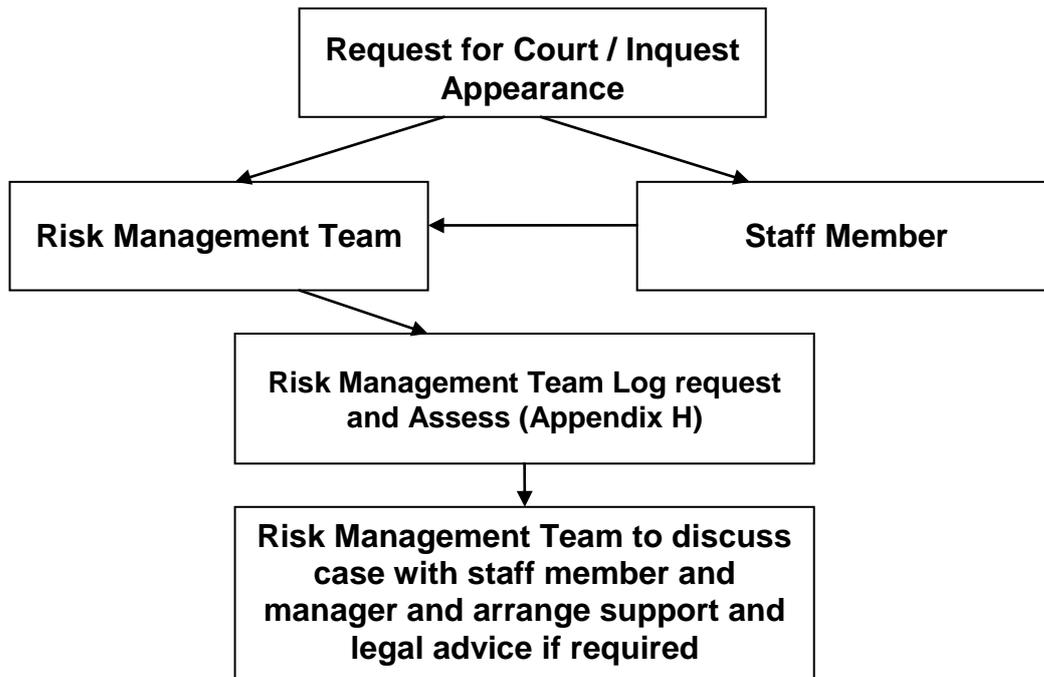
directly involved staff immediately following the incident and evidence is gathered by interviewing the member of staff. This process takes place in order to ascertain whether a person should be charged with an offence or whether a person charged with an offence is guilty of it.

- 12.2 Any interview, which is not held under caution, is classed as informal and can be held at any LSW premises or at a Police Station. It is the understanding that LSW staff will co-operate as fully as possible with such investigations and staff should make themselves available if requested. Staff should notify their Manager and the Risk Management Team (at the earliest opportunity) if they are requested to make a statement.
- 12.3 For informal interviews it is permissible for a colleague to be present for support and depending on the nature of the incident, legal advice should be sought via the Risk Management Team. Each case will be considered on its own merits and following any request the case will be discussed with a Director before legal advice is approved.
- 12.4 If Police request an interview under caution, this amounts to a formal interview and it is imperative that legal advice is obtained from LSW solicitors via the Risk Management Team.
- 12.5 Where staff belong to a Defence Union, Trade Union or a Professional Organisation, they may also want to consult them or obtain their own personal legal representation.
- 12.6 In all cases, it is permissible for staff to be given time to gather their thoughts and therefore defer an interview in order to access relevant information and documentation (such as patient records) or for legal representation to be arranged. Staff should liaise with their Line Manager and the Risk Management Team throughout this process.
- 12.7 The usual procedure for interview and statement writing involves at least one Police Officer having a face-to-face interview with the member of staff. The Police Officer will handwrite a statement on an official MG11 form. This can either be done immediately following the incident or later if the witness is unable to make a statement immediately. When complete, the member of staff will be asked to read, check and make any amendments to their statement. If amendments are made, they should be initialled **before** the staff member is asked to approve the statement and sign the statement of truth at the end of each page. The staff member's manager should attend the interview in all cases.
- 12.8 It is imperative that the member of staff is content that the handwritten statement as transcribed by the Police Officer is a true reflection of what was said in the interview, as this will stand as evidence in any resulting criminal prosecution proceedings. It is also important that only factual evidence is given in these statements (facts that can be evidenced) as the staff member may be challenged on points of fact at a later time.
- 12.9 The Police are often reluctant to permit copies of statements to be kept by witnesses, however, it is permissible to request a copy at the time of signing on the basis that it will be kept confidential.

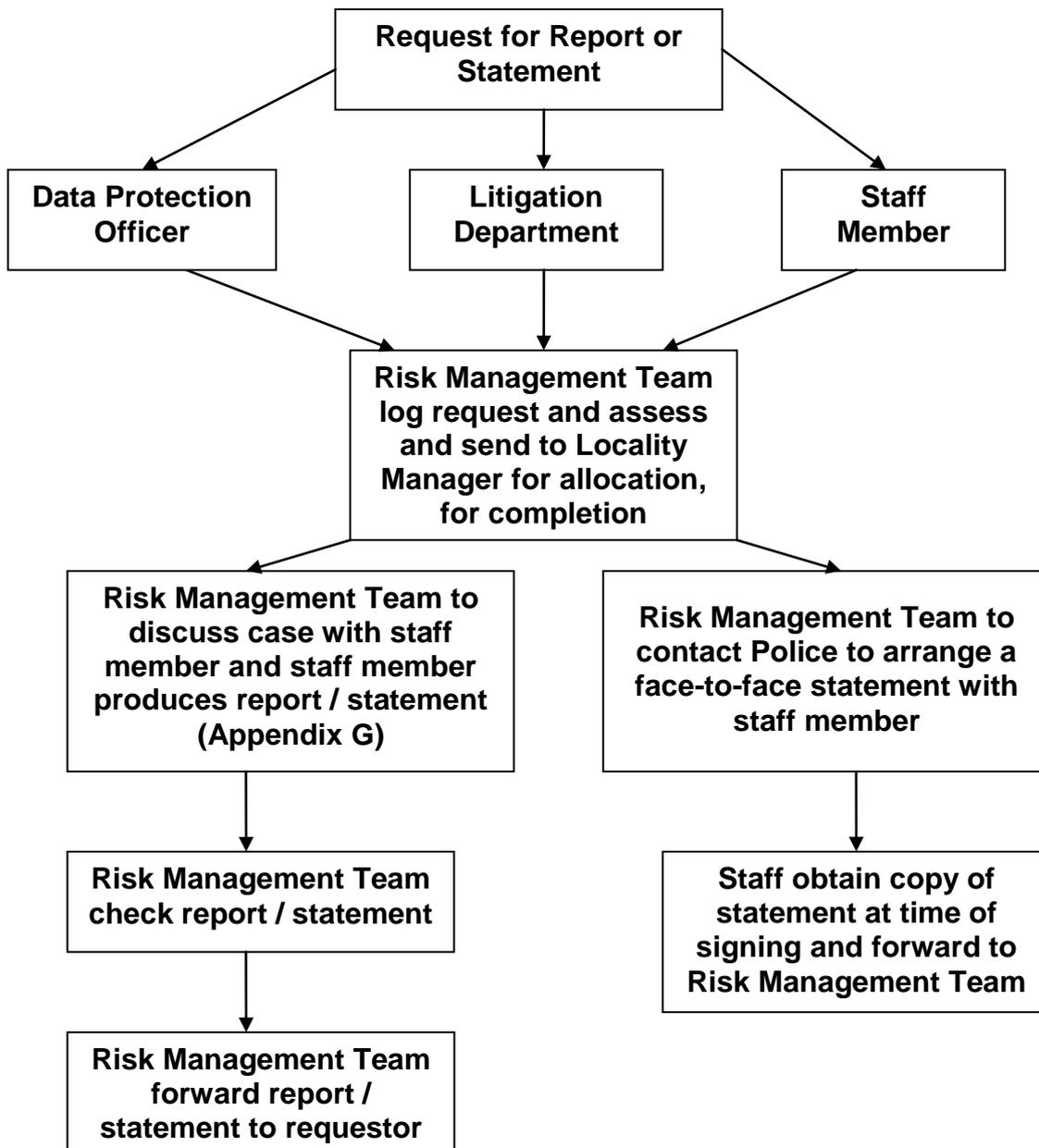
12.10 In child protection cases, the Child Protection Supervisor or Manager will be present and copies of statements obtained. Records may be disclosed as exhibits.

12.11 See Appendix J for guidance about appearing in Criminal Courts.

13 Flow Chart – Request for Staff Appearance from Coroner or Court



14 Flow Chart – Request for Report or Statement from Coroner, Police, CPS, CICA, Insurance Company or Solicitors for Criminal or Civil Proceedings



15 Civil Proceedings

15.1 LSW is vicariously liable for all staff who hold contracts of employment with LSW including locum staff, researchers with honorary contracts, volunteers and students when they are acting in the cause and scope of their employment. LSW is not liable for independent contractors or their employed staff.

15.2 Occasionally staff are contacted directly by a patient’s legal representative to provide a statement or report in connection with litigation against LSW. The Litigation or Risk

Management Team must be informed of any such requests immediately. A decision will then be made whether such a request can be accommodated.

- 15.3 All reference to litigation against LSW should immediately be notified to the Litigation or Risk Management Team, who will ensure that the litigation process is managed appropriately.
- 15.4 See Appendix I for guidance about appearing in Civil Court.

16 Coroners Proceedings

- 16.1 The coronial system is inquisitorial rather than adversarial. The duty of the Coroner is to investigate violent, or unnatural and sudden death of unknown cause and, in certain circumstances, of potential system failures. Many deaths reported to the Coroner will lead to a post mortem, which shows the cause of death as natural. The Coroner will be satisfied and will allow a death certificate to be issued without an inquest. At other times the Coroner may decide it necessary to hold an inquest.
- 16.2 The Coroner may sit alone or with a jury. A jury is mandatory in some circumstances, for example where the death occurred in custody or due to an accident at work or in circumstances thought to be prejudicial to the public health or safety. Members of the jury may question a witness through the Coroner to help clarify any matters they do not understand.
- 16.3 In certain deaths where there is uncertainty as to the cause of death in hospital or in the community, the Coroner may institute enquiries including a post mortem examination and begin by asking the healthcare professional involved for a written account of events. In all cases this should be requested via the Risk Management Team.
- 16.4 An inquest will normally be opened within a few days of the death and then adjourned for further inquiries. This will usually take between three and six months.
- 16.5 If a request for a statement or attendance at the inquest is received directly from the Coroner, the individual must inform the Risk Management Team, so that advice can be sought, where appropriate, from LSW's solicitor before documents are forwarded to the Coroner.
- 16.6 The content of the statement / report should follow the principles as set out in Appendices A & B (Preparing a Statement / Report). Wherever possible, it should only be written after the individual has considered the overall circumstances. In particular, the witness may have regard to the post-mortem report or records which, in most cases, will be made available by the Coroner. It is appropriate for the statement / report to be concluded with a summary, drawing together the various parts of the report and providing a conclusion, which might include an element of opinion.
- 16.7 There is no legal right for a family to see any other reports or statements prepared for a Coroner in advance of the inquest. However, some Coroners will respond

positively to requests for advance disclosure of such documents from families or others, or will provide a summary.

- 16.8 It does not always follow that by providing a statement or report, the staff member will be required to attend the inquest, though this is a matter for the Coroner. In some circumstances, the Coroner will ask the police to investigate the circumstances of the death and members of staff should co-operate in the same way, with appropriate support from line manager and Risk Management Team.
- 16.9 The Coroner may call witnesses or, alternatively, read statements / reports previously submitted. If the family is legally represented, the solicitor acting for the family may also question witnesses.
- 16.10 Every inquest is held in public, which means that any member of the public or press has the right to attend the inquest. Witnesses who are contacted by the press should not comment on issues relating to the deceased. The LSW's Communications Manager will deal with any press enquiries.
- 16.11 Families of the deceased often find the outcome of the inquest upsetting or disappointing, as it may not have answered all their questions or produced a satisfactory verdict. The inquest is the opportunity for the deceased person's family to ask the health care practitioners who provided the medical treatment and care relevant questions about the circumstances of the death. The Coroner will decide who can be called to give evidence at the inquest hearing. LSW's solicitors will give advice on this point during the pre-inquest briefing.
- 16.12 Occasionally, a formal complaint, legal claim or LSW internal investigation may already have been initiated before the inquest is resumed. In these circumstances, it is important that there is close co-operation with the Risk Management Team to ensure a collaborative approach is maintained.
- 16.13 Ordinarily, there will be no need for individual members of staff to be independently represented. However, if there is a conflict of interest between the member of staff and LSW, staff may be asked to obtain their own legal representation for the inquest and should inform the Risk Management Team of such a course of action.
- 16.14 The Coroner's verdict will determine:
- a) Who the deceased was;
 - b) How (i.e. by what means) the deceased died;
 - c) Where and when the person died;
 - d) The verdict will be given. The Coroner's role is not to apportion blame to particular staff.
- 16.15 The European Convention on Human Rights is also relevant to inquests. The Courts have found that the Convention requires an effective official investigation where there could have been a breach of Article 2 - The Right to Life, where the state has a

responsibility over the deceased, such as a patient. Therefore, it is possible for an inquest to offer a verdict of neglect in relation to the system or the care provided.

- 16.16 The Coroner may also offer recommendations to LSW for changes or improvement.
- 16.17 If you are contacted or confronted by the media, make no comment and refer them to the LSW Communications Manager.

17 Employment Tribunals

- 17.1 Employment Tribunals deal with claims concerning dismissal, redundancy, discrimination, pay, and employment contracts. They are legal bodies, which sit in public. A Tribunal consists of a legally qualified chairman and two lay members - one representative of employers and the other representative of employees. Staff may be asked to be witnesses either by LSW or by the member of staff bringing the Tribunal claim. In some circumstances the Tribunal may issue a Witness Order to require an unwilling witness to attend.
- 17.2 Witnesses normally provide a written statement (see Appendix G on Preparing a Statement / Report) in advance and are then available in person to be questioned by both parties and by the Tribunal. For Employment Tribunals where a solicitor is involved to represent LSW, they will usually assist with the preparation of witness statements as instructed by the Workforce Development Director. Witnesses are usually required to give their evidence on oath or affirmation. If you are a witness for LSW, the LSW's advocate (usually a solicitor or Workforce Development Manager) will inform you about the procedure for the employment tribunal.
- 17.3 If you are a witness for the member of staff bringing the claim, their representative (often a Trade Union official) will normally give you this briefing. Witnesses may be called at a preliminary hearing, held to examine a particular issue, as well as at the main hearing.
- 17.4 Many of the issues, which are the subject of Employment Tribunals, will previously have been raised in internal appeals within LSW, generally with the same witnesses providing statements.

18 Children's Proceedings

- 18.1 Children's Proceedings are heard in the Family Division Courts and involve proceedings under public law where local authorities are applying for orders concerning a child (i.e. Care Order). All staff must follow the Family Division Court's protocols / pro-forma and are at all times required to seek the advice and guidance of the Safeguarding Children Team (tel: 01752 435063). Other types of proceeding under law include cases where parents are seeking various orders to decide such matters as residence, or parental responsibility. Those members of staff involved with children and or parents may be asked to provide statements / reports by a local authority, or a parent, or their legal representatives. All requests should be directed to the Safeguarding Children's Team.

- 18.2 Currently all requests from the Children and Family Court Advisory and Support Service (CAFCASS) come via the Safeguarding Children Team with the appropriate consent documentation.
- 18.3 If one parent's solicitor requests information, this must be done with due regard of the best interest of the child and staff are not be seen to be supporting either parent. Requests must be directed to Safeguarding Children Team who can take a view.
- 18.4 It is imperative that all statements, etc, are quality assured with thorough consideration and sent to the Safeguarding Children Team for final checking. Disclosure needs careful management and must be recorded.
- 18.5 Where a parent's legal representatives are contacting members of staff, careful consideration must be given by the Designated Nurse for Safeguarding Children as to whether any statement or report should be provided, and whether legal advice should be sought. Currently all legal requests come via the Safeguarding Children Team.
- 18.6 In Local Authority Court Proceedings, it is rarely inappropriate to provide such a statement. The Local Authority currently send requests for legal statements, etc, to the Safeguarding Children Team, along with witness availability and any request for disclosure statements are prepared with supervisors and checked by the Safeguarding Children Team prior to submitting.
- 18.7 It is likely that these statements will need to be provided quickly to comply with court deadlines to hear cases and should include all relevant input from health professionals.

19 Safeguarding Adults

- 19.1 Before the release of clinical records regarding disclosure of abuse/domestic abuse, the Safeguarding Adults and Domestic Violence Lead will consider the risk and implications of perpetrators being present when records are read.
- 19.2 The DPO will liaise with the Safeguarding Adults and Domestic Violence Lead regarding the management of such requests.

20 Internal Investigations – SIRI, Security & Fraud and Complaints

- 20.1 Individuals may be asked to provide a statement or report and/or attend court as part of a criminal investigation for the Inland Revenue, Local Counter Fraud Specialist, Local Security Management Specialist or other agency. The guidance in Sections 12 and 15 should be referred to in these instances.
- 20.2 Investigating and responding to a complaint can continue while a Coroner conducts an inquest into a death. However, a Coroner may wait for the resolution of all investigations before holding an inquest and may ask for copies of any reports. Refer to Complaints (Handling and Resolution of) Policy for further information. See Appendix G for guidance about preparing reports and statements for this purpose.

20.3 Serious incidents which require investigation (SIRI) are mainly investigated internally and reported to the SIRI Panel which meets on a monthly basis. The reports are derived from investigations which include interviews with professionals, record and information reviews. The reports produced are confidential to LSW however, may be further disclosed to Coroner, Police or Employment Tribunal and patients or their relatives following consultation with solicitors. Refer to the Serious Incidents Requiring Investigation (SIRI) Policy for further information.

21 Support For Staff

21.1 It is recognised that being involved in a serious incident and any subsequent investigations and inquest or court appearance can be very difficult and upsetting for staff. Line Managers / Locality Managers should support their staff in all circumstances and further support may be offered in the form of legal advice and representation if deemed necessary by Risk Management Team and Directors.

21.2 Throughout this process, management, team, union representative and peer support should always be offered. In most cases supervision will meet an individuals needs, however all LSW employees have access to the counselling service provided by PPC Worldwide's Employee Assistance Programme (EAP), which is free and available 24/7, and all LSW employees should be made aware of its existence. The **PPC Worldwide Counselling Service** can be contacted by calling **0800 282 193**.

21.3 Staff can also access counselling through the Staff Health and Wellbeing Service, Derriford Hospital – 0845 155 8200.

22 Monitoring Compliance and Effectiveness

22.1 The monitoring of effectiveness and compliance with specified standards is via the departmental audit and report. Our evidence will support evidence submitted in compliance with the Information Governance Toolkit.

22.2 Following Inquests and attendances at Court, individuals and teams should reflect upon the outcome of the inquest and lessons learned shared amongst peers.

22.3 Line Managers must provide regular monitoring and supervision to ensure that staff are compliant with and supported by the processes detailed within this policy.

22.4 The Risk Management Team will monitor the quality of statements and reports provided by staff in accordance with processes set out in this policy.

22.5 Breach of this policy could damage the reputation of LSW. Similarly, a failure of a member of staff to comply with a summons or answer questions requested by a court may result in a fine of up to £1000 or imprisonment for contempt of court.

All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Professional Practice Safety and Quality

Date: 10th May 2016

Procedure for Formal Request for Medical Records

- 1.1 The Data Protection Officer (c/o Risk Management Team) receives all requests for health records. Any request should be forwarded to the DPO within **two** working days of receipt. If the request is from a third party then the letter of application and Form of Authority must be checked by the DPO for the following:
 - a) The Form of Authority must be directed at Livewell Southwest (PHC) or any area within this organisation; if this is not the case then a new, appropriately worded form must be requested and received before any records can be disclosed;
 - b) Whether there is any intention of a claim being pursued against LSW, its clinicians and/or staff;
 - c) Double-check that the Form of Authority matches the details on the letter of request for health records;
- 1.2 The request will result in health records being obtained from the sources that hold the records and a date by which the records are required will be stipulated, which is usually one week. If the clinical records are in active use and removing them from the clinical environment would create risk, then the lead clinician must advise the DPO and agree a way forward.
- 1.3 Once the health records have been received by the DPO, the formal process will be applied before disclosure of the health records.
- 1.4 It is always necessary to protect the confidentiality of the notes and we would wish to remind you of your obligations to ensure the confidentiality and privacy of these notes during any transit, their storage and disposal and once the process of your using them are complete.
- 1.5 In accordance with the Department of Health Record Management: Code of Practice, on completion of the request the file is closed and placed in the archive for ten years.
- 1.6 See Appendix C – Access to Health Records – Information for staff.



Access to Health Records – Information for Applicants

1 Access to health records

All patients have the right to see, and receive a copy of, information we hold about them in their Health Record, this is known as the right of “subject access”. This right is contained within two acts of parliament:

- The Data Protection Act 1998 which covers access to records of living individuals; and
- The Access To Health Records Act 1990 which only covers access to records of deceased patients

2 Who can apply for access to health records?

Under the provisions of the Data Protection Act, you can apply for access if you are:

- The patient, you may apply for access to your own records
- The patient’s representative:
- A person with parental responsibility for a child (unless the child is 8-14 and is capable of understanding and consenting, then their consent is needed)
- A person authorised in writing by the Patient to act on their behalf
- A person appointed by the Court to act on behalf of the Patient

Whereas under the Access to Health Records Act the only people who can apply for access are:

- Personal representative of a deceased patient and any person who may have a claim arising from the death (please see Point 2 on What Happens Next).

3 Can any information be withheld from you?

Under the Data Protection Act, you or your representative has the right of access to information contained within your health record, except where:

- A Health Professional considers that giving access to that information would cause serious harm to the physical or mental health or condition of the patient or any other person.
- Any information that identifies a third party, where that third party is not a health professional and has not consented to the disclosure.
- Where the applicant is acting as a representative of the patient, who is capable of understanding the request for access, but where that applicant is not considered to be acting with the patient’s permission.
- Where the patient is not capable of understanding the request for access, and it is considered that the release of information would not be in the best interests of the patient.

- Any information which is restricted by law from disclosure under other acts of parliament, which includes:
 - Human Fertilisation & Embryology Act 1990
 - Human Fertilisation & Embryology (Disclosure of Information Act) 1992
 - NHS (Venereal Diseases) Regulations 1974
 - NHS Trust (Venereal Diseases) Regulations 1991
 - The Abortion Regulations 1991

Under the Access to Health Records Act, the patient's representative has a right of access to all records kept on or after the 1 November 1991, or any records before that date if they are relevant in explaining records on or after the 1 November 1991. However, all the exceptions noted above for the Data Protection Act equally apply to the Access to Health Records Act, and there is an additional exception, which is:

- Access is not given to the patient's representative, where that patient has explicitly requested that no access be given to records after their death.

4 What happens next?

4.1 Informal applications

You may **verbally** ask the health professional treating you, for access to your records in their presence and to discuss it with them. These requests are not formal applications under the Data Protection Act, and may occur at any time during your care. Please note that if you would like a copy of the notes you must follow the formal application procedure detailed below.

4.2 Formal applications under the Data Protection Act or the Access to Health Records Act

If you wish to make a formal application to Livewell Southwest (LSW), you must do so in writing. Once received and your application considered, you can expect to receive a copy of your records within 40 days. If any of your record is abbreviated or has detailed medical terminology, which you do not understand, these will be explained to you. If you want to discuss any part of your record, you must contact the person responsible for your healthcare directly. There is a charge for this service please see [Charging Schedule](#) in 10.5 in main body of policy (cheques should be made payable to Livewell Southwest).

If you are making an application under the Access to Health Records Act 1990, you must be the Personal Representative of the deceased patient or any person who may have a claim arising from the death.

A Personal Representative refers to a person who has been appointed as Executor or Administrator to the Estate. Such appointment can be substantiated by production of a Grant of Probate or Letters of Administration issued by the Probate Registry. If the applicant is not a Personal Representative then the applicant must be able to demonstrate that he or she may have a claim arising out of the patient's death in order to qualify for access under this provision.

However, under this provision access may only be made in respect of information relevant to any claim that may arise out of the patient's death. It does not authorise

disclosure of all of the records. Furthermore, access may not be given to any part of the patient's record if it includes a note, made at the patient's request that he or she did not wish access to be given on such an application.

5 Where do I write to make a formal application?

If you want you make a formal application, please write to the address below, including your:

- name
- date of birth
- address
- contact number if available

You do not need to give detailed information about your condition or the care that you received. However, it would help us if you could tell us which unit you attended and who treated you. This will ensure the prompt location of the records you wish to see. Please include details of where you wish us to send your notes. For Personal Representatives making applications, please include the details outlined above for yourself and similar details for the person about whom you are making the request.

Alternatively, complete the attached application form. Your application will be dealt with privately and confidentially at all times, and all correspondence will be marked as such. Please note that under the Access to Health Records Act 1990, you can stipulate that after your death access to all or part of your personal health record is restricted. Contact the address below for the appropriate form.

Once your request has been received by LSW, your notes will be located, copies made and arrangements will be made for you to receive them within the stated time limits.

Data Protection Officer
Mount Gould Administration Block
Mount Gould Hospital
Plymouth
Devon PL4 7QD

Livewell Southwest is happy to consider providing this information sheet in other formats.

If you have difficulties in understanding what to do, we are happy to try to help you.

Please feel free to discuss your needs with the Data Protection Officer on ☎ 01752 435111.

Access to Health Records – Information for Staff

1 Access to Health Records

Patients have the right to see, and receive a copy of, information we hold about them in their Health Record, this is known as the right of “subject access”. This right is contained within two acts of parliament, namely:

- The Data Protection Act 1998 which covers access to records of living individuals; and
- The Access To Health Records Act which only covers access to records of deceased patients

2 Who can apply for Access to Health Records?

The people who can seek access to the records under the Data Protection Act are:

- The patient
- Persons authorised in writing on behalf of the patient
- Persons with parental responsibility for a child patient
- Persons appointed by the Court to act on behalf of the patient

Whereas the people who can seek access to the records under the Access to Health Records Act are Personal Representative of a deceased patient, or any person with a claim arising out of that patient’s death.

3 Can any information be withheld from the patient?

Under the Data Protection Act, the patient or their representative has the right of access to any information contained within their health record, except where:

- A Health Professional considers that giving access to that information would cause serious harm to the physical or mental health or condition of the patient or any other person
- Any information that identifies a third party, where that third party is not a health professional and has not consented to the disclosure (note, a GP is classed as a Health Professional).
- Where the applicant is acting as a representative of the patient, who is capable of understanding the request for access, but where that applicant is not considered to be acting with the patient’s permission.
- Where the patient is not capable of understanding the request for access, and it is considered that the release of information would not be in the best interests of the patient.
- Any information which is restricted by law from disclosure under other acts of parliament, which includes:
 - Human Fertilisation & Embryology Act 1990
 - Human Fertilisation & Embryology (Disclosure Of Information Act) 1992
 - NHS (Venereal Diseases) Regulations 1974
 - NHS Trust (Venereal Diseases) Regulations 1991
 - The Abortion Regulations 1991

Under the Access to Health Records Act, the patient's representative has a right of access to all records kept on or after the 1 November 1991, or any records before that date if they are relevant in explaining records on or after the 1 November 1991. However, all the exceptions noted above for the Data Protection Act equally apply to the Access to Health Records Act, and there is an additional exception, which is:

- Access is not given to the patient's representative, where that patient has explicitly requested that no access be given to records after their death.

4 The Process to Follow

Applications to access records can be made either by an informal or formal route:

4.1 Informal Applications

These are verbal applications made directly to health professionals treating the patient, where the patient's or their representative's only want to view the notes, but **not** have a copy of them nor take notes. These requests are not formal applications under the Data Protection Act, and may be responded to either by:

- Handing the patient the notes for inspection under supervision by a member of LSW staff, remembering and complying with the aspects of withholding access noted overleaf.
- A Health Professional going through the notes together with the patient, remembering and complying with the aspects of withholding access noted overleaf.

Please note, that if the applicant would like a copy of the notes, in part or in full, they must follow the formal application procedure detailed below.

4.2 Public Records Act (1958 - Amended)

Formal applications must be made in writing to LSW and should be sent to the DPO, including:

- Patients name (& requestor name if different) Patients address (& requestor name if different)
- Patient's date of birth
- Contact number for requestor if available

A single centralised point within the organisation deals with these applications. These requests have to be responded to within the legally prescribed timescale of 40 days, and usually culminate in providing a copy of the notes to the applicants. If any of the records are abbreviated or with detailed medical terminology, this will then need to be explained to the applicant.

The Acts make provision for charges to be made for access to records. The DPO agrees the charge.

Please familiarise yourself with these guidance notes, and the equivalent ones for applicants. If anyone asks for access to their records, follow these procedures. Do not attempt to deny access to any part of a record, unless your justification is covered by the exceptions noted above. If you have any queries or need any assistance please contact the Data Protection Officer, Mount Gould Hospital on telephone 01752 435111.



Data Protection Act 1998 - Subject Access Request Form
(about a living person)

Important Note:

This form consists of eight sections. Please ensure that you read every part of the form. Complete in full any section that applies to your access request.

Part 1: Details of Data Subject

(the person on whom the information is required and to be completed in all cases)

Surname: **Forename(s):**

Maiden Name: **Date of Birth:**

Address:

.....

..... **Postcode:**

Telephone No: **Mobile:**

NHS Number (if known):

Hospital Number (if known):

Please enter below details of previous inpatient or outpatient treatment (if relevant):

Hospital, Clinic, etc	Department/Speciality	Approximate Date

Part 2: Details of Person Making the Access Request

(to be completed in all cases)

Surname: **Forename(s):**

Address:

..... **Postcode:**

☎Telephone No: **Mobile:**

If you are not the person on whom the information is required, please indicate your relationship with that person:

.....

Part 3: Child Data Subjects

Note: Where the Child is capable of understanding and consenting (in the United Kingdom [except Scotland] this is normally between the ages of 8 and 14 years), the Child may apply for Personal Data in his or her own right. The Child’s consent is required for an adult to access the record.

Authorisation for applicant’s access to a Child’s Personal Data

Applicant’s relationship to the Child:

Applicant’s reason for the request:

.....

Child’s Declaration of Consent

I, (Child’s full name)
understand the request for personal information held in my records. I agree to this information being passed to (Applicant’s full name):

.....

Signed (by Child): Date:

Part 4: All Data Subjects

Please use this section of the form to give us any extra **relevant** information that will help to either identify the data subject, or help us locate the records requested

Previous Address (1):

..... Postcode:

Previous Address (2):

..... Postcode:

Other Relevant Information:

.....

.....

Maiden or Previous Name(s) (If applicable):

.....

If you wish to receive data relating to a specific aspect of your care, please specify below:

.....

.....

Part 5: Method of Obtaining Data

(to be completed by the Applicant in all cases)

Please send the requested information to me at the address detailed in Part 1
***Yes / No** or when the information is available, please contact me to arrange collection of the records. If I do not collect the records personally, I will send a named representative who will have my signed authority to collect this information on my behalf.

Please contact me ***at the address / telephone numbers** as detailed in Part 1
or at the following alternative address.....

..... Postcode:

(* delete as appropriate)

Warning - Please note: making untrue statements in order to secure access to personal information to which you are not entitled is a criminal offence.

Part 6: Declaration by Witness

(to be completed by an Independent Witness in all cases)

I, (insert and print full name).....
certify that I have known (insert and print applicant’s full name)
..... for years

*He / she is known to me as an *Employee / Client / Patient / Personal Friend / Other -
please specify (*delete as applicable)

I also certify that, to the best of my knowledge and belief, the information given on this form
is correct.

Signed: Date:

Profession:

☎Daytime Telephone No:

Name & Address of Employer:
.....

Home Address:
.....

Part 7: Declaration by the Applicant

(to be completed by the Applicant in all cases)

I declare that, to the best of my knowledge, belief, the information given on this form is
correct and that I am:

- The person named in Part 1.
- The agent of the person named in Part 1 (**please attach proof of your authority to
this form**).
- The parent / guardian of the person named in Part 1; the access request is being
made in the Child’s interest.

Name: (Block Capitals)

Signed: Date:

**Please ensure that you have fully completed all sections of this form that apply to
your access request. Omissions or incorrect information will cause delay and could
result in access to the requested data being denied.**

Completed forms are to be sent to:

Data Protection Officer, Livewell Southwest, Mount Gould Admin Block
Mount Gould Hospital, Mount Gould Road, Plymouth, Devon PL4 7QD

Please Note:

Under the Access to Health Records Act (1990), you can stipulate that after your death access to all or part of your personal written health record is restricted.

Please tick the box provided if you require the appropriate form.

Part 8: For Official Use Only

Registration No:

Date of Receipt:

Livewell Southwest is happy to consider providing this information sheet in other formats.

If you have difficulties in understanding what to do, we are happy to try to help you.

Please feel free to discuss your needs with the Data Protection Officer on ☎ 01752 435111



Access to Health Records Act 1990 – Subject Access Request Form
(deceased patients)

Important Note - this form consists of eight sections. Please ensure that you read every part of the form. Complete in full any section that applies to your access request. This form is only for applications to access records of deceased patients.

Part 1: Details of Data Subject

(the person on whom the information is required and to be completed in all cases)

Surname: **Forename(s):**

Maiden Name: **Date of Birth:**

Address:

.....

..... **Postcode:**

Telephone No: **Mobile:**

NHS Number (if known):

Hospital Number (if known):

Please enter below details of previous inpatient or outpatient treatment (if relevant):

Hospital, Clinic, etc	Department/Speciality	Approximate Date

Part 2: Details of Person Making the Access Request

(to be completed in all cases)

Surname: **Forename(s):**

Address:

..... **Postcode:**

☎Telephone No: **Mobile:**

Please indicate your relationship with that person on whom you are requesting records:

.....

Part 3: All Data Subjects

Please use this section of the form to give any extra **relevant** information that will help to identify the Data Subject, or which you think might help us locate the records requested.

Previous Address (1):

..... **Postcode:**

Previous Address (2):

..... **Postcode:**

Other Relevant Information:

.....

.....

Maiden or Previous Name(s) (If applicable):

.....

If you wish to receive data relating to a specific aspect of their care, please specify below:

.....

.....

Part 4: Method of Obtaining Data

(to be completed by the Applicant in all cases)

Please send the requested information to me at the address detailed in Part 1
*Yes / No or when the information is available, please contact me to arrange collection of
the records. If I do not collect the records personally, I will send a named representative
who will have my signed authority to collect this information on my behalf.

Please contact me *at the address / telephone numbers as detailed in Part 1
or at the following alternative address.....

..... Postcode:

(* delete as appropriate)

Warning - Please note: making untrue statements in order to secure access to personal
information to which you are not entitled is a criminal offence.

Part 5: Declaration by Witness

(to be completed by an Independent Witness in all cases)

I, (insert and print full name).....
certify that I have known (insert and print applicant's full name)
..... for years

*He / she is known to me as an *Employee / Client / Patient / Personal Friend / Other -
please specify (*delete as applicable)

I also certify that, to the best of my knowledge and belief, the information given on this form
is correct.

Signed: Date:

Profession:

☎Daytime Telephone No:

Name & Address of Employer:

Home Address:

Part 7: Declaration by the Applicant

(to be completed by the Applicant in all cases)

I declare that, to the best of my knowledge, belief, the information given on this form is correct and that I am:

- The person named in Part 1.
- The agent of the person named in Part 1 (**please attach proof of your authority to this form**).
- The parent / guardian of the person named in Part 1; the access request is being made in the Child's interest.

Name: (Block Capitals)

Signed: Date:

Please ensure that you have fully completed all sections of this form that apply to your access request. Omissions or incorrect information will cause delay and could result in access to the requested data being denied.

Completed forms are to be sent to:

Data Protection Officer
Livewell Southwest
Mount Gould Admin Block
Mount Gould Hospital
Mount Gould Road
Plymouth
Devon PL4 7QD

Part 8: For Official Use Only

Registration No:

Date of Receipt:

Livewell Southwest is happy to consider providing this information sheet in other formats.

If you have difficulties in understanding what to do, we are happy to try to help you.

Please feel free to discuss your needs with the Data Protection Officer on ☎ 01752 435111



Requests for Personal Information not held in Patient Health Records

Livewell Southwest may hold personal information about you in other departments away from your health record. If you require personal information that is not in your health record, you should say what you are looking for in the space provided on the application form. If possible, please identify any departments and individuals contacted. Examples might include:

- I have been to department
- I saw or spoke toname of person or type of job
- I wrote toperson, job title, department.

Examples of documents that may contain personal information outside of the health record may include:

- Accident / Incident Report
- Compliment or Complaint
- Data Protection Act or similar type of request for information
- Patients in Practice Safety Scheme Records

Preparing Statements and Reports Guidance and Report Template

Preparing a Statement/Report

Where would a request to write a statement/report come from?

- Solicitor acting for LSW or patient
- Police
- Coroner
- CPS (Crown Prosecution Service)
- Insurance Company
- CICA (Criminal Injuries Compensation Authority)
- Government Agency
- LSW Managers/Workforce Development conducting investigations following incidents or complaints
- Local Security Management / Counter Fraud Specialists

Any requests to staff from outside agencies to provide statements / reports or attend Court should, in the first instance, be referred to the Risk Management Team for further guidance and advice as, occasionally, it will not be appropriate to reply to a request.

What do I need to do before writing a statement / report?

- 1) Do not panic. Do not feel pressurised into providing a statement / report “immediately”.
- 2) You must compose it with due thought, care and with reference to all the relevant clinical records. While some clinical records may be available, there may be difficulty in obtaining the records especially if other members of staff are involved. It is important that the statement / report you make is compiled from your own clinical notes and not those of others. If you are unable to give a complete history of the treatment and / or sequence of events (i.e. because the patient was transferred to another team), do not add details to your statement / report that you cannot later confirm.
- 3) If you are writing the statement / report from memory you need to reflect this but try to be as accurate as possible.
- 4) Alternatively, if there is no recollection of the patient, it needs to state that purely the records are being relied upon.

Do I need Consent to disclose?

It may be that LSW will need to seek the approval from the patient before proceeding, as in some instances such approval may be essential to ensure that LSW does not breach the patient's confidentiality. If in doubt contact the Risk Management Team.

How do I prepare a statement/report?

While hand-written statements/reports are acceptable (in black ink), it is better if these are typewritten as this prevents transcription errors later.

What should the statement/report contain? (Also see Report Template)

Your statement / report should be written on LSW headed paper and should include the following:

- It should be addressed to the requesting individual or office
- Who you are
- Professional qualifications (do not use abbreviations)
- Position held
- Date of statement
- Normal place of work
- Identity of patient detailing:
 - their name
 - date of birth
 - address
 - name(s) by which the person is known
 - language spoken / method of communication
- Deal with matters relevant to the case with a logical structure and in chronological order.
- If safeguarding children / adults, state relationship between you and the patient, and the relationship between patient and alleged perpetrator.
- Stick to the facts making clear what is within your direct knowledge.
- Avoid criticism of colleagues and / or other departments
- Use the first person singular (i.e. "I resuscitated Mr Smith" rather than "Mr Smith was resuscitated") as it minimises ambiguity
- Avoid the use of any medical jargon and / or abbreviations
- All statements should conclude with a Statement of Truth:
- "I [full name] believe that the facts stated in this statement / report are true to the best of my knowledge and belief."
- Sign and date the statement on every page and keep a copy.

Is there anything that should not be in the statement/report?

It is important before signing any statement / report that you read it carefully. You need to correct any typographical errors and ensure clarity of thought. Remember, by signing the statement / report you are committing yourself to the statement being true. If you are happy that the contents of the statement / report are correct, sign and date it, and submit the statement to the Risk Management Team. Keep a copy of your statement and copies of any relevant notes securely at work. Do not use your home computer to write your statement / report and do not take your statement or any records home.

Suggested template for writing a:

***Statement / *Report** (*delete as appropriate)

Date: [date statement signed by you]

To: [name and address to the requesting individual or office]

Details of Person Concerned	
Name:	
Address:	
Date of Birth:	
Date of Death:	(if relevant)

Details of Report Author:

- Who you are (name, qualifications - do not use abbreviations, profession, position held and normal place of work)
- Capacity in which you are writing (i.e. Registered Nurse, Support Worker, etc)
- It is useful to add how much experience you have

Details of Person Concerned (in addition to the front sheet):

- Name of deceased, together with name(s) by which the person was / is known
- Their address
- If relevant, their first and second languages / method of communication

Medication:

Detail:

- Current medication
- Type of drug
- Name of medication
- Dose
- How was medication prescribed
- Note any recent change(s)
- State what each medication was being used for

Medical History:

Include details of any physical problems as these may well be relevant to what happened.

Past History:

In brief up to last year, chronological account can be in list format.

Recent History:

- General:
- The last year in more detail than “Past History”
 - The Care Plan(s) should be discussed during the course of this section

- Community:
- In particular the past two months should be more detailed
 - The most recent Care Plan should be described in full
 - Include details of the last assessment of risk, risk management plan and mental state, if relevant
 - Explain the reason for treatments (i.e. psychological therapies), if relevant
 - Forensic history, if relevant

- Inpatient:
- In particular the past two weeks should be more detailed
 - The most recent Care Plan should be described in full
 - Include details of the last assessment of risk, risk management plan and mental state, if relevant
 - Explain the reason for treatments (i.e. psychological therapies), if relevant
 - Forensic history, if relevant

Remember - you are writing the statement / report on behalf of the service. You should therefore include details of the whole care plan not just the part that you were involved in delivering.

Personal and Family details:

- Include relevant personal history
- Family history of (mental) illness, if relevant
- Details of current social circumstances
- Any recent life events

Remember - this document may be made public. Do not disclose third party information unless absolutely necessary - if in any doubt contact the Risk Management Team.

Conclusion:

The conclusion of the statement / report should summarise the facts. You should not offer opinion or speculation (i.e. as to the cause of a death) although you may offer a view on the facts as you see them unless advised otherwise (i.e. after discussion with the Risk Management Team or LSW Solicitors). It is appropriate to offer condolences on behalf of LSW here.

Statement of Truth:

The last sentence should read as follows:

“I [full name] believe that the facts stated in this statement / report [delete as appropriate] are true to the best of my knowledge and belief.”

Signed:

Print Name:

Date:

Layout and Appendices – the foot of each page of the statement / report should be signed and dated by you (statement / report author). Appendices may be included and can be useful (i.e. copy of a relevant LSW policy, etc). These should be securely attached and referred to in the main statement/report.

Coroner's Inquest Risk Assessment Form (for use by the Risk Management Team)		
Personal Details of Deceased		
Name:		
Date of Birth:		
Date of Death:		
Details of Team / Staff Involved:		
Inpatient / Community:		
Hospital or Team(s) Involved:		
Witnesses who have provided statements:	To attend Inquest:	Rule 37
•		
•		
Documents / Policies disclosed to HMC and when:	•	
	•	
	•	
	•	
Identity of person compiling Coroner's Report		
Name:		
Title:		
Base:		
Date of submission to HMC:		
Any concerns identified in Coroner's Report (in brief):		
Care issues:		
Policy breaches:		
Disciplinary action taken or pending:		

Appearing in a Civil Court

How should I prepare beforehand?

- Read through your report – you do not need to memorise it
- Review the medical records
- Find out where the court is and how long it will take you to get there
- Find out how long you will be likely to be needed
- Consider whether proceedings will take place in a closed court (i.e. not in a public setting – this sometimes occurs with children’s proceedings).

On the day:

- Allow plenty of time to get there
- Dress appropriately – court is a formal occasion
- If you have the medical records, take them with you
- You will have an opportunity to clear any questions you have about your evidence with the LSW solicitor or barrister

What happens if I remember something not in my statement or want to change my mind about something in my statement?

Inform the LSW solicitor, as it is much better for everyone if this information is available before you give your evidence. However, remember that you are giving evidence on oath and therefore you must tell nothing but the truth.

What happens when the case starts?

- It is usual in civil claims that the witnesses can come and sit in the courtroom and hear all the evidence, you will be shown before the case starts where you should sit and where you should go to give evidence when it is your turn.
- The person bringing the claim (the Claimant) will present their case first.
- The Claimant’s representative will tell the Judge what the case is about and will then call evidence.
- You will remember signing a statement possibly some time ago. Both sides have exchanged their statements before the hearing.
- These statements will stand as evidence in chief (i.e. the main evidence).
- Once a witness has given their evidence in chief the other side’s representative can cross-examine them on their evidence and the Judge can also ask questions.
- When all the Claimant’s witnesses have given evidence and been cross-examined, the Defendant’s witnesses are then called.
- When all the evidence has been called, both sides’ representatives give their closing speeches to the Judge.
- The Judge then gives his judgment. He may do so immediately, adjourn for a short while and then give his judgment or reserve his judgment for a later date; especially in cases that are more complicated or where there are numerous documents to consider.

What will happen when I am called to give evidence?

Your name will be called and you should make your way to the witness stand.

You will be asked to take an oath or affirm – tell the user if you prefer not to swear on the Bible.

You will be asked to confirm your name, address and occupation.

Usually the next step will be for you to be referred to your statement (it will be in a bundle of papers on the witness stand) and asked to confirm that it is your statement and that the contents are true.

You may well be asked by the barrister or solicitor representing the case to answer a few supplementary questions.

Then the other side's representative will have the opportunity to cross-examine you but **don't worry!** Listen to the questions you are asked carefully and answer them **truthfully**. The Judge may also ask you questions, answer them in the same way.

What do I call the Judge?

Depending on the level of Judge he / she will be expected to be called "sir", "ma-am", or "your honour" but don't worry about getting it right all the time. This can be clarified on the day.

What if I don't understand a question?

Ask for it to be repeated. Take your time. Try and avoid the temptation to enter into an argument. If you are unable to answer the question, say so.

Where can I seek further advice?

For each individual circumstance advice can be obtained from the Risk Management Team or the Complaints and Litigation Team.

Appearing in Criminal Court (Magistrates or Crown)

What Happens In a Magistrates Court?

Magistrates will listen to all the evidence and decide whether the person accused of the crime (the defendant) is guilty or not. If the defendant is found guilty (convicted), or the defendant admits he or she is guilty, the magistrates usually decide on the sentence. The magistrates are either three local people or there may be just one magistrate who is a lawyer. In court there will also be a lawyer who speaks for the prosecution, and a different one who speaks for the defendant. They do not wear wigs and gowns.

What Happens in Crown Court?

A trial in a Crown Court takes place in front of a judge. If the defendant does not admit to being guilty, a jury of 12 men and women who are ordinary members of the public will also be there. The jury decides whether the defendant is guilty or not guilty. The judge decides on matters of law.

If the defendant is found guilty or admits he or she is guilty, the judge also decides on the sentence. In court there will also be a lawyer who speaks for the prosecution, and a different one who speaks for the defendant.

Who Else Will Be In Court?

In both types of court there will be a Clerk of the Court who helps to run the proceedings. In a magistrates' court the Clerk also gives the magistrates advice on legal matters. You will also see Court Ushers who call witnesses, take messages and help to run the court. You can recognise them by their black gowns. There may be other people in the courtroom such as police and probation officers, newspaper reporters and members of the public.

What Do I Need To Take With Me?

You should take the letter asking you to go to court, if you received one, and any other information you have been given about the court hearing.

If you are told to do so, you should bring any exhibits you still have or which may have been returned to you.

You should also consider taking a copy of medical records with you if you need to refer to them during questioning.

You should take the address of the court and public transport details and if you are driving, you should allow time to find a place to park and remember you may be staying several hours.

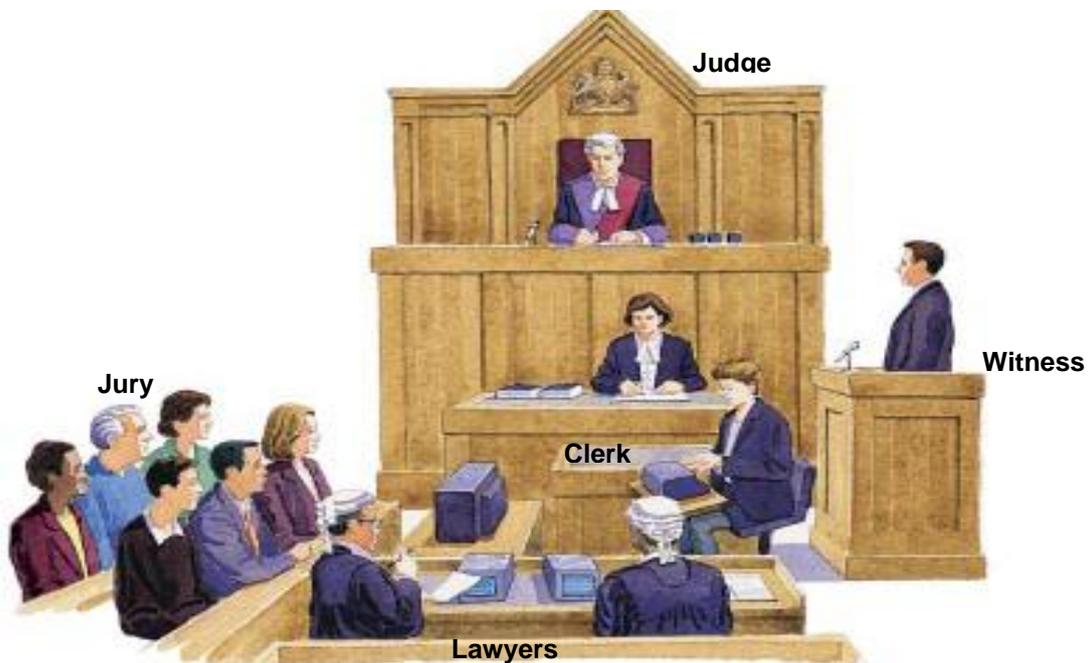
For further information and advice, please contact the Risk Management Team on 01752 434738.

Typical Magistrates Court



This picture shows a typical magistrates court. The magistrates sit behind a raised bench and the witness box is usually to one side, near the front of the court.

Typical Crown Court



This picture shows a typical courtroom of the Crown Court. Judges and some lawyers wear wigs and gowns. The Court Clerk also wears a gown and, in some courts, a wig too. There is also an area for the jury to sit.