

Legal Framework Policy
ME CCG Policy Reference:
MECCG067

Target Audience	Commissioning Managers, Service Managers, Procurement Managers, Executive Directors
Brief Description (max 50 words)	The procedure is intended to inform Mid Essex CCG Clinical Commissioning Group how to access legal advice and services.
Action Required	To be approved and then disseminated to all staff
Equality Impact Assessment	This policy has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This Policy is applicable to CCG staff, Board, members and those who work on behalf of the CCG irrespective of their age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion or belief, marriage or civil partnership.

Document Information

Version Number	2.0
Accountable Officer	Director of Governance & Performance
Responsible Officer	Head of Corporate Governance
Date Approved by QFG Committee	26 September 2018
Approved by Board	27 September 2018
Review Date	March 2022 (Agreed at Audit Committee 23 Feb 2021 to extend the review date for this policy to March 2022)
Stakeholders engaged in development/review	Director of Governance & Performance Head of Corporate Governance Director of Nursing & Quality Quality, Finance & Governance Committee, JC Chief Finance Officer

Amendment History

Version	Date	Reviewer Name(s)	Comments
1.0	January 2014	Nikki Dowling (CSU)	First Draft
1.1	February 2014	Christine Gear	First draft reviewed and comments added

2.0	August 2018	Viv Barnes	Full re-write of policy to reflect current practice
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1. Introduction

From time to time, the CCG may require a professional or formal opinion regarding the substance or procedure of the law in relation to a particular situation. This policy has been written to clarify the process that should be followed in such circumstances.

This policy explains the circumstances when legal advice may be required and the process for obtaining such advice, both from within the CCG and if appropriate, from a preferred law firm and other external legal advisors.

2. Scope

This policy relates to access to legal advice in all areas as and when it may be required.

This policy applies to:

- CCG Board members and the members of its committees and sub-committees;
- Members of the Mid and South Essex CCGs Joint Commissioning Team (JCT);
- GPs or staff from member practices performing a CCG role
- Permanent and temporary CCG employees;
- third parties acting on behalf of the CCG under a contract;
- students and trainees (including apprentices);
- contracted staff;
- agency staff engaged by the CCG; and
- secondees.

It does not apply to staff of the Commissioning Support Unit (CSU) aligned to or working with the CCG. The CSU will cover the costs of any legal advice they may require to deliver safe and effective services. Any exceptions to this must be by prior agreement between the CSU and the Chief Finance Officer or Accountable Officer.

3. Roles and Responsibilities

- a) Accountable Officer - the Accountable Officer is ultimately responsible for ensuring that the CCG's standards of Corporate Governance, conduct and probity are satisfactory and meet legislative and regulatory requirements. The Accountable Officer devolves responsibility for Legal Services via the Director of Governance & Performance (Board Director for Legal Affairs) and the Head of Corporate Governance but maintains a watching brief over the services and ensures regular situation and performance reports are received when required.
- b) Board Director for Legal Affairs – the role is fulfilled by the Director of Governance & Performance. This role includes overseeing the legal operations across the CCG and ensuring they are effective, fit for purpose and keep pace with the legal requirements and NHS Regulations. This director ensures that the Accountable Officer and Board receive regular

situation reports of legal matters and bespoke briefs are given on significant or urgent cases.

c) Legal Lead Officer - this role is fulfilled by the Head of Corporate Governance who is responsible for:

- Investigation of legal issues and provision of advice to staff.
- Negotiating and maintaining external sources of legal advice.
- Providing reports and advice to the Board Director for Legal Affairs and via this person to the Board.
- Offering appropriate training to staff to include practical advice on, for example, patient confidentiality, writing witness statements etc.
- Management of claims and litigation cases.
- Maintain the Legal Framework Policy.

4. When is Legal Advice required?

It is inevitable that situations may occur where it is necessary and / or appropriate to seek legal advice. It may be a routine issue relating to the management of the CCG (e.g. constitutional or matters of contract law) or it may relate to potential litigation. In such cases, early intervention may prevent situations escalating.

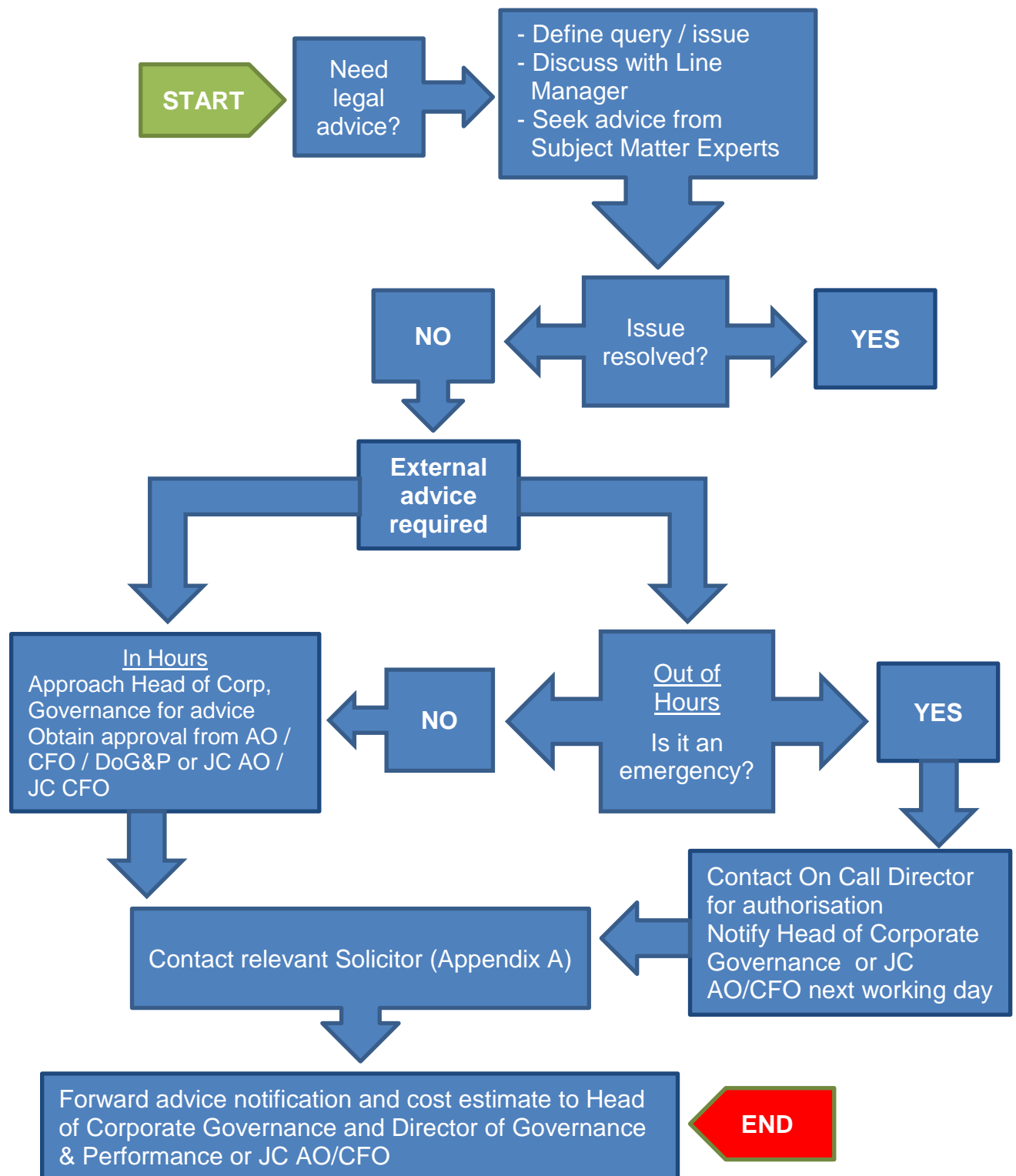
Reasons to seek legal advice may include:

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

5. Accessing Legal Advice

The flow chart overleaf should be used when legal advice is needed, noting that only the Accountable Officer, Chief Finance Officer and Director of Governance & Performance are authorised to procure legal advice or, in the case of advice required by the Joint Commissioning Team, the Lead AO for the Joint Committee or the JCT Chief Finance Officer.

Flowchart for obtaining legal advice



6. Internal Subject Matter Experts

Issue	Subject Matter Expert
Clinical issues	Director of Nursing & Quality / Deputy Director of Nursing & Quality / Head of Continuing Healthcare
Complaints / Claims / Potential Litigation	Deputy Director of Nursing & Quality / Head of Corporate Governance / Director of Governance & Performance
Subject Access Requests / Data Protection	Information Governance team
Corporate Governance / Constitutional / Compliance Issues	Head of Corporate Governance / Director of Governance & Performance
Freedom of Information	Head of Corporate Governance / Director of Governance & Performance / Information Governance team
Employee / Public Liability	Head of Corporate Governance
Employment issues	HR team
Mental Health Act / Deprivation of Liberty Issues	Director of Nursing & Quality / Deputy Director of Nursing & Quality / Head of Continuing Healthcare
Safeguarding Issues	Director of Nursing & Quality / Deputy Director of Nursing & Quality / Safeguarding team
Patient Information & Confidentiality	Director of Nursing & Quality / Deputy Director of Nursing & Quality
Property	Head of Corporate Governance (Head Office) / Chief Finance Officer (other properties)
Contract queries and disputes	Contracting team, JCT
Patient treatment packages and disputes	IFR team

7. Contacting legal firms

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

- Is the nature of the situation regarding a clinical negligence or personal injury allegation, a claim or potential claim, or a Judicial Review?

If yes, then refer to the Head of Corporate Governance.

- Have you contacted the internal subject expert?

Depending on the nature of the advice required, help may be available in-house or within our partner organisations (including other CCGs) or individuals may have knowledge of similar legal advice that has already been provided, e.g. NHS Property Services Ltd for estates and facilities issues, advice provided by the CCG's Local Security Management and Local Counter Fraud Specialists.

If authorisation is given to seek external legal advice, the Head of Corporate Governance or the Director of Governance & Performance (or the JC CFO in the case of JCT legal advice) will confirm the process for the submission and authorisation of legal invoices. When seeking advice it is important to:

- Ensure that you are clear about the issue you need advice on and the sequence/chronology of events (it may be helpful to write this down in advance if you are seeking verbal advice).
- Ensure that you have any relevant documents/information to hand and can email or fax them if required.
- Ensure that any verbal request for advice is followed up in writing as soon as possible (e.g. by email) confirming the scope of advice that is required.
- Request an estimate of costs based on the legal advisor's role, hourly rate and the time needed to deliver the advice.
- Copy the written request for advice to the Head of Corporate Governance and ask for the advice provided and any changes in the estimated costs to be shared with the Head of Corporate Governance (or the JC CFO in the case of JCT legal advice).
- Copy the estimate of costs to the Director of Governance & Performance or the JC AO/CFO.

8. Reporting of Legal Cases

The Board will be made aware of situations, recommendations or activities that could have substantial legal consequences via two main routes:

- i) The Legal Lead Officer will report details of relevant cases, enquiries or CCG activity to the Board via the Board Director for Legal Affairs.
- ii) The Accountable Officer will raise the matter directly with the Board via their normal reporting channels.

9. Monitoring and Review

The Head of Corporate Governance/JC CFO will maintain records of all cases for which legal advice has been procured and will monitor the charges levied to the CCG/JCT.

Inappropriate use of the CCG's advisors for obtaining legal advice or failure to obtain legal advice when required could result in disciplinary proceedings being initiated against the relevant employee.

The Policy will be reviewed on the date set out on the covering page of the policy, or sooner if necessary.

10. Associated Policies and Guidance

Standing Orders/ Scheme of Delegation /Standing Financial Instructions
Risk Management Strategy
Complaints and Concerns Policy
Information Governance Policy
Freedom of Information Policy

CONTACTS LIST**CCG Subject Matter Experts**

Name and Job Title	Areas of expertise	Contact Details
Viv Barnes Director of Governance & Performance	Complaints/Claims/ Potential Litigation Corporate Governance/ Constitutional/Compliance Issues Freedom of Information Employee / Public Liability H&S and Property issues Judicial Review	
Rachel Hearn, Director of Nursing & Quality	Clinical issues MHA and DoLs Safeguarding Patient Information & Confidentiality	
Sara O'Connor Head of Corporate Governance	Complaints/Claims/ Potential Litigation Corporate Governance/ Constitutional/Compliance Issues Freedom of Information Employee / Public Liability H&S and Property issues Judicial Review	
Viv Barker Deputy Director of Nursing & Quality	Complaints Clinical issues MHA and DoLs Safeguarding Patient Information & Confidentiality	
Aly Taylor Head of Continuing Healthcare	Clinical issues MHA and DoLs	
Jane Marley Head of Information Governance	Subject Access Requests / Data Protection	
Julie Burton Head of HR & Workforce Development	Employment issues	
Leila Francis Designated Nurse Safeguarding Children	Safeguarding Issues	
Jackie Barrett Designated Adult Safeguarding Manager	Safeguarding issues MHA and DoLs	
Adam Townsend, Head of Contracts, JCT	Contract queries and disputes	
Paula Wilkinson Chief Pharmacist	Medication issues Patient treatment packages and disputes	

Solicitors

Crown Commercial Service Legal Services Framework Providers

Mid Essex CCG does not have a legal services agreement with any particular firm. Advice may therefore be sought from any provider on the Crown Commercial Service Legal Services Framework.

Use of any other legal services provider must be agreed in advance with the AO, CFO or Director of Governance & Performance and will be subject to the usual procurement requirements in the Standing Financial Instructions.

Supplier	Contact details	Areas of legal advice previously procured by CCG
Bevan Brittan	Tel: 0370 194 1000	
Browne Jacobson	Tel: 020 7337 1000	Constitutional advice
Burges Salmon LLP	Tel: 020 7685 1200	
DAC Beachcroft LLP	Tel: 020 7242 1011	
Dentons UK MEA LLP	Tel: 020 7242 1212	
DLA Piper UK LLP	Tel: 08700 111 111	
Eversheds Sutherland (International) LLP	Tel: 020 7919 4500	
Field Fisher	Tel: 020 7861 4000	
Gowling WLG	Tel: 0370 903 1000	HR advice
Hogan Lovells International LLP	Tel: 020 7296 2000	
Linklaters LLP	Tel: 020 7456 2000	
Mills & Reeve LLP	Tel: 020 7648 9220	Continuing Healthcare advice; contract advice
Pinsent Mason	Tel: 020 7418 7000	
PwC LLP	Tel: 020 7583 5000	
Simmons and Simmons	Tel: 020 7628 2020	
Slaughter & May	Tel: 020 7600 1200	
TLT LLP	Tel: 0333 006 0000	
Womble Bond Dickinson LLP	Tel: 0345 415 0000	

See <https://ccs-agreements.cabinetoffice.gov.uk/contracts/rm3786> and <https://www.sbs.nhs.uk/proc-framework-agreements-support> (which includes information on fees) for more information.

N.B. Before seeking legal advice in respect of contractual and commercial disputes, it is recommended that support is sought from the Centre for Effective Dispute Resolution (CEDR). CEDR provide mediation, adjudication and arbitration services to healthcare and other sectors.

Tel: 020 7536 6000
Email: info@cedr.com

NHS Litigation Authority Panel Solicitors

Clinical Claims:

Bevan Brittan
Browne Jacobson
Capsticks
Clyde & Co.
DAC Beachcroft
Hempsons
Hill Dickinson
Kennedys
Ward Hadaway
Weightmans

Non-clinical Claims:

Browne Jacobson
Clyde & Co
DAC Beachcroft
Kennedys
Weightmans