



AGENDA ITEM

2.2.4

AUDIT & RISK COMMITTEE

LOSSES AND SPECIAL PAYMENTS 01.01.21 TO 28.02.21

Date of meeting

13/04/2021

FOI Status

Open/Public

If closed please indicate reason

Not Applicable - Public Report

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Approving Executive Sponsor

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Report purpose

FOR NOTING

Engagement (internal/external) undertaken to date (including receipt/consideration at Committee/group)

Committee/Group/Individuals

Date

Outcome

NWSSP – legal services and Risk Pool

On-going

NOTED

ACRONYMS

WRP	Welsh Risk Pool
NWSSP	NHS Wales Shared Services Partnership
VER	Voluntary Early Release
DEL	Departmental Expenditure Limit

1. SITUATION/BACKGROUND

This report advises the Audit & Risk Committee on the losses and special payments made by the University Health Board (UHB) for the two month period from 1 January 2021 to 28 February 2021, as required in Standing Financial Instructions.

The Health Board is liable for the first £25k of any Personal Injury or Medical Negligence claim (not including Redress cases), with amounts over this being borne by the Welsh Risk Pool (WRP) managed by the NHS Wales Shared Services Partnership (NWSSP). For any “other” cases such as Employment Matters or Voluntary Early Release (VER) for example, the full cost of the loss is borne by the UHB. Where the WRP would be liable for a reimbursement to the UHB then there will be timing differences between payments being made and any reclaim from the Risk Pool. There is a strict protocol in place for reclaiming from the WRP.

In accounting for losses on claims, liability is recognised when legal advice states that there is a probability in excess of 50% of the Health Board having to settle. The quantum of the claim, and associated plaintiff costs are therefore recognised as “expenditure” at this point, with the risk pool recovery element also being recognised. Other losses are recognised as and when they arise.

There is therefore a significant timing issue (which can be several years) between expenditure being recognised within the Health Board’s accounts and cash payments being made. Write-off approval action is only required for cash payments. This report highlights:

- a) Amounts that have been charged to expenditure for which payments are yet to be made. These amounts are held within the balance sheet as future amounts owing (or owed by the WRP) at the appropriate Balance Sheet date;
- b) Amounts charged to expenditure during the current year (together with income from the WRP), and which therefore has a budgetary impact against the Health Board’s Revenue Resource Limit; and
- c) Cash payments made during the period for which write-off action is required, with details being provided within the appendices.

2. SPECIFIC MATTERS FOR CONSIDERATION BY THIS MEETING

Standing Financial Instructions require all losses to be reported to the Audit & Risk Committee. This report is therefore a key element of the governance process around losses and special payments.

The number of claims, both Medical Negligence and Personal Injury, continues to result in significant levels of expenditure. These levels of expenditure are determined case by case and are based on information supplied by Welsh Legal Services.

Section a, b and c below provide details in regards to amounts that have been charged to expenditure for which payments are yet to be made, budgetary impact against the Health Board's Revenue Resource Limit and the cash payments made during this reporting period.

a) Provision and Creditors as at 28 February 2021

This is shown in table 1 below, together with equivalent figures at the end of the last three financial years.

Table 1

	28.02.21	31.12.20	31.03.20	31.03.19	31.03.18
	£000	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative	Cumulative
Medical Negligence claims/costs (Note 1)	102,755	106,364	85,516	81,897*	78,961*
Redress Medical Negligence claims/costs	438	439	382		
Personal Injury claims/costs	459	431	680	532	1,618
Recoverable from Welsh Risk Pool (Note 1)	(129,839)	(140,005)	(115,161)	(99,137)	(87,408)
Net claim provision	(26,187)	(32,771)	(28,583)	(16,708)	(6,829)
Permanent Injury Benefit	6,382	6,104	6,252	4,517	3,258
Net Provision	(19,805)	(26,667)	(22,331)	(12,191)	(3,571)
Number of live cases on losses system (LaSPaR)					
	28.02.21	31.12.20	31.03.20	31.03.19	31.03.18
Medical Negligence claims	309	317	279	230	285
Redress Medical Negligence claims	180	177	202	87	112
Personal Injury claims	114	105	113	97	91

Please note the figures disclosed in the above table are cumulative figures as at the relevant reporting period.

*Medical Negligence claims/costs for the year ended 31 March 2018 & 2019 are inclusive of costs relating to the Redress claims. The costs relating to redress claims for the previous and current years are disclosed on a separate line for additional clarity.

Note 1: The reduction of £3.6m in medical negligence provision reported since the last reporting period is predominantly due to the changes in Quantum estimates for two cases. Corresponding decrease in provision for amount recoverable from WRP is also reflected in Table 1 above.

b) Expenditure incurred for the year to 28 February 2021

This is shown in table 2 below, together with equivalent figures for the last three complete financial years and last reporting period to the Audit & Risk Committee (31.12.2020).

The "other" category mainly consists of payment of retirement gratuities, Employment Matters and voluntary early releases (see appendix 4).

Table 2

	Year to	Year to	Year ended	Year ended	Year ended
	28.02.21	31.12.20	31.03.20	31.3.19	31.3.18
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	28,052	27,899	18,455	18,300	29,014
Redress Medical Negligence claims/costs	325	281	367		
Personal Injury claims/costs	303	232	557	(405)	1,612
Recoverable from Welsh Risk Pool	(27,494)	(27,413)	(18,225)	(16,544)	(29,033)
Net claim expenditure (Note 2)	1,186	999	1,154	1,371	1,593
Permanent Injury Benefit	432	53	2,075	1,697	62
Other	463	359	407	306	174
Total expenditure	2,081	1,411	3,636	3,354	1,829

Note 2: The annual budget for net claim expenditure for 2020-2021 is £1,169k (year to date £1,072k). There is therefore an overspend on claims of £114k as at 28 February 2021.

The Audit & Risk Committee will be aware that any overspend incurred by the Welsh Risk Pool will need to be shared amongst NHS organisations, and is therefore an additional financial risk to those organisations.

Welsh Risk Pool Risk Sharing Agreement

As at Month 11, the WRP DEL expenditure forecast for 2020-2021 was £121m. The element to be funded under the Risk Sharing Agreement remains the same at £13.8m as previously reported to the Committee. This represents a potential risk for CTM of £1.6m (11.87% of the £13.8m) and this risk is reflected in our Month 11 forecast. It has now been confirmed by WRP that the risk sharing agreement as noted above will be invoked in 2020/2021.

Welsh Risk Pool charge on late submission of reimbursement claims

As reported previously to the Audit & Risk Committee, the Health Board has been working closely with the colleagues from WRP in resolving the matter relating to the timely submission of the Claims Management Report (CMR's) and Learning from Events Reports (LFER's) for the reimbursement of outstanding monies from WRP.

The WRP Committee meeting was held on 17 March 2021 and it was confirmed that the Committee reviewed the position in relation to the application of a 10% penalty on the reimbursement of cases, which had been submitted outside of the four-month timescale. At the Committee, it was confirmed the Health Board have shown improvement and have provided assurances that all outstanding Case Management Reports and associated submission documents have been submitted. As a result, the cases that were subject to the 10% penalty applied from January's meeting have been refunded and no further deductions were made on cases that may have been subject to a 10% penalty in March's meeting.

However, in March 2021, WRP confirmed that the 10% penalty charge applied to the late submission of the cases for the November WRP Committee is a permanent charge, which amounts to £83k and relate to 5 claims. Currently, this charge is not reflected in the expenditure figure disclosed within table 2 above and will reported to the next Audit & Risk Committee once appropriate process has been followed in line with the scheme of delegation of duties.

To date, good progress is being made on the WRP reimbursement claims, with £10.2m of WRP reimbursements received in February 2021 and an additional £11.2m to be received in April 2021. A further £9.6m of reimbursement claims have been submitted for WRP Committee review and approval.

c) Cash Write-Offs made for the period 1 January 2021 to the 28 February 2021

Table 3 shows the cash impact up to 28 February 2021 of the current financial year. More detail is provided within the Appendices for the current reporting period.

An analysis of medical negligence payments and receipts over cases for the last 2 months is shown in **Appendix 1a**. Redress medical negligence analysis of payments and receipts is now shown separately from medical negligence in **Appendix 1b**. A similar analysis is provided for personal injury claims in **Appendix 2** and Permanent Injury Benefit (PIB) in **Appendix 3**.

Other write-offs relate to ex-gratia payments, employment claim matters, debt write offs and condemnations & obsolescence, which are approved in accordance with the Scheme of Delegation. The ex-gratia payments include gratuities provided to staff on retirement with more than 20 years' service, in line with HR policy, and voluntary early release payments. These are shown in **Appendix 4**.

Table 3

Cash write-offs made during 20/21

	01.01.21 - 28.02.21 £000	Previously reported £000	2020-21 £000
Medical Negligence (Appendix 1a)			
Claims	3,175	4,587	7,762
Costs	416	2,026	2,442
Defence Fees	171	437	608
Redress Medical Negligence (Appendix 1b)			
Claims	27	152	179
Costs	6	30	36
Defence Fees	12	42	54
Personal Injury (Appendix 2)			
Claims	35	241	276
Costs	6	98	104
Defence Fees	2	143	145
Permanent Injury Benefit (Appendix 3)	101	201	302
Other (Appendix 4)			
Ex-Gratia	8	49	57
Debt Write Off	7	48	55
Condemnations and Obsolescence	6	262	268
Fruitless Payments		0	
Employment Matter	83	0	83
Total	4,055	8,316	12,371
Recovered from Welsh Risk Pool	(10,249)	(2,569)	(12,818)
Net Cash Write-Off	(6,194)	5,747	(447)

3. KEY RISKS/MATTERS FOR ESCALATION TO BOARD/COMMITTEE

None noted.



4. IMPACT ASSESSMENT

Quality/Safety/Patient Experience implications	Yes (Please see detail below)
	<p>The majority of losses and special payments are as a result of things going wrong and where quality, safety or patient experience may therefore have been compromised.</p> <p>Details of medical negligence and personal injury claims are provided quarterly to the Concerns (Claims) Scrutiny Panel who subsequently reports to the Quality, Safety & Risk Committee</p>
Related Health and Care standard(s)	Governance, Leadership and Accountability
Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.	Yes
	Completed as part of the Financial Control Procedures for Losses & Special Payments (FP 15)
Legal implications / impact	Yes (Include further detail below)
	Losses provided for are informed by legal advice where appropriate based on probability of a successful claim
Resource (Capital/Revenue £/Workforce) implications / Impact	Yes (Include further detail below)
	The report highlights the resource impact of losses both in expenditure and cash terms. It also highlights the level of provision within the balance sheet for potential future payments.
Link to Strategic Well-being Objectives	Provide high quality, evidence based, and accessible care

5. RECOMMENDATION

The Audit & Risk Committee is requested to:

- **NOTE** the losses and special payments made for the period 1 January 2021 to 28 February 2021.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.