



AGENDA ITEM

2.2.4

AUDIT & RISK COMMITTEE

LOSSES AND SPECIAL PAYMENTS 01.11.20 TO 31.12.20

Date of meeting

08/02/2021

FOI Status

Open/Public

If closed please indicate reason

Not Applicable - Public Report

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Presented by

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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 November 2020 to 31 December 2020, 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 31 December 2020

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

Table 1

	31.12.20	31.10.20	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)	106,364	101,144	85,516	81,897*	78,961*
Redress Medical Negligence claims/costs	439	361	382		
Personal Injury claims/costs	431	445	680	532	1,618
Recoverable from Welsh Risk Pool (Note 1)	(140,005)	(133,372)	(115,161)	(99,137)	(87,408)
Net claim provision (Note 2)	(32,771)	(31,422)	(28,583)	(16,708)	(6,829)
Permanent Injury Benefit	6,104	6,092	6,252	4,517	3,258
Net Provision	(26,667)	(25,330)	(22,331)	(12,191)	(3,571)
Number of live cases on losses system (LaSPaR)					
	31.12.20	31.10.20	31.03.20	31.03.19	31.03.18
Medical Negligence claims	317	306	279	230	285
Redress Medical Negligence claims	177	169	202	87	112
Personal Injury claims	105	132	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 31st 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 increase of £5.2m in medical negligence provision reported since the last reporting period is attributed to the changes in Quantum estimates on various cases. As such a provision is recognised for the estimated costs to reflect the change. Corresponding increase in provision for amount recoverable from WRP is also reflected in Table 1 above.

Note 2: The increase in the net claim provision is due to payments made by the Health Board, not yet reimbursed by the WRP.

Comparison of Provisions with other similar Welsh Health Boards

As noted below, an exercise has been carried out to assess the level of the Health Board's provisions against similar other Welsh Health Boards as noted in the table below:

Table 1.1

	Cwm Taf Morgannwg UHB	Cardiff & Vale UHB	Aneurin Bevan UHB	Swansea Bay LHB (draft)	Betsi Cadwaladr UHB
	£'000	£'000	£'000	£'000	£'000
	Cumulative as at 31/03/2020	Cumulative as at 31/03/2020	Cumulative as at 31/03/2020	Cumulative as at 31/03/2020	Cumulative as at 31/03/2020
Provisions					
Clinical Negligence claims	83,218	116,145	160,723	126,575	83,642
Redress claims	360	273	524	815	284
Personal Injury Claims & Permanent Injury Benefit	6,679	5,728	3,940	6,271	4,894
Defence Fees	2,776	21,100	2,841	3,021	1,863
Total	93,033	143,246	168,028	136,682	90,683

The above data is derived from the annual accounts 2019-20 as published on relevant Health Board's websites.

As noted above, there are noticeable variations between the levels of provisions held by different Health Boards. It is difficult to draw any conclusions from the high level information available from the annual accounts, the variations can be attributed to the nature, number and the timing of the claims.

b) Expenditure incurred for the year to 31 December 2020

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 (31.10.2020).

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
	31.12.20	31.10.20	31.03.20	31.3.19	31.3.18
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	27,899	20,373	18,455	18,300	29,014
Redress Medical Negligence claims/costs	281	176	367		
Personal Injury claims/costs	232	197	557	(405)	1,612
Recoverable from Welsh Risk Pool	(27,413)	(20,051)	(18,225)	(16,544)	(29,033)
Net claim expenditure (Note 3)	999	695	1,154	1,371	1,593
Permanent Injury Benefit	53	41	2,075	1,697	62
Other	97	80	407	306	174
Total expenditure	1,149	816	3,636	3,354	1,829

Note 3: The annual budget for net claim expenditure for 2020-2021 is £1,169k (year to date £877k). There is therefore overspend on claims of £122k as at 31 December 2020.

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 9, 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 9 forecast.

The Welsh Risk Pool Risk Sharing Agreement is based on a formula and is made up of five key areas; the model calculates a weighted risk sharing percentage per NHS organisation as follows:

	Area	Weighting
A	HSCS and Prescribing Allocation	30%
B	Claims History	20%
C	New claims transferred from the Service to Legal and Risk Services (LARS)	10%
D	Claims potentially affecting next years' spend*	25%
E	Management of concerns and learning from events	15%

*There are two measures in this area; cases with cashflows < 1 year & Periodical Payment Order (PPO) allocation utilisation.

The above methodology will be applied to any in-year expenditure above the level of the indicative Welsh Government allocation.

The model:

- weights various contributory factors in order to provide a balanced and equitable system;
- it is transparent and auditable in its application;
- it does not rely heavily on past events;
- it provides emphasis on activity and behaviours of the last year;
- it accounts for the percentage of the allocation (PPOs) that is utilised before any in year settlements;
- it provides reward for managing Putting Things Right effectively;
- it can be updated every year to reflect recent activity and progress;
- it allows the inclusion of NHS Trusts that impact on the allocation usage but which were ignored in historic formula; and
- systems and databases are in place, which can easily manipulate and analyse information in a timely manner to derive the formula for future years.

In accordance with the WRP risk sharing model, the table below provides details of how the risk is shared between the Welsh NHS organisations:

Table 2.1

	Total Risk Sharing % 2019/20	Total Risk Sharing % 2020/21	Movement %
Aneurin Bevan LHB	17.04	17.87	0.83
Swansea Bay LHB	16.09	16.59	0.5
Betsi Cadwaladr University LHB	18.44	17.07	-1.37
Cardiff & Vale University LHB	15.32	15.66	0.34
Cwm Taf Morgannwg UHB	11.97	11.87	-0.1
Hywel Dda LHB	10.72	9.61	-1.11
Powys LHB	5.86	6.45	0.59
Public Health Wales NHST	1.2	1.34	0.14
Velindre NHST	1.13	1.28	0.15
Welsh Ambulance NHST	2.23	2.26	0.03
Total	100	100	0

As noted above, Cwm Taf Morgannwg UHB share of 11.87% is favourable compared to some of the similar other Welsh Health Boards. For comparative purposes the CTM allocation share is 15.4%. This does not compare directly to the 11.87% as CTM is a net commissioner of services from other Health Boards, but 11.87% is lower than our proportion of expenditure on the provision of services.

c) Cash Write-Offs made for the period 1 November 2020 to the 31 December 2020

Table 3 shows the cash impact up to 31 December 2020 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

	01.11.20 - 31.12.20 £000	Previously reported £000	2020-21 £000
Medical Negligence (Appendix 1a)			
Claims	1,416	3,171	4,587
Costs	713	1,313	2,026
Defence Fees	178	259	437
Redress Medical Negligence (Appendix 1b)			
Claims	13	139	152
Costs	4	26	30
Defence Fees	9	33	42
Personal Injury (Appendix 2)			
Claims	5	236	241
Costs	4	94	98

Defence Fees	41	102	143
Permanent Injury Benefit (Appendix 3)	0	201	201
Other (Appendix 4)			
Ex-Gratia	4	45	49
Debt Write Off	13	35	48
Condemnations and Obsolescence	0	262	262
Fruitless Payments	0	0	0
Employment Matter	0	0	0
Total	2,400	5,916	8,316
Recovered from Welsh Risk Pool	(729)	(1,840)	(2,569)
Net Cash Write-Off	1,671	4,076	5,747

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

- There is a separate paper on the agenda relating to the actions being taken to complete Claims Management Reports(CMR's), and Learning From Events Reports(LFER's) for the Welsh Risk Pool, which then impact on the level of outstanding debt on claims reimbursements shown in Table 2 above.

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 completed	Yes
	No specific impact



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 November 2020 to 31 December 2020.