

AGENDA ITEM

2.2.2

AUDIT & RISK COMMITTEE

LOSSES AND SPECIAL PAYMENTS 01.03.21 TO 30.06.21

Date of meeting

17/08/2021

FOI Status

Open/Public

If closed please indicate reason

Not Applicable - Public Report

Prepared by

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Presented by

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Approving Executive Sponsor

Executive Director of Finance

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
Stephanie Muir, CTMUHB Head of Legal Services, Complaints

On-going

NOTED

ACRONYMS

WRP	Welsh Risk Pool
NWSSP	NHS Wales Shared Services Partnership
VER	Voluntary Early Release
DEL	Departmental Expenditure Limit
L&R	Legal & Risk
PTR	Putting Things Right

1. SITUATION/BACKGROUND

This report advises the Audit & Risk Committee on the losses and special payments made by the Health Board (HB) for the two month period from 1 March 2021 to 30 June 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 HB. Where the WRP would be liable for a reimbursement to the HB 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 (ASSESSMENT)

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 30 June 2021

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

Table 1

	30.06.21	31.03.21	28.02.21	31.03.20	31.03.19
	£000	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative	Cumulative
Medical Negligence claims/costs (Note 1)	109,867	86,029	102,755	85,516	81,897*
Redress Medical Negligence claims/costs	307	269	438	382	
Personal Injury claims/costs	415	436	459	680	532
Recoverable from Welsh Risk Pool (Note 1)	(125,221)	(114,863)	(129,839)	(115,161)	(99,137)
Net claim provision	(14,632)	(28,129)	(26,187)	(28,583)	(16,708)
Permanent Injury Benefit	6,313	6,320	6,382	6,252	4,517
Net Provision	(8,319)	(21,809)	(19,805)	(22,331)	(12,191)
Number of live cases on losses system (LaSPaR)					
	30.06.21	31.03.21	28.02.21	31.03.20	31.03.19
Medical Negligence claims	298	309	309	279	230
Redress Medical Negligence claims	179	168	180	202	87
Personal Injury claims	107	110	114	113	97

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 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: At the year-end, £15m of the remaining provision relating to two long-term structured settlement cases were transferred to WRP, with the future periodical payments to the claimants being managed by WRP directly. Giving a reduction in the provision held by the Health Board for the period ending 31st March 2021 compared to the last reported period of 28th February 2021.

The increase in provision for the first quarter of the current financial year predominantly relates to the changes in the estimated settlement values for the three cases, as follows:

1. 05RVEMN0022 (increase of £8.7m). Quantum figures have been reconsidered and increased following receipt of the Claimant's schedule of loss. Estimated costs have increased, as the Health Board were not successful at the liability trial.
2. 20RYLMN0129 (increase of £1.1m). L&RS updated their estimation in May 2021 following receipt of the further expert evidence, and Counsel's advice that this is a complex and high value case so damages and costs have increased.
3. 20RYLMN0198 (increase of £16.8m). Unsupportive expert evidence has been obtained, and on balance, the Health Board will not successfully defend this case but further investigations are ongoing to confirm Health Boards position.

b) Expenditure incurred for the year to 30 June 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 (28.02.2021).

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 to	Year ended	Year ended
	30.06.21	31.03.21	28.02.21	31.03.20	31.3.19
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	25,213	13,110	28,052	18,455	18,300
Redress Medical Negligence claims/costs	107	305	325	367	
Personal Injury claims/costs	146	316	303	557	(405)
Recoverable from Welsh Risk Pool	(25,198)	(12,449)	(27,494)	(18,225)	(16,544)
Net claim expenditure (Note 2)	268	1,282	1,186	1,154	1,371
Permanent Injury Benefit	(7)	470	432	2,075	1,697
Other	22	609	463	407	306
Total expenditure	283	2,361	2,081	3,636	3,354

Note 2: The annual budget for net claim expenditure for 2020-21 is £1,169k, there is therefore overspend on claims of £113k as at 31 March 2021. The annual budget for net claim expenditure for 2021-22 is £1,143k (year to date £286k) there is therefore an underspend of £18k.

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 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 17th 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. The final value of this penalty charge is £103k and relate to 5 claims. Currently, this charge is reflected in the expenditure figure disclosed within table 2 and appendix 5a and remaining £20k 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 £14.5m received in the first quarter of this financial year. A further £4.3m has been received in July 2021.

Case Management Reports are still being submitted as advised by WRP before the Learning from Events Reports, thus ensuring payments will be made and assuring WRP that the Health Board's Claims Team are following process.

It is proposed that the WRP will reinstate the normal process i.e. the standard 60 working day deadline for submission of an LFER and a six month deadline for submission of further information from 1st October 2021.

This means that the LFERs will require submission before the CMRs.

There are discussions in progress in conjunction with the ILGs as to how this is managed more effectively going forward to ensure timely submission of LFERs and subsequently CMRs.

c) Cash Write-Offs made for the period 1 March 2021 to the 30 June 2021

Table 3a shows the cash impact for financial year 2020-21 and Table 3b up to 30 June 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 4 months is shown in **Appendix 1a and 1b**. Redress medical negligence analysis of payments and receipts is now shown separately from medical negligence in **Appendix 2a and 2b**. A similar analysis is provided for personal injury claims in **Appendix 3a and 3b** and Permanent Injury Benefit (PIB) in **Appendix 4a and 4b**.

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 5a and 5b.**

Table 3a

Cash write-offs made during 2020/21

	01.03.21 - 31.03.21 £000	Previously Reported £000	Total 2020-21 £000
Medical Negligence (Appendix 1a)			
Claims	159	7,762	7,921
Costs	1,563	2,442	4,005
Defence Fees	62	608	670
Redress Medical Negligence (Appendix 2a)			
Claims	138	179	317
Costs	2	36	38
Defence Fees	9	54	63
Personal Injury (Appendix 3a)			
Claims	5	276	281
Costs	16	104	120
Defence Fees	14	145	159
Permanent Injury Benefit (Appendix 4a)	101	302	403
Other (Appendix 5a)			
Ex-Gratia	5	57	62
Debt Write Off	1	55	56
Condemnations and Obsolescence	0	268	268
Loss of Cash	120	0	120
Employment Matter	21	83	104
Total	2,216	12,371	14,587
Recovered from Welsh Risk Pool	69	(12,818)	(12,749)
Net Cash Write-Off	2,285	(447)	1,838

Table 3b

Cash write-offs made during 21/22

	01.04.21 - 30.06.21 £000
Medical Negligence (Appendix 1b)	
Claims	1,072
Costs	214
Defence Fees	89
Redress Medical Negligence (Appendix 2b)	
Claims	44
Costs	10
Defence Fees	16
Personal Injury (Appendix 3b)	
Claims	126
Costs	21
Defence Fees	20
Permanent Injury Benefit (Appendix 4b)	0
Other (Appendix 5b)	
Ex-Gratia	20
Debt Write Off	0
Condemnations and Obsolescence	0
Ombudsman	1
Employment Matter	0
Total	1,633
Recovered from Welsh Risk Pool	(14,842)
Net Cash Write-Off	(13,209)

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
	If more than one Healthcare Standard applies please list below:
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 March 2021 to 30 June 2021.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.