



AGENDA ITEM

4.2

AUDIT & RISK COMMITTEE

Losses and Special Payments 01.04.22 to 30.06.22

Date of meeting

22/08/2022

FOI Status

Open/Public

If closed please indicate reason

Not Applicable - Public Report

Prepared by

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Presented by

Sally May - Executive Director of Finance & Procurement

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
Assistant Director Claims & Concerns

Georgina Galletly – Director of Corporate Governance

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
CMRs	Claims Management Reports
LFERs	Learning From Events Reports
ILG	Integrated Locality Group
CSG	Clinical Service Group
SOP	Standard Operating Procedure
GMPI	General Medical Practice Indemnity

1. SITUATION/BACKGROUND

- 1.1 This report advises the Audit & Risk Committee on the losses and special payments made by the University Health Board (UHB) for the three month period from 1 April 2022 to 30 June 2022, as required in Standing Financial Instructions.
- 1.2 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.
- 1.3 General Medical Practice Indemnity Scheme (GMPI) was introduced in recent years by the Welsh Government as a state-backed scheme within NHS Wales. Legal and Risk Services and WRP operates this scheme and cases settled under the scheme are presented to WRP for reimbursement.
- Scrutiny of the Learning from Events Report is conducted in the same manner as cases settled under NHS Indemnity or as part of the redress scheme.
 - Payments in relation to claims managed under GMPI are made by the defendant Health Board, and reimbursement by the WRP is made to the Health Board.
 - No excess in relation to reimbursement of cases settled under the GMPI will apply to the Health Board and all costs incurred are fully reimbursed.
- 1.4 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.



- 1.5 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)

- 2.1 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.
- 2.2 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.
- 2.3 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 2022

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

Table 1

	30.06.22	31.03.22	31.03.21	31.03.20
	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative
Medical Negligence claims/costs	64,967	65,127	86,029	85,516
Redress Medical Negligence claims/costs	436	235	269	382
Personal Injury claims/costs	605	611	436	680
Recoverable from Welsh Risk Pool	(87,279)	(93,074)	(114,863)	(115,161)
Net claim provision (Note 1)	(21,271)	(27,101)	(28,129)	(28,583)
Permanent Injury Benefit	6,086	6,201	6,320	6,252
Net Provision	(15,185)	(20,900)	(21,809)	(22,331)
Number of live cases on losses system (LaSPaR)				
	30.06.22	31.03.22	31.03.21	31.03.20
Medical Negligence claims (Note 2)	316	299	309	279
Redress Medical Negligence claims (Note 2)	245	213	168	202
GP Indemnity claims	7	7	0	0
Personal Injury claims	120	113	110	113

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

Note 1: The decrease in the net claim provision for this period reflects the successful reimbursement of claims from WRP. Please note further update within section B below.

Note 2: There is an overall increase in Medical Negligence and Redress open cases during the first quarter of the year as noted in the table above. However, a number of cases will be closed in Quarter 2 due to the Systems Update.

b) Expenditure incurred for the year to 30 June 2022

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 (23.06.2022).

The “other” category mainly consists of payment of retirement gratuities, Employment Matters and voluntary early releases (see appendix 6).

Table 2

	Year to	Year to	Year ended	Year ended
	30.06.22	31.03.22	31.03.21	31.03.20
	£000	£000	£000	£000
Medical Negligence claims/costs	1,374	1,945	13,110	18,455
Redress Medical Negligence claims/costs	289	170	305	367
GP Indemnity	0	1	0	0
Personal Injury claims/costs	42	772	316	557
Recoverable from Welsh Risk Pool	(1,414)	(1,210)	(12,449)	(18,225)
Net claim expenditure (Note 3)	291	1,678	1,282	1,154
Permanent Injury Benefit	(115)	286	470	2,075
Other	165	570	609	407
Total expenditure	341	2,534	2,361	3,636

Note 3: The annual budget for net claim expenditure for 2022-23 is £1,785k (year to date £446k). As at M3 we are therefore reporting an under spend of £155k.

c) Cash Write-Offs made for the period 1 April 2022 to the 30 June 2022

Table 3 shows the cash impact to 30 June 2022 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 3 months is shown in **Appendix 1**. Redress medical negligence analysis of payments and receipts is now shown separately from medical negligence in **Appendix 2**.

GP Indemnity payment is shown on **Appendix 3**. A similar analysis is provided for personal injury claims in **Appendix 4** and Permanent Injury Benefit (PIB) in **Appendix 5**.



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 6**.

Table 3
Cash write-offs made during 22/23

	01.04.22 - 30.06.22 £000	Previously Reported £000	Total 2022-23 £000
Medical Negligence (Appendix 1)			
Claims	715	0	715
Costs	730	0	730
Defence Fees	88	0	88
Medical Negligence Totals	1,533	0	1,533
Redress Medical Negligence (Appendix 2)			
Claims	67	0	67
Costs	14	0	14
Defence Fees	8	0	8
Redress Medical Negligence Totals	89	0	89
GP Indemnity (Appendix 3)			
Defence Fees	0	0	0
GP Indemnity Totals	0	0	0
Personal Injury (Appendix 4)			
Claims	24	0	24
Costs	10	0	10
Defence Fees	13	0	13
Personal Injury Totals	47	0	47
Permanent Injury Benefit (Appendix 5)	0	0	0
Permanent Injury Benefit Totals	0	0	0
Other (Appendix 6)			
Ex-Gratia	33	0	33
Debt Write Off	0	0	0
Loss of Cash	0	0	0
Ombudsman	1	0	1
Employment Matter	132	0	132
Other Totals	166	0	166
Total	1,835	0	1,835
Recovered from Welsh Risk Pool	(7,208)	0	(7,208)
Net Cash Write-Off	(5,373)	0	(5,373)

WRP Risk Sharing Agreement

- 2.4 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.
- 2.5 In 2021-22, the WRP risk share was applied and in total £16.495m of overspend was shared amongst the Welsh NHS bodies. The Health Board's share of this overspend was 12.49% which amounts to £2.06m.
- 2.6 According to WRP 5 year DEL forecast, a likely overspend in region of £25.3m will need to be shared between the Health Boards in 2022-23 and similar values in the subsequent 3 years. The board have made provision for the increase of the extra £1.1m in the financial plan for 2022/23.

Welsh Risk Pool charge on late submission of reimbursement claims

- 2.7 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 Case Management Reports (CMRs) and Learning from Event Reports (LFERs) for the reimbursement of outstanding monies from WRP.
- 2.8 Following the Review of procedures for the management of claims, redress cases and coronial investigations by WRP, CTM has been working with WRP on an improvement plan to address areas for improvement, particularly in relation to the timely submission of CMRs and LFERs.
- 2.9 Reports on due dates for CMRs are regularly undertaken and audited monthly to ensure all CMR are on target for submission when due. This process has enabled more effective tracking and monitoring of CMRs, with all CMRs being submitted on time.
- 2.10 Work continues on the effective production and submission of LFERs, in conjunction with ILGs. This is now supported by effective tracking on new Datix Cymru.

Actions taken are as follows:

- LFER How to Guide developed and shared widely
- LFER SOP developed
- Weekly reports run and disseminated on LFER status
- Spreadsheet compiled for the red/amber deferred cases which are problematic to track on Datix Cymru
- Request submitted to the Once for Wales Datix team to make amendments to the system allowing easier tracking of red/amber deferred cases
- ILG Governance teams now provided access to Datix Cymru, allowing real time review of LFER status
- Weekly LFER drop in sessions arrange for staff to “drop in” to discuss any issues with specific LFERs
- Ad hoc meetings with service areas in respect of LFERs status and barriers to providing evidence.
- Escalation of any barriers to relevant Executives
- Weekly meetings with ILGs in respect of LFER status, led by Executive
- LFER status captured and reported at weekly Executive Patient Safety meeting
- Where learning has been delayed due to the pandemic, any LFERs overdue, which have not yet been submitted, have been submitted partially completed, allowing a 6-month extension.
- Changes requested and made to the new Datix Cymru to allow for more effective tracking of Red/Amber Deferred and overdue LFERs

2.11 In June 2022, CTM were notified of 38 LFERs which were overdue their 6 month extension and were at risk of permanent deferral. A significant amount of work was undertaken to complete and submit these LFERs, with 20 being submitted by 20 July 2022.

2.12 The WRP Committee met on 20th July 2022 and gave Health Board’s until the end of September to get these LFERs completed and submitted. Work continues on these LFERs, along with business as usual.

2.13 The new operational model has accounted for LFER facilitation within the Care Group Governance business partner model.

2.14 Training on Datix Cymru enforces the need to complete the Datix system comprehensively including, action points and uploading evidence of actions taken. This should assist with LFER completion at a later date when Redress or a Claim is triggered.

2.15 Root Cause Analysis (RCA) training includes the importance of the completion of LFERs in a timely manner, with the financial implications highlighted to staff.

Status

There are currently 89 Red/Amber deferred cases recorded on Datix Cymru, of those 22 have gone over the 6 months extension deadline date and can be at risk of permanent deferral.

22 LFERs have been triggered but are not yet due for submission.

A number of blank LFERs have been submitted in order to gain a 6 month extension.

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

3.1 The risk highlighted above regarding the late submission of WRP reimbursement claims could result in further financial penalties.

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.	<p>Yes</p> <p>If yes, please provide a hyperlink to the location of the completed EIA or who it would be available from in the box below.</p>



	If no, please provide reasons why an EIA was not considered to be required in the box below.
	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 Goals	Sustaining Our Future

5. RECOMMENDATION

5.1 The Audit & Risk Committee is requested to:

- **NOTE** the losses and special payments made for the period 1 April 2022 to 30 June 2022.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.