



AGENDA ITEM

4.2

AUDIT & RISK COMMITTEE

Losses and Special Payments 01.10.22 to 31.12.22

Date of meeting

13/02/2023

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
Assistant Director Claims & Concerns

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



CMR	Claims Management Report
LFER	Learning From Events Report
ILG	Integrated Locality Group
CSG	Clinical Service Group
SOP	Standard Operating Procedure
GMPI	General Medical Practice Indemnity
HSE	Health and Safety Executive
AMD	Assistant Medical Director

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 October 2022 to 31 December 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 31 December 2022

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

Table 1

	31.12.22	30.09.22	31.03.22	31.03.21	31.03.20
	£000	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative	Cumulative
Medical Negligence claims/costs	59,617	65,994	65,127	86,029	85,516
Redress Medical Negligence claims/costs	575	538	235	269	382
Personal Injury claims/costs	859	618	611	436	680
Recoverable from Welsh Risk Pool	(73,232)	(84,441)	(93,074)	(114,863)	(115,161)
Net claim provision (Note 1)	(12,181)	(17,291)	(27,101)	(28,129)	(28,583)
Permanent Injury Benefit	5,951	6,018	6,201	6,320	6,252
Net Provision	(6,230)	(11,273)	(20,900)	(21,809)	(22,331)
Number of live cases on losses system (LaSPaR)					
	31.12.22	30.09.22	31.03.22	31.03.21	31.03.20
Medical Negligence claims (Note 2)	339	326	299	309	279
Redress Medical Negligence claims (Note 2)	247	243	213	168	202
GP Indemnity claims	13	7	7	0	0
Personal Injury claims	130	129	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 net claim provision for this period reflects the successful reimbursement claims from WRP as detailed in the Table 3. Please note further update on this matter within section B below.

Note 2: There is an overall increase in Medical Negligence and Redress open cases during this financial year as noted in the table above. However, a systems reconciliation process is being completed currently and updated number of open cases will be provided to the next Audit & Risk Committee.

b) Expenditure incurred for the year to 31 December 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 (12.12.2022).

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	Year ended
	31.12.22	30.09.22	31.03.22	31.03.21	31.03.20
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	(282)	3,749	1,945	13,110	18,455
Redress Medical Negligence claims/costs	645	431	170	305	367
GP Indemnity	3	0	1	0	0
Personal Injury claims/costs	763	262	772	316	557
Recoverable from Welsh Risk Pool	190	(3,782)	(1,210)	(12,449)	(18,225)
Net claim expenditure (Note 3)	1,319	660	1,678	1,282	1,154
Permanent Injury Benefit	(42)	(80)	286	470	2,075
Other	1,232	1,210	570	609	407
Total expenditure	2,509	1,790	2,534	2,361	3,636

Note 3: The annual budget for net claim expenditure for 2022-23 is £1,785k (year to date £1,338k), there is therefore a very small underspend of £19k.

c) Cash Write-Offs made for the period 1 October 2022 to the 31 December 2022

Table 3 shows the cash impact to 31 December 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 2 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

	01.10.22 - 31.12.22 £000	Previously Reported £000	Total 2022-23 £000
Medical Negligence (Appendix 1)			
Claims	1,432	1,262	2,694
Costs	756	1,424	2,180
Defence Fees	159	194	353
Medical Negligence Totals	2,347	2,880	5,227
Redress Medical Negligence (Appendix 2)			
Claims	110	95	205
Costs	20	20	40
Defence Fees	46	15	61
Redress Medical Negligence Totals	176	130	306
GP Indemnity (Appendix 3)			
Defence Fees	3	0	3
GP Indemnity Totals	3	0	3
Personal Injury (Appendix 4)			
Claims	23	111	134
Costs	193	63	256
Defence Fees	45	80	125
Personal Injury Totals	261	254	515
Permanent Injury Benefit (Appendix 5)	103	103	206
Permanent Injury Benefit Totals	103	103	206
Other (Appendix 6)			
Ex-Gratia	16	61	77
Debt Write Off	4	0	4
Loss of Cash	0	861	861
Ombudsman	2	3	5
Employment Matter	0	285	285
Other Totals	22	1,210	1,232
Total	2,912	4,577	7,489
Recovered from Welsh Risk Pool	(7,236)	(12,414)	(19,650)
Net Cash Write-Off	(4,324)	(7,837)	(12,161)

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 WRP have confirmed an overspend 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

- 2.6 As reported previously to the Audit & Risk Committee, the Health Board continues to work 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.
- 2.7 Following the review of procedures for the management of claims, redress cases and coronial investigations by WRP, an improvement plan was jointly developed by CTM and WRP. Good progress has been made in achieving actions detailed within the plan. However, there are still challenges in respect of timely submission of LFERs. This has been recognised and changes are being made with the responsibility for the facilitation of LFERs being realigned as part of the proposed changes to the new operating model in respect of quality, safety and governance.
- 2.8 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 continuing to be submitted on time.
- 2.9 Work continues on the effective production and submission of LFERs, which will be supported when the new operating model for quality, safety and governance is implemented.

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
- Ad hoc meetings with service areas in respect of LFERs status and barriers to providing evidence.
- Escalation of any barriers to relevant Executives
- LFER status captured and reported at weekly Executive Patient Safety meeting
- AMD engagement to assist with the LFER process
- Reconciliation of WRP data and CTM Datix Cymru data.

2.10 Submissions are reviewed by WRP and either deferred or approved at panel and final approval for reimbursement given at WRP Committee. The following has been achieved:

WRP Committees

July -	£5,208,271.63
September -	£2,901,634.75
November -	£4,336,763.64
January -	£5,867,563.53

Circa £18.2 million

- 2.11 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.
- 2.12 RCA training includes the importance of the completion of LFERs in a timely manner, with the financial implications highlighted to staff.

Status

- 2.13 There are currently 83 Red/Amber deferred cases recorded on the Welsh Risk Pool system, of those 20 have gone over the 6 months extension deadline date and can be at risk of permanent deferral. With a further 42 due to hit the 6 month deadline.
- 2.14 The Legal Services team are working closely with Heads of Quality & Safety and governance teams to address these cases.
- 2.15 We continue to submit a high number of blank LFERs in order to gain a 6 month extension. Deferred cases will not reduce until LFERs are submitted in a timely manner.

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

- 3.1 The Health Board is now beginning to realise the risk of submitting blank LFERs, as the number of Amber/Red deferred cases are increasing, with a risk of them eventually breaching the 6 months extension and becoming a risk of permanent deferral.
- 3.2 The new operating model for quality, safety and governance has built learning from events reports facilitation into the patient safety team. It is felt that sustainable improvements will be made in this area, when the new operating model is implemented.

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
	<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> <p>If no, please provide reasons why an EIA was not considered to be required in the box below.</p>
	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 October 2022 to 31 December 2022.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.