



**AGENDA ITEM**

4.4

**AUDIT & RISK COMMITTEE**

**LOSSES AND SPECIAL PAYMENTS 01.07.22 TO 30.09.22**

<b>Date of meeting</b>	12/12/2022
<b>FOI Status</b>	Open/Public
<b>If closed please indicate reason</b>	Not Applicable - Public Report
<b>Prepared by</b>	Daxa Varsani – Financial Accountant
<b>Presented by</b>	Sally May - Executive Director of Finance & Procurement
<b>Approving Executive Sponsor</b>	Executive Director of Finance
<b>Report purpose</b>	FOR NOTING

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

<b>Committee/Group/Individuals</b>	<b>Date</b>	<b>Outcome</b>
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
HSE	Health and Safety Executive



## 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 July 2022 to 30 September 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 September 2022**

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



**Table 1**

	30.09.22	30.06.22	31.03.22	31.03.21	31.03.20
	£000	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative	Cumulative
Medical Negligence claims/costs	65,994	64,967	65,127	86,029	85,516
Redress Medical Negligence claims/costs	538	436	235	269	382
Personal Injury claims/costs	618	605	611	436	680
Recoverable from Welsh Risk Pool	(84,441)	(87,279)	(93,074)	(114,863)	(115,161)
Net claim provision (Note 1)	<b>(17,291)</b>	<b>(21,271)</b>	<b>(27,101)</b>	<b>(28,129)</b>	<b>(28,583)</b>
Permanent Injury Benefit	6,018	6,086	6,201	6,320	6,252
Net Provision	<b>(11,273)</b>	<b>(15,185)</b>	<b>(20,900)</b>	<b>(21,809)</b>	<b>(22,331)</b>
<b>Number of live cases on losses system (LaSPaR)</b>					
	30.09.22	30.06.22	31.03.22	31.03.21	31.03.20
Medical Negligence claims (Note 2)	326	316	299	309	279
Redress Medical Negligence claims (Note 2)	243	245	213	168	202
GP Indemnity claims	7	7	7	0	0
Personal Injury claims	129	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 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 the first two quarters of the year as noted in the table above. However, a systems reconciliation process is being completed currently and an updated number of open cases will be provided to the next Audit & Risk Committee.

**b) Expenditure incurred for the year to 30 September 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 (22.08.2022).

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 to	Year ended	Year ended
	30.09.22	30.06.22	31.03.22	31.03.21	31.03.20
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	3,749	1,374	1,945	13,110	18,455
Redress Medical Negligence claims/costs	431	289	170	305	367
GP Indemnity	0	0	1	0	0
Personal Injury claims/costs	262	42	772	316	557
Recoverable from Welsh Risk Pool	(3,782)	(1,414)	(1,210)	(12,449)	(18,225)
<b>Net claim expenditure (Note 3)</b>	<b>660</b>	<b>291</b>	<b>1,678</b>	<b>1,282</b>	<b>1,154</b>
Permanent Injury Benefit	(80)	(115)	286	470	2,075
Other (Note 4)	1,210	165	570	609	407
<b>Total expenditure</b>	<b>1,790</b>	<b>341</b>	<b>2,534</b>	<b>2,361</b>	<b>3,636</b>

**Note 3:** The annual budget for net claim expenditure for 2022-23 is £1,785k (year to date £893k), there is therefore an underspend of £233k.

**Note 4:** As reported to the Audit & Risk Committee previously regarding the Health & Safety Executive (HSE) Fine, the actual payment of £861k has now been made during September 2022.

**c) Cash Write-Offs made for the period 1 July 2022 to the 30 September 2022**

Table 3 shows the cash impact to 30 September 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

	01.07.22 - 30.09.22 £000	Previously Reported £000	Total 2022-23 £000
<b>Medical Negligence (Appendix 1)</b>			
Claims	547	715	1,262
Costs	694	730	1,424
Defence Fees	106	88	194
<b>Medical Negligence Totals</b>	<b>1,347</b>	<b>1,533</b>	<b>2,880</b>
<b>Redress Medical Negligence (Appendix 2)</b>			
Claims	28	67	95
Costs	6	14	20
Defence Fees	7	8	15
<b>Redress Medical Negligence Totals</b>	<b>41</b>	<b>89</b>	<b>130</b>
<b>GP Indemnity (Appendix 3)</b>			
Defence Fees	0	0	0
<b>GP Indemnity Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Personal Injury (Appendix 4)</b>			
Claims	87	24	111
Costs	53	10	63
Defence Fees	67	13	80
<b>Personal Injury Totals</b>	<b>207</b>	<b>47</b>	<b>254</b>
<b>Permanent Injury Benefit (Appendix 5)</b>	<b>103</b>	<b>0</b>	<b>103</b>
<b>Permanent Injury Benefit Totals</b>	<b>103</b>	<b>0</b>	<b>103</b>
<b>Other (Appendix 6)</b>			
Ex-Gratia	28	33	61
Debt Write Off		0	
Loss of Cash	861	0	861
Ombudsman	2	1	3
Employment Matter	153	132	285



<b>Other Totals</b>	<b>1,044</b>	<b>166</b>	<b>1,210</b>
<b>Total</b>	<b>2,742</b>	<b>1,835</b>	<b>4,577</b>
<b>Recovered from Welsh Risk Pool</b>	<b>(5,206)</b>	<b>(7,208)</b>	<b>(12,414)</b>
<b>Net Cash Write-Off</b>	<b>(2,464)</b>	<b>(5,373)</b>	<b>(7,837)</b>

## **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
- Request submitted to the Once for Wales Datix team to make amendments to the system allowing easier tracking of red/amber deferred cases
- Integrated Locality Group (ILG) Governance teams now provided access to Datix Cymru, allowing real time review of LFER status
- 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
- 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

2.10 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 with all LFERs being submitted.

2.11 Submissions are reviewed by WRP and either deferred or approved at panel and final approval for reimbursement give 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

Circa £12.4 million

In addition £890,534 has recently been approved at Amber Panel for reimbursement.

2.12 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.

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

### **Status**

2.14 There are currently 84 Red/Amber deferred cases recorded on Datix Cymru, of those 9 have gone over the 6 months extension deadline date and can be at risk of permanent deferral.

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 There continues to be a risk of permanent deferrals and associated financial penalties due to the high number of blank LFERs being submitted. It is felt that sustainable improvements will be made in this area, when the new operating model in respect of quality, safety and governance is implemented and embedded.

## **4. IMPACT ASSESSMENT**

<b>Quality/Safety/Patient Experience implications</b>	Yes (Please see detail below)
	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.  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
<b>Related Health and Care standard(s)</b>	Governance, Leadership and Accountability
	If more than one Healthcare Standard applies please list below:



<p><b>Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.</b></p>	<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> <p>If no, please provide reasons why an EIA was not considered to be required in the box below.</p> <p>Completed as part of the Financial Control Procedures for Losses &amp; Special Payments (FP 15)</p>
<p><b>Legal implications / impact</b></p>	<p>Yes (Include further detail below)</p> <p>Losses provided for are informed by legal advice where appropriate based on probability of a successful claim</p>
<p><b>Resource (Capital/Revenue £/Workforce) implications / Impact</b></p>	<p>Yes (Include further detail below)</p> <p>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.</p>
<p><b>Link to Strategic Goals</b></p>	<p>Sustaining Our Future</p>

## 5. RECOMMENDATION

5.1 The Audit & Risk Committee is requested to:

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