



**AGENDA ITEM**

4.2

**AUDIT & RISK COMMITTEE**

**Losses and Special Payments 01.02.22 to 31.03.22**

<b>Date of meeting</b>	23/06/2022
<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



## 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 two month period from 1 February 2022 to 31 March 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 March 2022**

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



**Table 1**

	31.03.22	31.01.22	31.03.21	31.03.20	31.03.19
	£000	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative	Cumulative
Medical Negligence claims/costs (Note 1)	65,127	86,433	86,029	85,516	81,897*
Redress Medical Negligence claims/costs	235	377	269	382	
Personal Injury claims/costs	611	356	436	680	532
Recoverable from Welsh Risk Pool (Note 1)	(93,074)	(100,719)	(114,863)	(115,161)	(99,137)
Net claim provision (Note 2)	(27,101)	(13,553)	(28,129)	(28,583)	(16,708)
Permanent Injury Benefit	6201	6256	6,320	6,252	4,517
Net Provision	(20,900)	(7,297)	(21,809)	(22,331)	(12,191)
<b>Number of live cases on losses system (LaSPaR)</b>					
	31.03.22	31.01.22	31.03.21	31.03.20	31.03.19
Medical Negligence claims	299	320	309	279	230
Redress Medical Negligence claims	213	227	168	202	87
GP Indemnity claims	7	0	0	0	0
Personal Injury claims	113	119	110	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:** The reduction in Medical Negligence Provision is mainly attributed to three cases where settlements were reached and future payments will be made directly by WRP as part of the Periodical Payment Order, therefore no provision is required to be made by CTM for these liabilities. Corresponding reduction in provision for amount recoverable from WRP is also reflected in Table 1.

**Note 2:** The increase in net claim provision for this period reflects the outstanding WRP reimbursement of claims. Please note further information on this matter within section B below.

## b) Expenditure incurred for the year to 31 March 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 (24.02.2022).

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
	31.03.22	31.01.22	31.03.21	31.03.20	31.3.19
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	1,945	9,146	13,110	18,455	18,300
Redress Medical Negligence claims/costs	170	261	305	367	
GP Indemnity	1	0	0	0	0
Personal Injury claims/costs	772	430	316	557	(405)
Recoverable from Welsh Risk Pool	(1,210)	(8,419)	(12,449)	(18,225)	(16,544)
<b>Net claim expenditure (Note 3)</b>	<b>1,678</b>	<b>1,418</b>	<b>1,282</b>	<b>1,154</b>	<b>1,371</b>
Permanent Injury Benefit	286	239	470	2,075	1,697
Other	570	87	609	407	306
<b>Total expenditure</b>	<b>2,534</b>	<b>1,744</b>	<b>2,361</b>	<b>3,636</b>	<b>3,354</b>

**Note 3:** The annual budget for net claim expenditure for 2021-22 was £1,143k (actual expenditure for the year £1,678k), therefore an overspend of £535k for 2021-22.

## c) Cash Write-Offs made for the period 1 February 2022 to the 31 March 2022

Table 3 shows the cash impact to 31 March 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 21/22**

	01.02.22 - 31.03.22 £000	Previously Reported £000	Total 2021-22 £000
<b>Medical Negligence (Appendix 1)</b>			
Claims	12,678	6,872	19,550
Costs	1,367	1,250	2,617
Defence Fees	59	621	680
<b>Medical Negligence Totals</b>	<b>14,104</b>	<b>8,743</b>	<b>22,847</b>
<b>Redress Medical Negligence (Appendix 2)</b>			
Claims	47	75	122
Costs	10	33	43
Defence Fees	-6	46	40
<b>Redress Medical Negligence Totals</b>	<b>51</b>	<b>154</b>	<b>205</b>
<b>GP Indemnity (Appendix 3)</b>			
Defence Fees	1	0	1
<b>GP Indemnity Totals</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>Personal Injury (Appendix 4)</b>			
Claims	-62	277	215
Costs	86	178	264
Defence Fees	64	55	119
<b>Personal Injury Totals</b>	<b>88</b>	<b>510</b>	<b>598</b>
<b>Permanent Injury Benefit (Appendix 5)</b>	102	302	404
<b>Permanent Injury Benefit Totals</b>	<b>102</b>	<b>302</b>	<b>404</b>
<b>Other (Appendix 6)</b>			
Ex-Gratia	19	69	88
Debt Write Off	9	11	20
Loss of Cash	28	0	28
Ombudsman	3	6	9
Employment Matter	425	0	425
<b>Other Totals</b>	<b>484</b>	<b>86</b>	<b>570</b>
<b>Total</b>	<b>14,830</b>	<b>9,795</b>	<b>24,625</b>



Recovered from Welsh Risk Pool	(437)	(22,563)	(23,000)
Net Cash Write-Off	14,393	(12,768)	1,625

### **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, 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 There have been discussions with the ILGs as to how this is managed more effectively going forward to ensure timely submission of LFERs and subsequently CMRs.

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 arranged 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.

2.10 In total 174 LFER were noted to be overdue as at 31st January 2022. This is a considerable risk carrying a significant financial value.

Within the improvement plan agreed with Welsh Risk Pool, it is noted that the following targets must be met:

Agreed Target	Update against Target
25% of LFERs submitted by 1st April 2022	Of agreed target of 44 cases - 40 LFERs or outstanding learning were submitted by 1 <sup>st</sup> April 2022
50% of LFERs submitted by 1st May 2022	Of agreed target of 88 cases - a total of 51 LFERs or outstanding learning were submitted by 1 <sup>st</sup> May 2022
100% of LFERs submitted by 1st June 2022	Of agreed target of 174 cases - a total of 110 LFERs or outstanding learning were submitted by 1 <sup>st</sup> June 2022. 64 historic LFERs were not submitted.

High value cases have been prioritised in this exercise, however, there is one outstanding high value (approx. £10m) claim which is being prioritised.

Welsh Risk Pool have requested a position update report which will be signed off by the Director of Corporate Governance following end of May 2022.

Welsh Risk Pool have made it clear that new LFERs triggering claims should be managed in time and be up to date to avoid adding to the backlog of cases.

Work is underway on these, however, there are 28 newly triggering LFERs due or imminently due for submission. It is imperative that these are submitted in time.

- 2.11 There is still a risk that cases which have not been submitted will not be reimbursed. WRP and the CTM Director of Corporate Governance meet regularly to discuss how to manage this risk.



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

- 3.1 The risk highlighted in section 2b of this report regarding the late submission of WRP reimbursement claims could result in further financial penalties.
- 3.2 As highlighted in the report above a meeting is scheduled between WRP and the Director of Corporate Governance to manage the risk.

### 4. IMPACT ASSESSMENT

<b>Quality/Safety/Patient Experience implications</b>	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 &amp; Risk Committee</p>
<b>Related Health and Care standard(s)</b>	Governance, Leadership and Accountability
	If more than one Healthcare Standard applies please list below:
<b>Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.</b>	Yes
	If yes, please provide a hyperlink to the location of the completed EIA or who it would be available from in the box below.
	If no, please provide reasons why an EIA was not considered to be required in the box below.
<b>Legal implications / impact</b>	Completed as part of the Financial Control Procedures for Losses & Special Payments (FP 15)
	Yes (Include further detail below)
<b>Resource (Capital/Revenue £/Workforce) implications /</b>	Losses provided for are informed by legal advice where appropriate based on probability of a successful claim
	Yes (Include further detail below)



<b>Impact</b>	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.
<b>Link to Strategic Goals</b>	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 February 2022 to 31 March 2022.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.