



**AGENDA ITEM**

5.2

**AUDIT & RISK COMMITTEE**

**Losses and Special Payments 01.07.21 to 30.09.21**

<b>Date of meeting</b>	07/12/2021
<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 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

- 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 July 2021 to 30 September 2021, 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 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.
- 1.4 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 2021

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

**Table 1**

	30.09.21	30.06.21	31.03.21	31.03.20	31.03.19
	£000	£000	£000	£000	£000
	Cumulative	Cumulative	Cumulative	Cumulative	Cumulative
<b>Medical Negligence claims/costs (Note 1)</b>	105,468	109,867	86,029	85,516	81,897*
Redress Medical Negligence claims/costs	296	307	269	382	
Personal Injury claims/costs	435	415	436	680	532
Recoverable from Welsh Risk Pool (Note 1)	(114,495)	(125,221)	(114,863)	(115,161)	(99,137)
<b>Net claim provision</b>	<b>(8,295)</b>	<b>(14,632)</b>	<b>(28,129)</b>	<b>(28,583)</b>	<b>(16,708)</b>
Permanent Injury Benefit	6,212	6,313	6,320	6,252	4,517
<b>Net Provision</b>	<b>(2,084)</b>	<b>(8,319)</b>	<b>(21,809)</b>	<b>(22,331)</b>	<b>(12,191)</b>
<b>Number of live cases on losses system (LaSPaR)</b>					
	<b>30.09.21</b>	<b>30.06.21</b>	<b>31.03.21</b>	<b>31.03.20</b>	<b>31.03.19</b>
Medical Negligence claims	307	298	309	279	230
Redress Medical Negligence claims	200	179	168	202	87
Personal Injury claims	109	107	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 for the current reporting period is predominantly attributed to one particular case due to reassessment of the quantum estimate.

## b) Expenditure incurred for the year to 30 September 2021

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 (17.08.2021).

The "other" category mainly consists of payment of retirement gratuities, Employment Matters and voluntary early releases (see appendix 5).

**Table 2**

	Year to	Year to	Year ended	Year ended	Year ended
	30.09.21	30.06.21	31.03.21	31.03.20	31.3.19
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	22,135	25,213	13,110	18,455	18,300
Redress Medical Negligence claims/costs	118	107	305	367	
Personal Injury claims/costs	285	146	316	557	(405)
Recoverable from Welsh Risk Pool	(21,611)	(25,198)	(12,449)	(18,225)	(16,544)
<b>Net claim expenditure (Note 2)</b>	<b>927</b>	<b>268</b>	<b>1,282</b>	<b>1,154</b>	<b>1,371</b>
Permanent Injury Benefit	(7)	(7)	470	2,075	1,697
Other	56	22	609	407	306
<b>Total expenditure</b>	<b>976</b>	<b>283</b>	<b>2,361</b>	<b>3,636</b>	<b>3,354</b>

**Note 2:** The annual budget for net claim expenditure for 2021-22 is £1,143k (year to date £572k) there is therefore a current overspend of £355k.

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.

For the current financial year, WRP has confirmed that the risk share will be applied and in total £16.495m of overspend will be shared amongst the Welsh NHS bodies.

The Health Board's share of this overspend will be 12.49% which amounts to £2.06m. This risk has been factored into the most recent finance forecasts for the year.

### **Welsh Risk Pool charge on late submission of reimbursement claims**

As reported previously to the Audit 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.

Earlier in the year, the WRP Committee applied a 10% penalty charge of £103k relating to five claims, which were submitted late for WRP reimbursement.

To date, good progress is being made on the WRP reimbursement claims and the Health Board continue to work closely with the WRP colleagues to ensure timeliness of the submission of the WRP reimbursement claims.

The normal WRP reimbursement process has been reinstated from 1<sup>st</sup> November 2021 with the standard 60 working day deadline for submission of an LFER and a six-month deadline for submission of further information.

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.

### **c) Cash Write-Offs made for the period 1 July 2021 to the 30 September 2021**

Table 3 shows the cash impact to 30 September 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 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**. A similar analysis is provided for personal injury claims in **Appendix 3** and Permanent Injury Benefit (PIB) in **Appendix 4**.

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 5**.



**Table 3**  
**Cash write-offs made during 21/22**

	01.07.21 - 30.09.21 £000	Previously Reported £000	Total 2021-22 £000
<b>Medical Negligence (Appendix 1)</b>			
Claims	794	1,072	1,866
Costs	409	214	623
Defence Fees	119	89	208
<b>Redress Medical Negligence (Appendix 2)</b>			
Claims	5	44	49
Costs	6	10	16
Defence Fees	11	16	27
<b>Personal Injury (Appendix 3)</b>			
Claims	49	126	175
Costs	55	21	76
Defence Fees	16	20	36
<b>Permanent Injury Benefit (Appendix 4)</b>	101	0	101
<b>Other (Appendix 5)</b>			
Ex-Gratia	26	20	46
Debt Write Off	8	0	8
Condemnations and Obsolescence	0	0	0
Ombudsman	0	1	1
Employment Matter	0	0	0
<b>Total</b>	<b>1,599</b>	<b>1,633</b>	<b>3,232</b>
<b>Recovered from Welsh Risk Pool</b>	<b>(7,138)</b>	<b>(14,842)</b>	<b>(21,980)</b>
<b>Net Cash Write-Off</b>	<b>(5,539)</b>	<b>(13,209)</b>	<b>(18,748)</b>

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

- 3.1 Although improvements have been made, as highlighted in the Organisational Risk Register there is a risk of failure to manage Legal cases efficiently and effectively, which could result in further financial penalties.
- 3.2 As highlighted in the report above a number of controls have been put in place to mitigate this 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.
	Completed as part of the Financial Control Procedures for Losses & Special Payments (FP 15)
<b>Legal implications / impact</b>	Yes (Include further detail below)
	Losses provided for are informed by legal advice where appropriate based on probability of a successful claim
<b>Resource (Capital/Revenue £/Workforce) implications / Impact</b>	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.
<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 July 2021 to 30 September 2021.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.