



**AGENDA ITEM**

4.2

**AUDIT & RISK COMMITTEE**

**Losses and Special Payments 01.10.21 to 31.01.22**

<b>Date of meeting</b>	24/02/2022
<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 Head of Legal Services, Complaints  Georgina Gallentley – 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



## 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 October 2021 to 31 January 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 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 31 January 2022

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

**Table 1**

	31.01.22	30.09.21	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>	86,433	105,468	86,029	85,516	81,897*
Redress Medical Negligence claims/costs	377	296	269	382	
Personal Injury claims/costs	356	435	436	680	532
Recoverable from Welsh Risk Pool (Note 1)	(100,719)	(114,495)	(114,863)	(115,161)	(99,137)
<b>Net claim provision (Note 2)</b>	<b>(13,553)</b>	<b>(8,295)</b>	<b>(28,129)</b>	<b>(28,583)</b>	<b>(16,708)</b>
Permanent Injury Benefit	6,256	6,212	6,320	6,252	4,517
<b>Net Provision</b>	<b>(7,297)</b>	<b>(2,084)</b>	<b>(21,809)</b>	<b>(22,331)</b>	<b>(12,191)</b>
<b>Number of live cases on losses system (LaSPaR)</b>					
	<b>31.01.22</b>	<b>30.09.21</b>	<b>31.03.21</b>	<b>31.03.20</b>	<b>31.03.19</b>
Medical Negligence claims	320	307	309	279	230
Redress Medical Negligence claims	227	200	168	202	87
Personal Injury claims	119	109	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 two cases where an agreement has been reached to make periodical payment orders by WRP directly for any future liabilities. Therefore no provision is required to be made by CTM for these liabilities.

**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 January 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 (07.12.2021).

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
	31.01.22	30.09.21	31.03.21	31.03.20	31.3.19
	£000	£000	£000	£000	£000
Medical Negligence claims/costs	9,146	22,135	13,110	18,455	18,300
Redress Medical Negligence claims/costs	261	118	305	367	
Personal Injury claims/costs	430	285	316	557	(405)
Recoverable from Welsh Risk Pool	(8,419)	(21,611)	(12,449)	(18,225)	(16,544)
<b>Net claim expenditure (Note 3)</b>	<b>1,418</b>	<b>927</b>	<b>1,282</b>	<b>1,154</b>	<b>1,371</b>
Permanent Injury Benefit	239	-7	470	2,075	1,697
Other	87	56	609	407	306
<b>Total expenditure</b>	<b>1,744</b>	<b>976</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 is £1,143k (year to date £952k). There is therefore an overspend of £466k to date.

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 & 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 CMRs and LFERs 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.

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.

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.

There has been a considerable amount of work in respect of data validation and migration of data from Datix Web to the new Datix Cymru (Once for Wales). Which has allowed more accurate reporting.

In total 174 learning from events reports 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:

- 25% of LFERs submitted by 1st April 2022
- 50% of LFERs submitted by 1st May 2022
- 100% of LFERs submitted by 1st June 2022

It should be noted that any cases identified after these dates that exceed the standard deadline for submission, will result in non-reimbursement from the WRP and NO COSTS can be recouped.

Actions have been put in place where the central Redress & Claims Team is working closely with the ILGs to achieve these targets as follows:

- LFER reports split by ILG and CSG including costs.
- Join current meetings held by the ILGs with CSG and present cases and costs
- Give firm deadlines for submission of learning
- Provide LFER training to ILGs and CSGs and Claims Team
- Support CSG by providing a buddy system to assist with learning
- Set up weekly drop in sessions for LFERs, giving CSGs and ILGs quick access to advice.
- Ensure accountability for learning is clear
- Implement a clear escalation process through ILG route
- Write a How to Guide for LFERs
- Regular touch point monitoring meetings set up with Exec leads and ILGs to monitor progress

There are some quick wins in terms of 3 cases totalling £26 million and targeting the Amber Deferred cases (cases referred back from WRP that tend to be missing 1 or 2 pieces of evidence, there are around 25 of these) which could be quickly closed down. Amber deferred cases DO NOT have to go back to WRP panel.

The normal WRP reimbursement process has been reinstated from 1st November 2021 with the standard 60 working day deadline for submission of an LFER. As of 1st February 2022, any new LFERs triggering will need to be submitted in a timely manner alongside work on the 174 overdue LFERs.

Weekly position reports are being submitted to WRP by claims handlers and this is reported at the weekly Executive Quality & Safety meeting.

**c) Cash Write-Offs made for the period 1 October 2021 to the 31 January 2022**

Table 3 shows the cash impact to 31 January 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**. 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**

	<b>01.10.21 - 31.01.22 £000</b>	<b>Previously Reported £000</b>	<b>Total 2021-22 £000</b>
<b>Medical Negligence (Appendix 1)</b>			
Claims	5,006	1,866	6,872
Costs	627	623	1,250
Defence Fees	413	208	621
<b>Redress Medical Negligence (Appendix 2)</b>			
Claims	26	49	75
Costs	17	16	33
Defence Fees	19	27	46
<b>Personal Injury (Appendix 3)</b>			
Claims	102	175	277
Costs	102	76	178
Defence Fees	19	36	55
<b>Permanent Injury Benefit (Appendix 4)</b>	201	101	302
<b>Other (Appendix 5)</b>			
Ex-Gratia	23	46	69
Debt Write Off	3	8	11
Condemnations and Obsolescence	0	0	0
Ombudsman	5	1	6
Employment Matter	0	0	0
<b>Total</b>	<b>6,563</b>	<b>3,232</b>	<b>9,795</b>
<b>Recovered from Welsh Risk Pool</b>	<b>(583)</b>	<b>(21,980)</b>	<b>(22,563)</b>
<b>Net Cash Write-Off</b>	<b>5,980</b>	<b>(18,748)</b>	<b>(12,768)</b>

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

3.1 The risks highlighted in relation to the late submission of reimbursement claims is highlighted in the main body of the report.



#### 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 October 2021 to 31 January 2022.
- **NOTE** the update in respect of the matter relating to the late submission of the WRP reimbursement claims.