



**GIG**  
CYMRU  
**NHS**  
WALES

Bwrdd Iechyd Prifysgol  
Bae Abertawe  
Swansea Bay University  
Health Board



<b>Meeting Date</b>	<b>9th March 2021</b>	<b>Agenda Item</b>	<b>5.2</b>
<b>Report Title</b>	<b>Losses and Special Payments Update</b>		
<b>Report Author</b>	Andrew Biston, Head of Accounting & Governance		
<b>Report Sponsor</b>	Darren Griffiths, Interim Director of Finance		
<b>Presented by</b>	Andrew Biston, Head of Accounting & Governance		
<b>Freedom of Information</b>	Open		
<b>Purpose of the Report</b>	To provide the Audit Committee with an update on losses and special payments for the period 1st December 2020 to 31 <sup>st</sup> January 2021 and to provide an analysis of the gross losses for period 1st April 2020 to 31 <sup>st</sup> January 2021 compared to the period 1st April 2019 to 31 <sup>st</sup> January 2020.		
<b>Key Issues</b>	<p>The losses and special payments recorded during the period 1<sup>st</sup> December 2020 to 31<sup>st</sup> January 2021 totalled £1,776,592 of which £1,513,295 is recoverable from the Welsh Risk Pool, meaning that the actual loss to the Health Board in the period totals £263,297.</p> <p>Of the losses and special payments made in the period a total of £553,774 related to cases pre 31<sup>st</sup> March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1<sup>st</sup> April 2019 of which the actual loss after recoveries are taken into account was £58,435.</p> <p>After the recoveries from Welsh Risk Pool are taken into account, the net loss of £1,403,989 to the Health Board for the period 1st April 2020 to 31<sup>st</sup> January 2021 is lower than the net loss of £2,010,563 for the comparable period 1st April 2019 to 31<sup>st</sup> January 2020.</p>		
<b>Specific Action Required</b> <i>(please ✓ one only)</i>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>
			✓
<b>Recommendations</b>	<p>Members are asked to:</p> <ul style="list-style-type: none"> <li>• <b>Note</b> the losses and special payments made in the period which will need to be reported to the Board</li> </ul>		

## LOSSES AND SPECIAL PAYMENTS UPDATE

### 1. INTRODUCTION

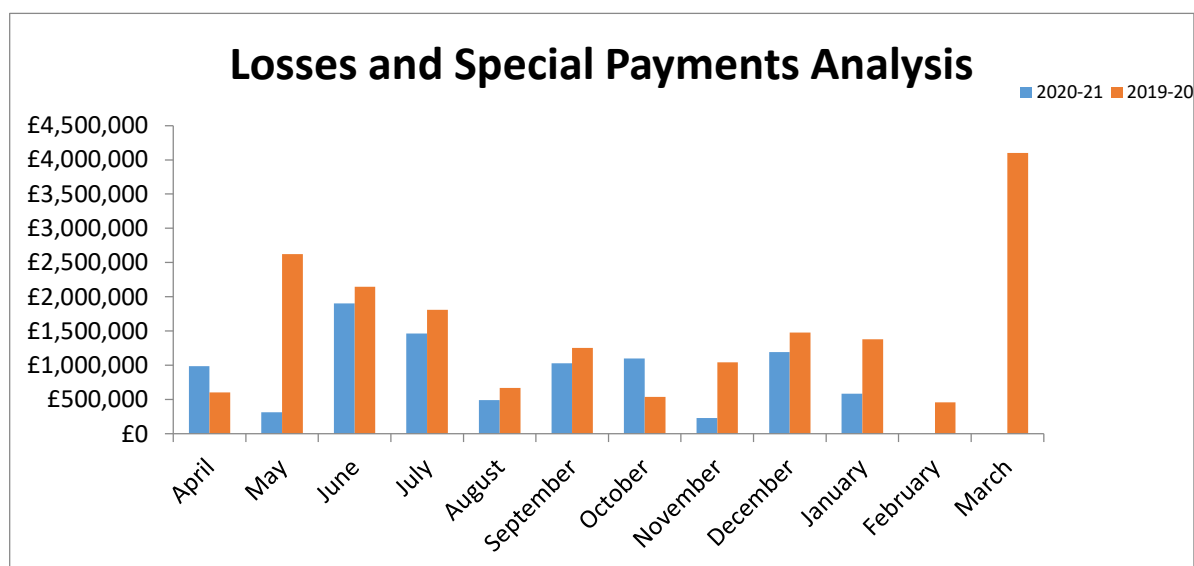
- 1.1. The Audit Committee handbook recommends that losses and special payments made by the Health Board be reported to the Audit Committee. This report addresses that requirement by providing an update on losses and special payments, for the period 1<sup>st</sup> December 2020 to 31<sup>st</sup> January 2021 and an analysis of the gross losses for 1<sup>st</sup> April 2020 to 31<sup>st</sup> January 2021 compared to the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> January 2020.

### 2. BACKGROUND

- 2.1. The losses and special payments recorded during the period totalled £1,776,592. This mainly comprised payments in respect of Clinical Negligence (£1,487,712), Redress (£225,669) and Personal Injury (£26,165). The remaining losses relate to losses arising as a result of write off of obsolete drug stock, ex gratia payments, compensation payments and bad debts.
- 2.2. These losses are detailed in **Appendices A to G** and summarised below:

Loss Type	Value £
Obsolete Drug Stock	1,861
Loss of Health Board property	24,803
Ex Gratia Payments	4,893
Compensation Payments	3,786
Bad Debts Written Off	1,703
Redress Payments	225,669
Clinical Negligence - Defence Fees	205,436
Clinical Negligence – Claimant Costs	167,199
Clinical Negligence – Damages	1,061,175
Clinical Negligence – CRU Payments	53,902
Personal Injury – Defence Fees	18,759
Personal Injury – Claimant Costs	212
Personal Injury - Damages	7,194
<b>Total</b>	<b>1,776,592</b>

- 2.3. As a result of the losses incurred during the period December 2020 to January 2021, the gross loss for the financial year to date amounts to £9,290,163 as compared to £13,545,509 for the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> January 2020. The chart below analyses these losses and special payments on a month by month basis.



- 2.4. The graph above confirms that there will be variations in payments across the year with there being no discernible trend to when cases are settled. The reduction in payments in the period April 2020 to January 2021 compared to the same period in the last financial year (£4.255m) is mainly due to two large settlements of £1.780m in April 2019 and £1.713m in July 2019. For the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> January 2021, there were four settlements over £500,000 in value as detailed below.

Case Reference	Location	Specialty	Amount (£)
15RYMMN0190	Princess of Wales Hospital	General Surgery	1,417,251
16RYMMN0057	Morrison Hospital	Orthopaedics	650,000
13RYMMN0225	Singleton Hospital	Obstetrics	560,000
13RYMMN0218	Neath Port Talbot Hospital	Orthopaedics	550,000

- 2.5. As part of the transfer of assets and liabilities arising from the Bridgend boundary change, the transfer order included an exception to the principle that all assets and liabilities transfer for clinical negligence, personal injury and redress cases which were open prior to the date of transfer. Therefore this report includes payments on cases prior to 31<sup>st</sup> March 2019 for the Princess of Wales Hospital and will continue to do so until all those cases have closed, a process which will take several years. For the period December 2020 to January 2021, the gross losses split by the post boundary change location for

these cases is shown in the table below, with the detail shown in **Appendices B, D and F** to this report.

<b>Loss Type</b>	<b>Total (£)</b>	<b>Swansea Bay Locations (£)</b>	<b>Cwm Taf Morgannwg Locations (£)</b>
Clinical Negligence	1,487,712	948,035	539,677
Personal Injury	26,165	22,464	3,701
Redress	225,669	215,273	10,396
<b>Total</b>	<b>1,739,546</b>	<b>1,185,772</b>	<b>553,774</b>

As at 31st January 2021, the number of open cases for which the health board has a provision in its accounts in these 3 categories analysed by location is as follows:

<b>Type of claim</b>	<b>Open Cases Swansea Bay Locations</b>	<b>Open cases Cwm Taf Morgannwg Locations</b>
Clinical Negligence	234	71
Personal injury	76	12
Redress	143	9

- 2.6 As will be noted from the first table in this report, a loss of £24,803 was incurred in December 2020 which has been classed as loss of health board property in accordance with the Welsh Government Losses and Special Payments Manual. The loss related to 3 wound drainage devices loaned to the health board by Smith & Nephew. A separate report is attached as Appendix H detailing the circumstances of these losses.

### **3. GOVERNANCE AND RISK ISSUES**

- 3.1. This paper addresses the financial governance requirements for reporting Losses and Special Payments to the Audit Committee. The Health Board adheres to the authorisation process for such payments as prescribed in the Welsh Government Losses and Special Payments manual and Standing Financial Instructions ensuring sound financial governance for such payments
- 3.2. The clinical governance issues raised and lessons learned from previous claims are discussed as part of the clinical governance agenda and do not form part of this report to the Audit Committee.

### **4. FINANCIAL IMPLICATIONS**

- 4.1. The financial implications associated with Losses and Special Payments for the Health Board comprise two elements. Firstly, there is the amount directly taken from the health budget by Welsh Government to fund the Welsh Risk

Pool. This is supplemented by a risk sharing agreement across NHS Wales which requires additional contributions to be made from Health Boards and Trusts in the event that the amount required by Welsh Risk Pool exceeds this directly funded amount.

- 4.2. In 2019/20 for the first time, the risk sharing agreement was invoked due to the value of settlements exceeding the amount of the top sliced funding. The Swansea Bay share of the additional costs amounted to £0.639m which was actioned through a reduction in the health board's resource allocation. The latest estimate from Welsh Risk Pool of the charge to the DEL budget for 2020/21 is £121m, meaning that it is almost certain that the risk sharing arrangement will be invoked for 2020/21, although at this stage the Welsh Government allocation has yet to be confirmed for the Welsh Risk Pool and so the amount required under the risk sharing agreement cannot be confirmed.
- 4.3. The second implication is the net charge to the Health Board's resource limit of costs incurred which comprise the first £25,000 of all clinical negligence and personal injury claims, legal fees for redress claims which are not reimbursed under the Putting Things Right Scheme and the cost of all other losses and special payments.
- 4.4. With effect from 1<sup>st</sup> April 2019, Welsh Government introduced the GP Indemnity Scheme which is administered by Welsh Risk Pool but requires health boards to manage the scheme on a day to day basis. As the scheme covers only new clinical negligence claims cases lodged since 1<sup>st</sup> April 2019 against GP's, (claims prior to 1<sup>st</sup> April 2019 will continue to be managed by the Medical Defence bodies) the health board has to date only received one claim for which the probability of success has been assigned as possible. As and when payments are made on the GMPI cases they will be reported through this report. The introduction of this scheme and the increased recording, monitoring and reporting requirements will have resource implications for the claims management and finance teams.
- 4.5. Of the £1,776,592 paid out in the period 1<sup>st</sup> December 2020 to 31<sup>st</sup> January 2021, £1,308,420 in respect of clinical negligence and personal injury claims and £204,875 in respect of redress claims is recoverable from the Welsh Risk Pool. Taking this recovery into account, the actual loss to the Health Board in the period totals £263,297 as summarised in the table below:

<b>Losses &amp; Special Payments</b>	<b>Amount £</b>
Clinical Negligence	1,487,712
Personal Injury	26,165
Redress Payments	225,669
Obsolete Drug Stock	1,861

<b>Losses &amp; Special Payments</b>	<b>Amount £</b>
Loss of Health Board property	24,803
Ex Gratia Payments	4,893
Compensation Payments	3,786
Bad Debts Written Off	1,703
<b>Sub Total</b>	<b>1,776,592</b>
Less WRP Recovery	-1,308,420
Less Redress Payments Reimbursed by WRP	-204,875
<b>Health Board Losses in the Period</b>	<b>263,297</b>

- 4.6. Analysing this by location, the net cost to the health board split between those cases which are Swansea Bay cases and those pre 31<sup>st</sup> March 2019 cases relating to locations which have transferred to Cwm Taf Morgannwg Health Board is as detailed in the table below, which shows that £56,968 relates to cases prior to 31<sup>st</sup> March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1<sup>st</sup> April 2019.

<b>Loss Type</b>	<b>Total (£)</b>	<b>Swansea Bay Locations (£)</b>	<b>Cwm Taf Morgannwg Locations (£)</b>
Clinical Negligence	179,693	126,879	52,814
Personal Injury	25,765	22,064	3,701
Redress	20,794	18,874	1,920
Other Losses	37,045	37,045	0
<b>Total</b>	<b>263,297</b>	<b>204,862</b>	<b>58,435</b>

- 4.7. After the recoveries from Welsh Risk Pool are taken into account, the net loss totals £1,403,989 for the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> January 2021 and £2,010,563 for the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> January 2020.

## **5. RECOMMENDATIONS**

- 5.1. The Audit Committee is asked to note the losses and special payments in the period of £1,776,592, of which £1,513,295 will be recovered from the Welsh Risk Pool (£1,308,420 in respect of clinical negligence and personal injury and £204,875 in respect of redress), leaving an actual loss to the Health Board in the period of £263,297.
- 5.2. The Audit Committee is also asked to note that of the £263,297 loss to the health board in the period, that £58,435 relates to cases pre 31<sup>st</sup> March 2019

for locations which transferred to Cwm Taf Morgannwg Health Board on 1<sup>st</sup> April 2019.

- 5.3. These losses and special payments will need to be reported to the Board and disclosed in the Health Board's Annual Accounts.

<b>Governance and Assurance</b>		
<b>Link to Enabling Objectives</b> (please choose)	<b>Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities</b>	
	Partnerships for Improving Health and Wellbeing	<input type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	<b>Deliver better care through excellent health and care services achieving the outcomes that matter most to people</b>	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
<b>Health and Care Standards</b>		
(please choose)	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
<b>Quality, Safety and Patient Experience</b>		
<p>Expenditure on losses and special payments arises as a result of clinical negligence resulting in harm to patients and is therefore reflective of poor quality and safety and patient experience. Similarly personal injury payments to patients, visitors and staff reflects poor procedures and management of the hospital environment. Ex-gratia payments also result in poor patient experience through the loss or damage to personal items.</p> <p>It is therefore imperative that the number and value of losses payments is reduced and the achievement of this reduction will result in improved quality, safety and patient experience.</p>		
<b>Financial Implications</b>		
The financial implications are detailed in the main body of the report.		
<b>Legal Implications (including equality and diversity assessment)</b>		
The legal aspects of clinical negligence, personal injury and redress cases are managed through the solicitors employed by Legal and Risk Services who form part of the NHS Wales Shared Services Partnership. The day to day administration of the claims is managed by the Patient Feedback Team within the health board,		

acting on the advice received from Legal and Risk Services.

### **Staffing Implications**

Whilst there are no direct staffing implications associated with this report it must be noted that the change in the accounting treatment and the reimbursement process for redress claims has resulted in significant additional work for both the claims management and finance teams. This will only increase further as and when GP indemnity cases begin to be received following the introduction of this scheme on 1<sup>st</sup> April 2019.

### **Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)**

The key issue for the “The Well-being of Future Generations (Wales) Act 2015, 5 ways of working is that loss payments and incidents of clinical negligence and personal injury reflect the fact that incidents which cause harm/loss have taken place. It is essential that the occurrence of such incidents is reduced through improved processes, governance and prevention in order to help the health board as a public body meet the objective of doing no harm.

### **Report History**

This is a regular report to the Audit Committee in line with the agreed work plan.

### **Appendices**

Appendices A to G provide the details of all losses and special payments made in the period 1<sup>st</sup> December 2020 to 31<sup>st</sup> January 2021. Appendix H provides a detailed report into the loss disclosed under loss of health board property.