ABM University Health Board	
Date of Meeting: 1st February 2018 **Name of Meeting: Quality & Safety Committee** **Agenda item: 9.2**	
Subject	*Welsh Risk Pool Annual Report*
Prepared by	Hazel Lloyd, Patient Experience, Risk & Legal Services
Approved by	Cathy Dowling, Interim Deputy Director of Nursing & Patient Experience
Presented by	Angela Hopkins, Interim Director of Nursing & Patient Experience

1.0 Situation

This report presents the Welsh Risk Pool Annual report for 2016/17, approved by the Welsh Risk Pool Advisory Board to the Quality & Safety Committee, and highlights key areas within the report that the Committee will wish to note.

2.0 Background

The Welsh Risk Pool (WRP) Annual Report is attached as Appendix 1. The report provides information on the costs associated with litigation and highlights the work being undertaken by WRP across NHS Wales to improve quality and safety.

3.0 Assessment

The Health Board is a member of the risk pooling arrangement for NHS Wales and receives reimbursements for losses over £25,000 relating to, in the main, clinical negligence and personal injury cases.

In 2016/17 WRP incurred expenditure of £73.416m (£74.6m in 2015/2016) which represents 1.7% (1.16% in 2015/16) of the total Welsh Health & Social Care budget for 2016/17 (see pages 22-24).

There had been a significant growth in the number and value of claims, involving negligence, for the period between April 2009 and March 2015. However, this growth has not been seen in 2015/16 or 2016/17. During 2016/17 ABMU Health Board saw the highest number of reduction in claims (26) when compared to 2015/16 (pages 6-9). The number of new cases opened across Wales during 2016/2017 was 923 compared to 990 in 2015/16. Total number of open cases in April 2017 was 2,675 of which ABMU Health Boards claims totalled 535 (20%).

A total of £55.6m (£43.4m in 2015/16) reimbursements were made to members of NHS Wales' risk pooling arrangement in respect of 338 (387 in 2015/16) clinical negligence cases. Maternity cases cost the NHS the most in terms of damages awarded in 2016/17 and was also the largest number of cases reimbursed to members (52).

Change in the Personal Injury Discount Rate (page 16)

In February 2017 the Lord Chancellor announced a change in the Personal Injury Discount Rate from 2.5% to 0.75%. This change will result in an increase of damages for clinical negligence and personal injury claims and will cost the NHS significantly more.

New Risk Sharing Agreement (Page 20)

Discussions have previously been held with the Directors of Finance in NHS Wales in relation to a risk sharing agreement for any over/under spend of the funding provided by Welsh Government for claims. The Health Boards risk sharing % (based on principles set out on page 21) is 17.26%.

The Assurance and Learning Group will review the WRP Annual Report in March 2018.

4.0 Recommendations

The Quality & Safety Committee is asked to:

- Note the contents of this report

Legal and Risk Services

&

Welsh Risk Pool Services

Annual Review

2016/2017

CHAIR'S FOREWORD

This report provides an overview of our work, not only in clinical negligence but across our growing portfolio encompassing personal injury, complex needs, safety and learning together with our comprehensive advice service to the NHS in Wales.

Negligence presents significant financial challenges to the NHS, and it is our duty to both compensate at an appropriate level whilst ensuring funds for patient care are safeguarded.

Once again we managed within the funding allocation provided by the Welsh Government which meant that we did not need the individual health organisations to contribute to the cost of negligence.

However, the Lord Chancellor's announcement in February 2017 which changed in the Personal Injury Discount Rate from 2.5% to -0.75% places considerable additional pressures on the NHS. The discount rate adjusts personal injury compensation payouts to take into account how much an individual can expect if they invest a lump sum over their lifetime. Designed to ensure that claimants are not under- or over-compensated, the rate had been set at 2.5% since 2001.

The new rate came into effect on 20th March 2017 and the cost of compensation, in relation to future care has risen significantly. Our estimated costs for 2017/18 have increased by in excess of 25% and as a result of this our provisions for the future have increased by over £70m.

Legal and Risk Services are working closely with the Welsh Government, NHS Resolution and HMT to address these costs and my finance team designed robust modelling which is being used across all NHS organisations and also within the Welsh Government accounts.

As noted above the remit of the Legal and Risk team is growing and is contributing significantly in assisting the NHS in Wales reduce costs. 2016/17 has been a year of expansion and success in both Legal and Risk services and the Welsh Risk Pool.

The appointment of a Head of Safety and Learning in the Welsh Risk Pool has added focus and enhanced team development, and this work has the potential to make a real impact in improving patient safety. The Welsh Risk Pool now has four distinct and inter-linked areas of work and the excellent progress is highlighted in this report.

We have identified nearly £87m of professional influence savings across our remit. We have saved the Service £900k in legal fees by undertaking more Personal Injury work with the Service. The Personal Injury Team was recently recognised as “Team of the Year” in the NWSSP Staff recognition awards.

Our growth in Commercial activities such as employment, property, commercial and general advice has saved the Service almost £500k in legal fees. The remit and breadth of work undertaken by the Complex Needs Team has grown considerably and one section of this report focuses on their work.

2016/17 also saw the development and sign-off of a new equitable and robust Risk Sharing Agreement which comes into effect in 2017/18.

I would like to pay tribute to the commitment of our staff and thank the team for their continuing hard work and efforts in improving outcomes and reducing the burden of harm on the NHS in Wales.

I would also like to thank Health Boards and Trusts for their support for our work. We welcome any feedback from our stakeholders to help us improve and develop for the future.

Margaret Foster
Chair
October 2017

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OVERVIEW

The **Welsh Risk Pool Service** is based in Alder House in North Wales and Companies House in Cardiff and administers the risk pooling arrangement for NHS Wales though reimbursing members for losses over £25,000. The reimbursements mainly relate to clinical negligence and personal injury although the scope of the risk pool includes buildings and, in exceptional circumstances, equipment. A significant number of large value claims are now settled using annual payments to claimants over their lifetime and this scheme is managed by the Welsh Risk Pool Service.

The Welsh Risk Pool emphasis is on improvement and the team works with NHS colleagues to ensure that learning is in place for each claim. Also, the Clinical Assessors undertake a range of clinical assessments in high risk areas. The Welsh Risk Pool also undertakes an annual assessment of the arrangements for the management of concerns, claims and learning from events.

Legal and Risk Services is based in Companies House in Cardiff and provides a comprehensive legal service for NHS Wales. The traditional core business relates to the management of clinical negligence and personal injury claims against NHS Wales and significant growth has been experienced in both of these areas in recent years.

In addition to the core activities the department has specialist teams who manage a range of legal work types including, commercial and regulatory work, property, employment advice and court of protection work.

The Welsh Risk Pool Service is integrated with Legal and Risk Services, to ensure a co-ordinated approach to the management of losses arising from claims.

The work of the two services is overseen by the Welsh Risk Pool Committee which is a formal sub-committee of the NHS Wales Shared Service Partnership (NWSSP) Committee. The Committee meets on six occasions each year and considers all claims submitted for reimbursement.

The focus of the Committee aims to ensure a system-wide approach to improvement and fully supports the provision of education and training for the NHS in Wales. The teams provide support and training across NHS Wales to a range of staff including Board Members, clinicians, claims managers and administrators.

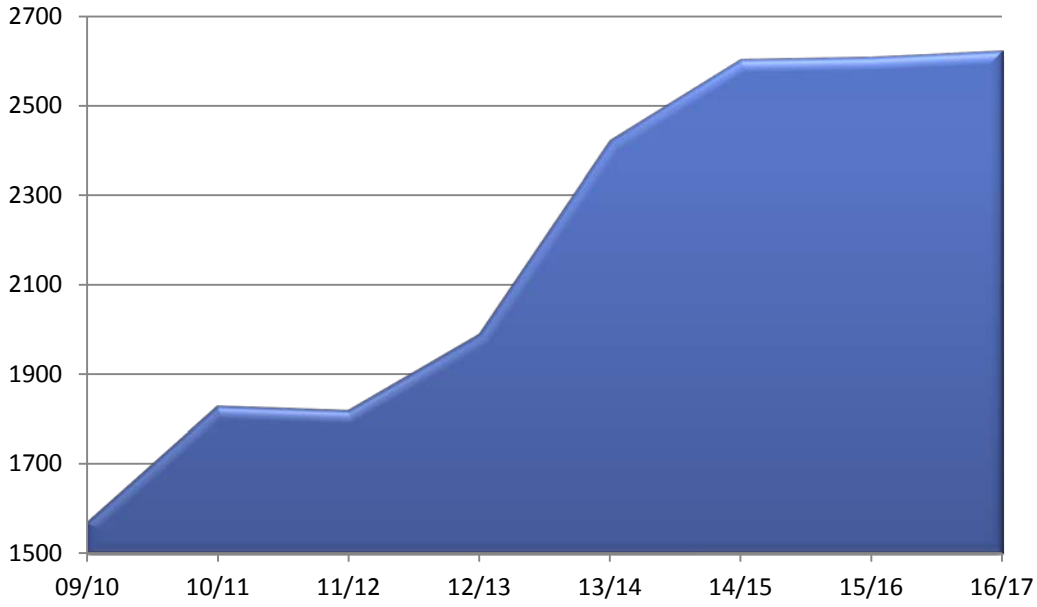
THE DEMAND

The WRPS administers the risk pooling arrangement and meets the cost of financial losses over £25,000. The most significant element of expenditure relates to clinical negligence matters which includes the annual cost of claims settled using a periodical payment order (PPO).

From 2009 to 2014 NHS Wales experienced a significant growth in the number of claims involving negligence with the number of open matters increasing by 65%. However, over the last 3 years the number of claims in the system appears to have stabilised, but whether this represents a long term trend is not yet clear. All clinical negligence claims are professionally managed by Legal and Risk Services and the table below provides a summary of open clinical negligence matters by financial year.

The table below does not include Putting Things Right cases in which the Health Boards and Trusts supported by Legal and Risk Services which additionally utilises more resource to manage.

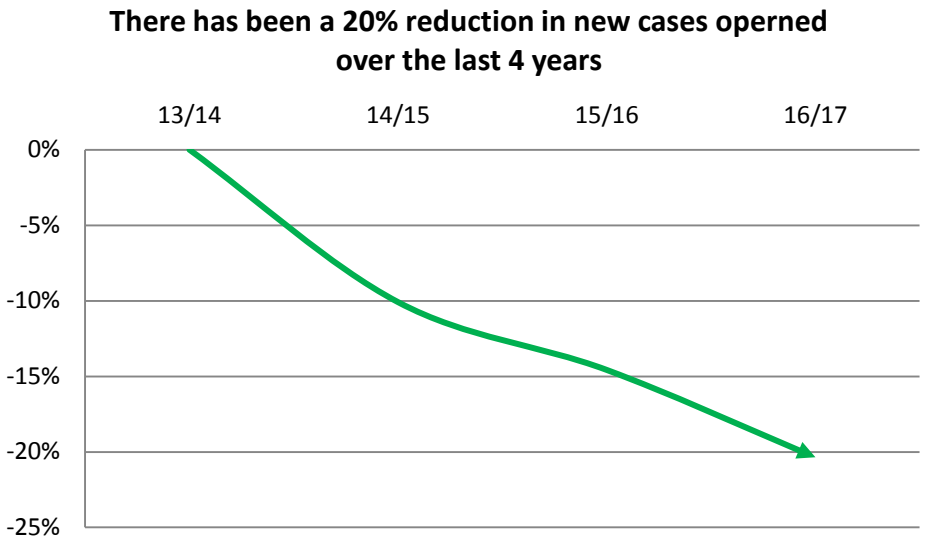
Open Clinical Negligence Matters by Financial Year



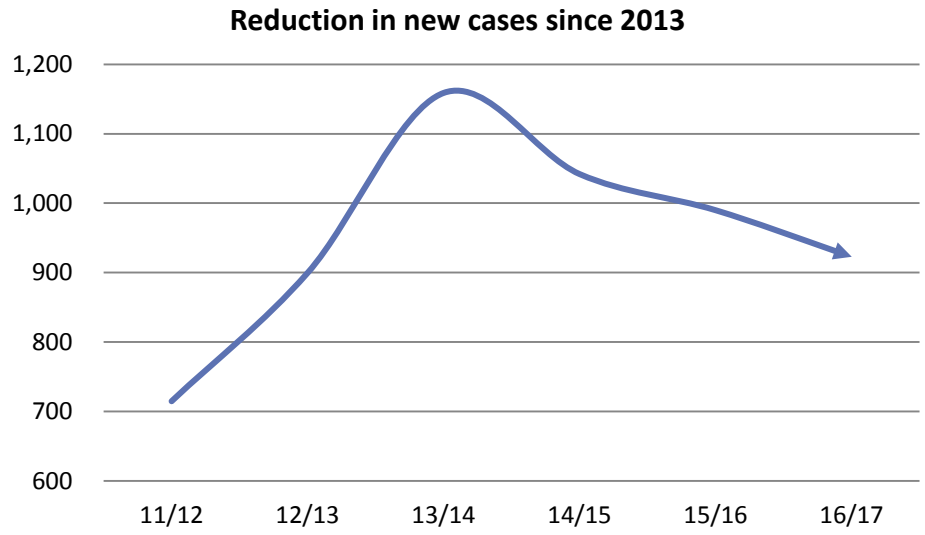
The number of new matters opened during 2015/16 was 923. For the third year running this represents a decrease in the number of new cases passed to Legal and Risk Services. There has been a 20% reduction in new cases since 2013/14.

However, the work required on the open cases has increased as those new matters from several years ago become highly active in litigation both following issue of Court proceedings or involving complex investigations or

negotiation. **The clinical negligence workload of Legal and Risk Services has increased by 67% since 2009.**

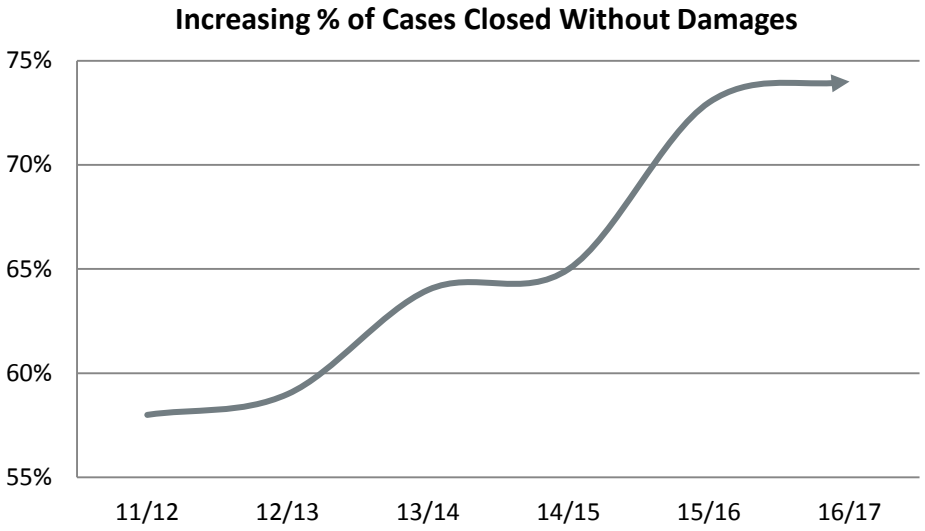


Past experience suggests that a significant number of the 923 new cases will not result in damages being paid. However, the operational staff time required to properly investigate and repudiate such claims cannot be underestimated.



In addition to the reduction in new cases Legal and Risk Services are closing increasing numbers of cases. The graph below shows not only the reduction in new cases but also the increase in cases being closed. Legal and Risk Services closed over 2,700 cases in the last 3 years, an increase of 32% over the previous 3 year period.

An important measure is the number of cases closed without an award of damages. In 2011/12 there were 694 cases closed by Legal and Risk Services. Of these 401 (58%) were closed with no award of damages. By 2016/17 this had risen to 74% resulting in only 24% of cases closing with damages.



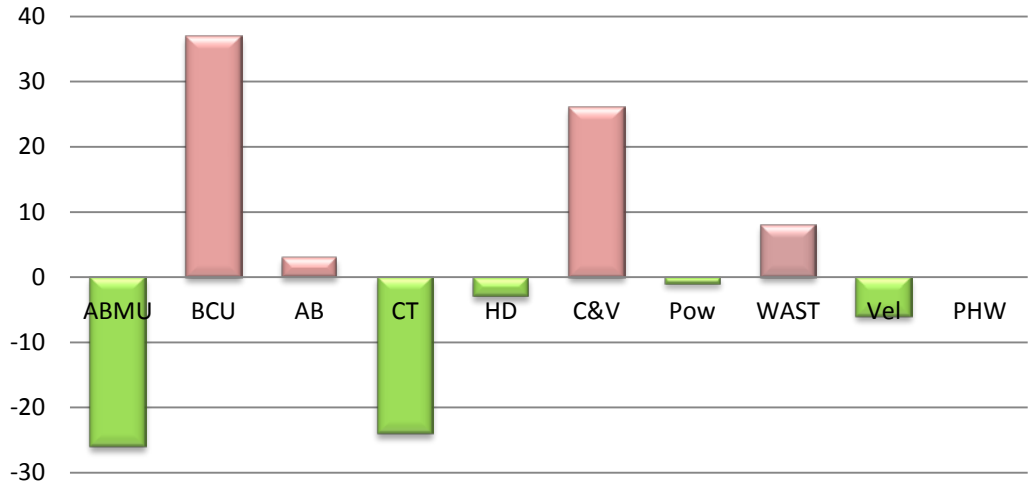
The factors influencing the increases in number and value are wide ranging and include:

- There has been an increase in the value of claims for which it is necessary to make provision for ongoing care over the lifetime of the claimant.
- The provision has increased from £281m in 2015/16 to £320m in 2016/17 primarily due to the material impact of 10 new Periodical Payment Orders with a valuation of £42m.
- The significant claimant costs associated with smaller value claims, especially where a historic no win no fee arrangement is in place. For claims with damages below £25,000 the average costs paid to claimant solicitors is 2.8 times the value of damages.

Whilst overall the number of open cases stabilised across Wales, there were significant differences between Health Organisations. ABMU Health Board and Cwm Taf University Health Board saw the biggest reductions of in-year open cases of 26 and 24 cases respectively.

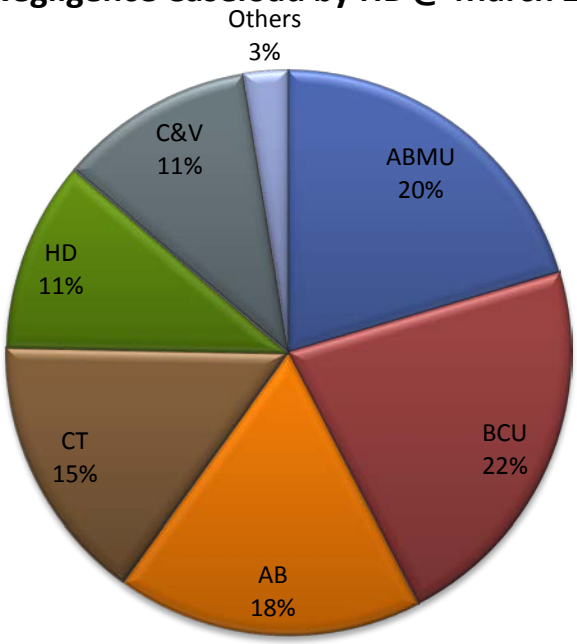
The biggest increases were in Betsi Cadwaladr University Health Board and Cardiff and Vale University Health Board with 37 and 26 more cases than at the end of 2015/16 respectively.

2016/17 In Year Movement of Total Clinical Negligence Caseload per Health Body

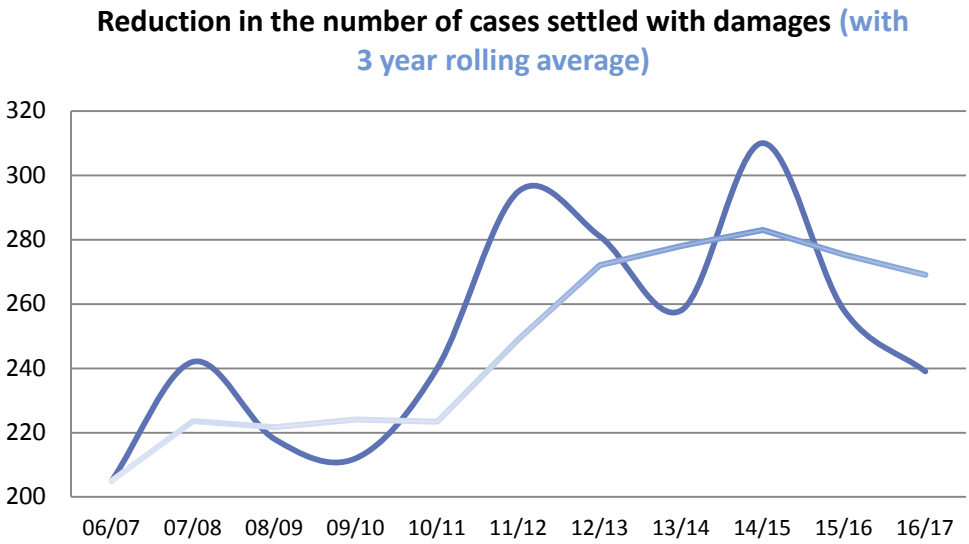


Betsi Cadwaladr University Health Board has 576 open cases, the highest number within Wales. ABMU Health Board has 535 and Aneurin Bevan University Health Board has 460. Together these three Health Boards accounts for 60% of all open cases in Wales.

Clinical Negligence Caseload by HB @ March 2017

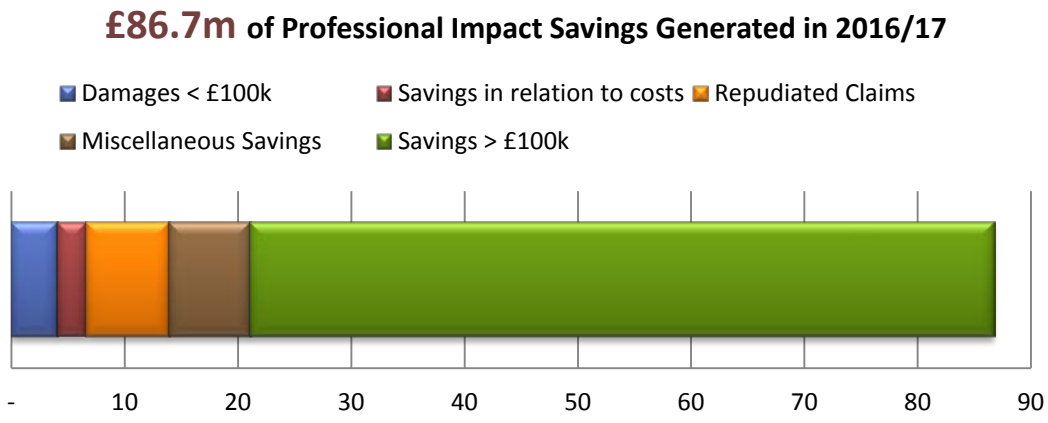


The graph below shows the number of clinical matters by financial year of closure and included a damages settlement. This confirms an increase of 16% since 2006/07 however the increase has, in previous years, been as high as 50% above the 2006/07 level. Historically approximately 80% of matters conclude with damages below £100,000 (including those that settle below the WRPS excess of £25,000). The three year trend line shows a reduction.



PROFESSIONAL IMPACT AND INFLUENCE SAVINGS GENERATED BY L&RS 2016/17

In 2016/17 Legal and Risk generated £86.7m in professional impact savings. The graph below splits this between the main savings classifications:



The Law Society in its publication entitled "The Future of Legal Services" (January 2016) reports that the growth of "in-House" legal services doubled between 2000 and 2012 representing 18% of all practicing solicitors. Whilst the majority of this is in the private sector, 37% of in–house solicitors work in the public sector.

In this context, services such as Legal and Risk Services are at the forefront of devising legal solutions that address complex, diverse and potentially costly issues, and are attracting a growing number of specialists from private practice.

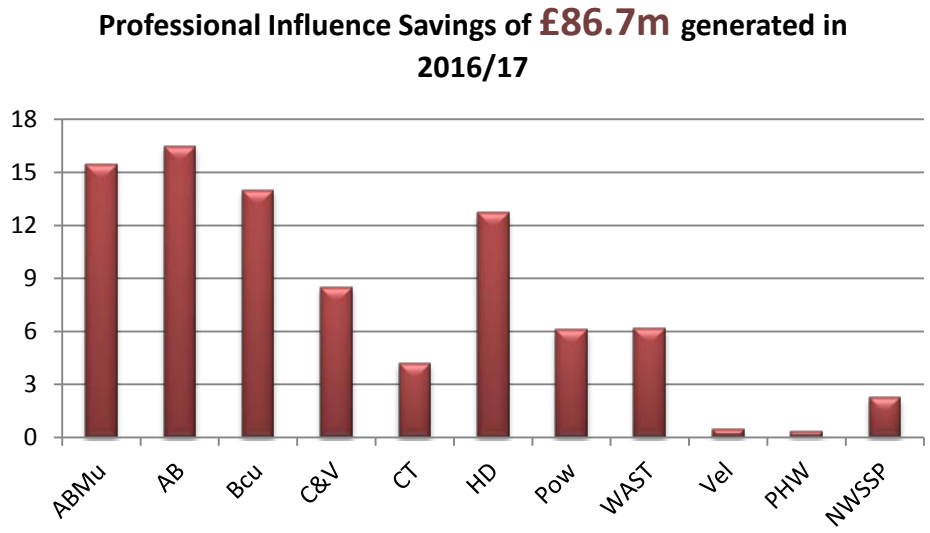
In addition to clinical negligence and personal Injury work there are wide-ranging opportunities for Legal and Risk Services to achieve impact, in terms of commercial contribution, handling major strategic transactions and dealing with the technical and operational impact of regulation. The professional impact and influence of the in-house team, continues to grow, driving economic value, service improvement and robust decision-making in the NHS in Wales.

The essential features of the professional impact and influence provided include,

- high-levels of specialism, expertise and professionalism;
- many years of deeply embedded experience, working within the NHS in Wales;
- a strong strategic and tactical skills, rooted in a detailed knowledge of a wide range of claimant solicitors and their tactics;
- a thorough approach to investigation and understanding of complex case issues.

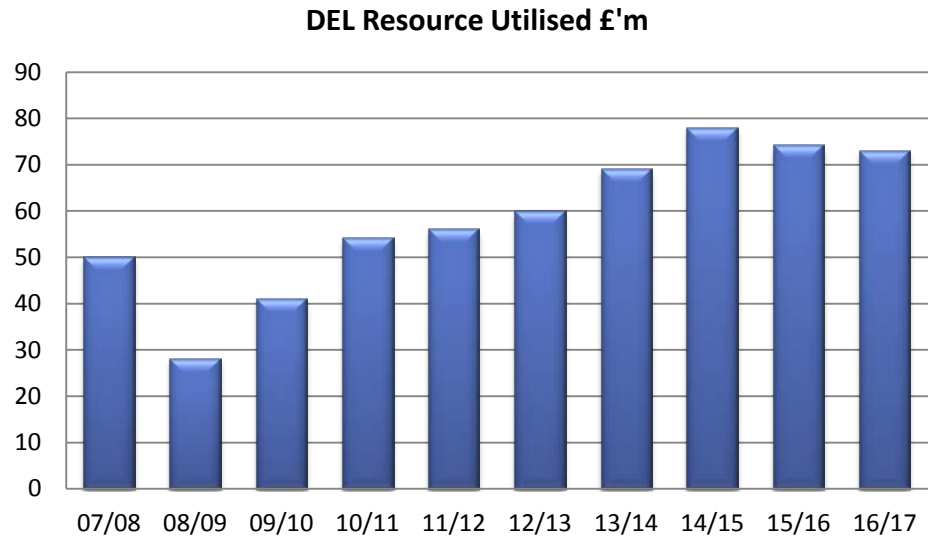
The points above contribute significantly to the outcomes that NHS Wales achieves and provides the Service with considerable support in facing these challenges.

The results by Health Organisation are highlighted below with three Health Boards reflecting in excess of £10m of professional influence savings.

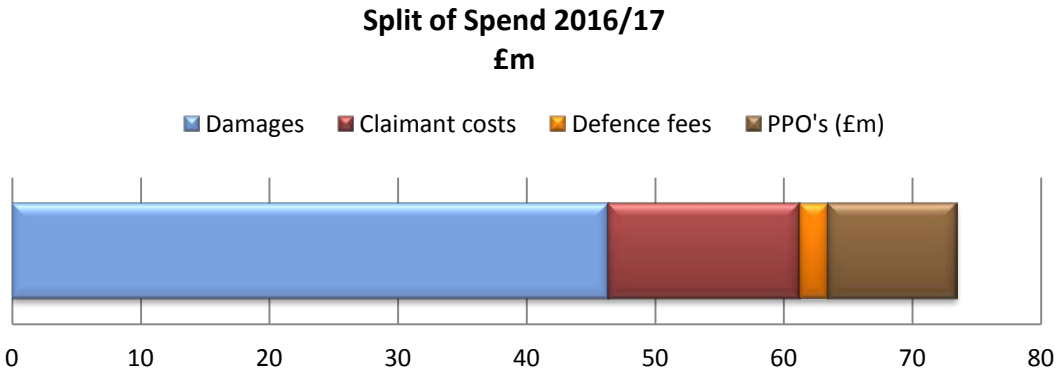


In-year Spend: "The DEL"

The graph below shows the in-year resource utilised on settled claims and annual payments for claims settled using a periodical payment order (i.e. excludes increases in provisions for ongoing claims).



The above resource is sourced from the healthcare budget for NHS Wales and in 2016/17 the expenditure of £73.416m which represents 1.17% of the NHS budget. The graph below identifies the main components of spend.



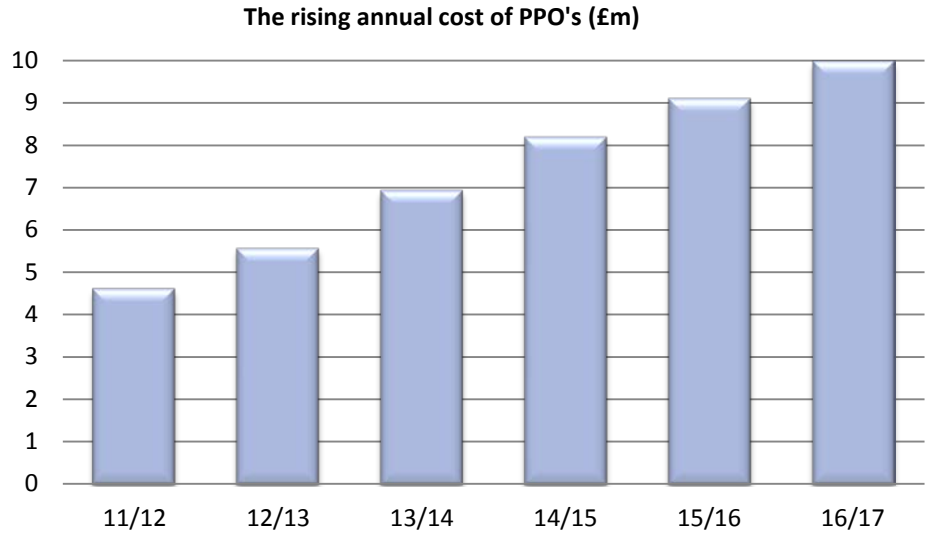
In a NAO Report commissioned by the Department of Health for England entitled "Managing the Costs of Clinical Negligence in Trusts", issued September 2017 it states that between 2010/11 and 2015/16 the average percentage of a Trust in England's income spent on contributions to pay for

clinical negligence increased from 1.3% to 1.8%. The Welsh figure of 1.16% is significantly lower than this.

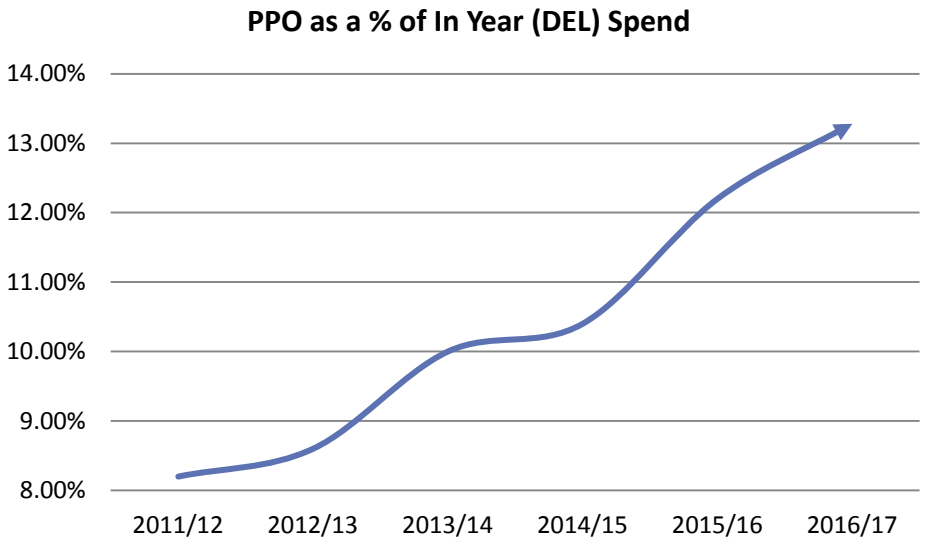
The implication of the rising costs of clinical negligence claims is that in an already constrained financial environment, this reduces the proportion of the health budget available to deliver healthcare to patients. It also creates an increasing cost on public finances for future years. NAO analysis states that in England, by 2020/21, the percentage of a Trust's income spent on negligence could increase to 4%.

Therefore, whilst Welsh figures are lower than England's currently it is important to be aware of the predicted trends
The table below provides a more detailed breakdown of expenditure.

PPO's are increasingly utilising a larger percentage of the in-year budget. The cost of PPOs has more than doubled since 2011/12. PPOs cost NHS Wales £4.61m in 2011/12 and this has increased by 116% to the 2016/17 level of £9.96m.



In percentage terms an increasing proportion of the DEL budget is being utilised on PPOs which in theory reduces the funding available for in-year payments. The graph below identifies that in 2011/12 PPOs accounted for 8.2% of the available allocation. By 2016/17 this had risen by 62% to 13.3% of the available budget.



The increase in PPOs, coupled with the change in discount rate issued by HM Treasury, places a considerable and increasing future burden on NHS Wales as outlined in the next section.

Provisions: "The AME"

The WRPS also accounts for its share of long term liabilities and this includes a provision for ongoing matters assessed as probable or certain and also an estimate of future costs associated with settling claims using a periodical payment order (PPO). As at 31st March 2017 the value of the liabilities on the WRPS balance sheet was £866m which is a rise on the opening balance of £184m.

A significant factor has been the change in the PIDR for the future elements within lump sum payments from +2.5% to minus 0.75%.

The discount rate is designed to recognise the value of money over time: £1 now may be worth more or less in the future. Applying a discount rate to the amounts we expect to pay out in the future enables us to put a value on those outgoings at today's prices. It tells us how much we would need to pay out if we settled all of those future obligations today. In accordance with International Financial Reporting Standards (IFRS), HM Treasury has applied market rates which reflect the low cost of borrowing to government in determining the long term discount rate, giving rise to a negative discount rate for very long term obligations.

THE IMPACT OF THE CHANGE IN THE PERSONAL INJURY DISCOUNT RATE (PIDR)

On Monday 27th February the Lord Chancellor, Liz Truss, announced a change in the Personal Injury Discount Rate from 2.5% to -0.75%. The new rate came into effect from 20th March 2017. The discount rate adjusts personal injury compensation payouts to take into account how much an individual can expect if they invest a lump sum over their lifetime. Designed to ensure that claimants are not under- or over-compensated, the rate had been set at 2.5% since 2001.

The purpose of compensation is to put a person who has suffered a personal injury as a result of negligence in the same financial position they would have been in had they not been injured. If a person receives a lump sum in respect of future losses, it is assumed that they would invest the lump sum. In addition, it is assumed that such a person will be risk averse when investing the lump sum. In simple terms, the higher the rate of interest it is assumed a Claimant will earn, the lower the lump sum awarded for future loss. The lump sum is calculated by multiplying the annual amount of the loss (the "multiplicand"), by a figure which reflects the number of years the annual loss would have been received, discounted by the assumed interest the Claimant will earn on the lump sum (the "multiplier"). Up until the Lord Chancellor's announcement on 27th February it was assumed that 2.5% interest would be earned on the lump sum and, as a result therefore, the lump sum was reduced to allow for accelerated receipt.

The rate of 2.5% was set by the Lord Chancellor in 2001 using a framework based on real yields of Index Linked Gilts at the time. Groups representing Claimants have been arguing for a review the discount rate for many years in light of the falling yields. The re-calculation under the framework has now been confirmed, leading to the change to -0.75%. This is a swing of 3.25%.

This cut in the rate will benefit the individuals who suffer from medical negligence, and other personal injury incidents, but will cost the NHS significantly more.

HOW THIS AFFECTS WALES

In practical terms, claims with elements of future loss must all be reviewed. Claimants are withdrawing Part 36 offers, Defendants must consider increasing Part 36 offers. Schedules of loss and damage need to be re-calculated and costs budgets revised and re-approved. The increase in damages will lead to more Claimants' costs being found to be "proportionate" and therefore recoverable.

This created a “push & pull” effect in 2016/17. Settlements meetings are being delayed and claimant part 36 offers are being withdrawn which has the effect of reducing in year spend. However, where settlement meetings are continuing they inevitably cost more.

A model has been developed to estimate the impact of the discount rate change. This was necessary as the impact of the change needed to be included in the All Wales Accounts and the accounts of individual Health Boards and Trusts. It was impossible, with the announcement so close to the end of the financial year, for schedules / quantum on all the probable and certain cases in the system to be updated and entered into the database prior to the final year end database report that the NHS use to generate their provisions – therefore a predictive model was necessary.

The model is based on actual case data, trends and many assumptions. These were shared with the Welsh Government and with the Wales Audit Office and were accepted within all statutory accounts.

The Lord Chancellor stated that already stretched NHS budgets would not be affected by this change and that additional funding will be found. Therefore, the impact of this change has not been passed to the NHS Organisations within Wales but is being managed centrally by the Welsh Government in collaboration with HMT.

THE FUTURE

In March 2017 the Ministry of Justice commenced a consultation exercise to seek opinion on how the personal injury discount rate, currently prescribed by the Lord Chancellor, should be set in future. The response to the consultation was published on the 7th September 2017. The key points are,

- The rate is to be set by reference to expected rates of return on a low-risk diversified portfolio of investments, rather than very low risk investments as at present

- The principles for the setting of the discount rate will be set out in statute

- The rate will initially be reviewed promptly after the legislation comes into force and, thereafter, at least every three years

- The rate is to be set by the Lord Chancellor with advice from an independent expert panel apart from the initial review which will be by the Lord Chancellor with advice from the Government Actuary

- The key legal principle will be that “the rate should be the rate that, in the reasonable opinion of the Lord Chancellor, a properly advised recipient of a lump sum of damages for future financial loss could be expected to achieve if he or she invested the lump sum in a diversified low-risk portfolio with the aim of securing that

    - **(a)** the lump sums and the income from it would meet the losses for which they are awarded when they are expected to fall; and
    - **(b)** the relevant damages would be exhausted at the end of the period for which they are awarded.

- Legislation to make the proposed changes is to be introduced "as soon as Parliamentary time permits”.

The announcement prior to the publication of the response indicated that the Government would expect that if a single rate were set that day under the new approach the real rate might fall within the range of 0% to 1%.

The change will not apply retrospectively. Therefore, it is highly likely that the discount rate will be changed to between 0% and 1% in due course. However, when this will happen is dependent upon when the necessary legislation is passed and comes into force.

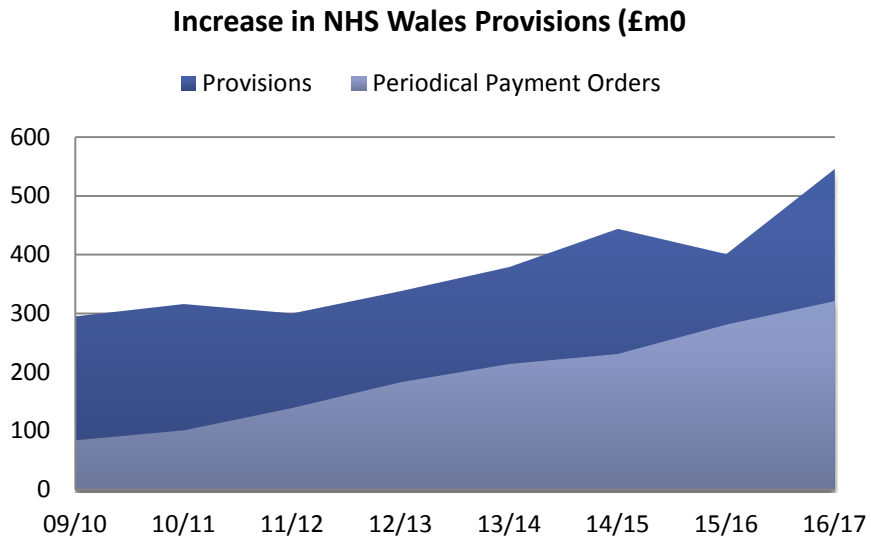
TOTAL PROVISIONS

As a significant proportion of the WRPS provisions are expected to be settled over the longer term, the reduction of the discount rate by three percentage points has had a considerable impact on the valuation. However, this is an accounting judgment that does not change the underlying future costs that will be incurred in meeting the obligations arising from claims.

The PPO's have been significantly affected by this change. The future liability in relation to PPO's has risen consistently from £84m in 2009/10 to £320m in 2016/17 as shown in the graph below. The increase in the PPO provision in 2016/17 was £39m, 14% in percentage terms. This was due to both new PPOs and the change in the discount rates.

In-year expenditure on PPOs is now approaching £10m.

Due primarily to the change in the PIDR, the provision for current cases classed as "probable" and "certain" has increased from £401m to £546m.



Contingent Liabilities

The balance sheet for 2016/17 also disclosed as a contingent liability of £854m in respect of estimates for claims currently assessed as possible.

In addition the total for remote contingent liabilities was £41m.

THE NEW RISK SHARING AGREEMENT

In 2014 the then Minister for Health and Social Services determined that the claims element of the Welsh Risk Pool Services budget would be transferred back to the Service from 1st April 2014. The Welsh Government confirmed baseline funding and outlined that the Service was responsible for the management of any over/under spend against this allocation. The letter also confirmed the need for risk sharing arrangements to be developed. In February 2014 a paper was presented to Directors of Finance outlining the NWSSP approach to claims management and set out,

1. A short term measure to manage in year costs above the allocated baseline and,
2. the requirement to produce a more sophisticated risk sharing model in the future.

Developing a new model

Building on the principles in place and researching best practice across the UK five areas have been developed and weighted to provide a new risk sharing agreement. The new model:

	Measure	*Detail*	Weighting
A	**HSCS and Prescribing Allocation**	*Current measure*	**30%**
B	**Claims History**	*Last 3 years – rolling basis*	**20%**
C	**New Claims transferred from the Service to LARS:** Number of New Cases < £25k	*Last 12 months*	**10%**
D	**Claims potentially affecting next years' spend:** 1. Cases with cash flows < 1 yr 2. PPO Allocation Utilisation	*From CN database : 15%* *Actual Costs : 10%*	**25%**
E	**Management of Concerns and**		

Learning from Events			
1.	Management of Concerns	*Annual Audit : 7.5%*	**15%**
2.	Learning from Events	*Annual Audit : 7.5%*	

The above allocation methodology will be applied to any in-year spend above the level of the WG allocation.

Whilst this model looks complex it,

- weights various contributory factors in order to provide a balanced and equitable system
- it is transparent and auditable in its application
- It does not rely heavily on past events
- It provides emphasis on activity and behaviours of the last year
- It weighs short term cashflows (within 12 months) higher than longer term potential spend (> 12 months)
- It accounts for the percentage of the allocation (PPOs) that is utilised before any in-year settlements
- It provides reward for managing Putting Things Right effectively
- it can be updated every year to reflect recent activity and progress
- It allows the inclusion of NHS Trusts that impact on the allocation usage but which were ignored from the previous formula
- systems and databases are in place which can easily manipulated and analysed in a timely manner to derive the formula for forthcoming years

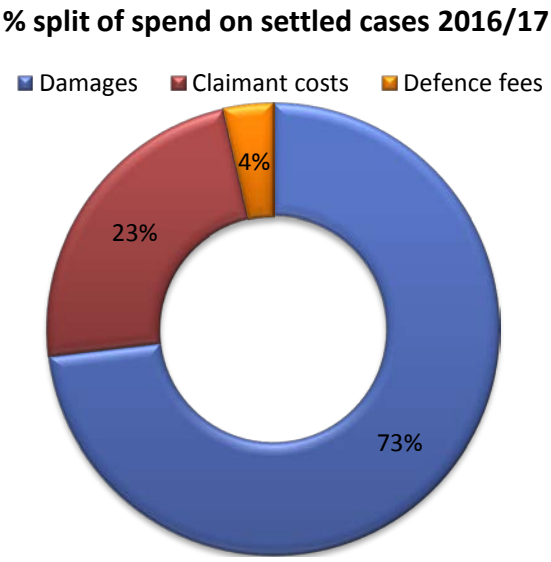
The 17/18 Risk Sharing % based on the principles above are:

SUMMARY: NEW RISK SHARING AGREEMENT FOR 2017/18

	TOTAL	HSCS Allocation A	Claims History B	PTR C	Cashflow < 1 year D (i)	PPO D (ii)	Audits / Lessons Learned E
Aneurin Bevan Health Board	**18.11%**	5.63%	3.23%	2.03%	3.24%	2.82%	1.16%
ABMU Health Board	**17.26%**	5.26%	3.23%	2.15%	2.27%	2.61%	1.74%
Betsi Cadwaladr Health Board	**17.99%**	6.81%	3.24%	2.26%	2.43%	1.12%	2.14%
Cardiff & Vale University Health Board	**15.56%**	4.21%	4.81%	1.41%	3.00%	0.91%	1.22%
Cwm Taf Health Board	**10.45%**	3.11%	2.67%	0.73%	1.67%	0.94%	1.33%
Hywel Dda Health Board	**11.29%**	3.68%	2.55%	1.27%	1.09%	1.14%	1.57%
Powys NHS Trust	**5.18%**	1.30%	0.00%	0.06%	0.96%	0.37%	2.50%
Public Health Wales NHS Trust	**1.25%**	0.00%	0.13%	0.00%	0.20%	0.00%	0.92%
Velindre NHS Trust	**1.06%**	0.00%	0.01%	0.00%	0.00%	0.00%	1.05%
Welsh Ambulance Service NHS Trust	**1.84%**	0.00%	0.14%	0.08%	0.15%	0.10%	1.36%
VALUE OF EACH ELEMENT	**100.00%**	**30.00%**	**20.00%**	**10.00%**	**15.00%**	**10.00%**	**15.00%**

Total expenditure of the WRPS during 2016/17 was £73.416m of which £55.6m related to reimbursements to members in respect of 338 matters. During the course of a claim the responsible body will make payments which include damages, claimant costs and defence disbursements.

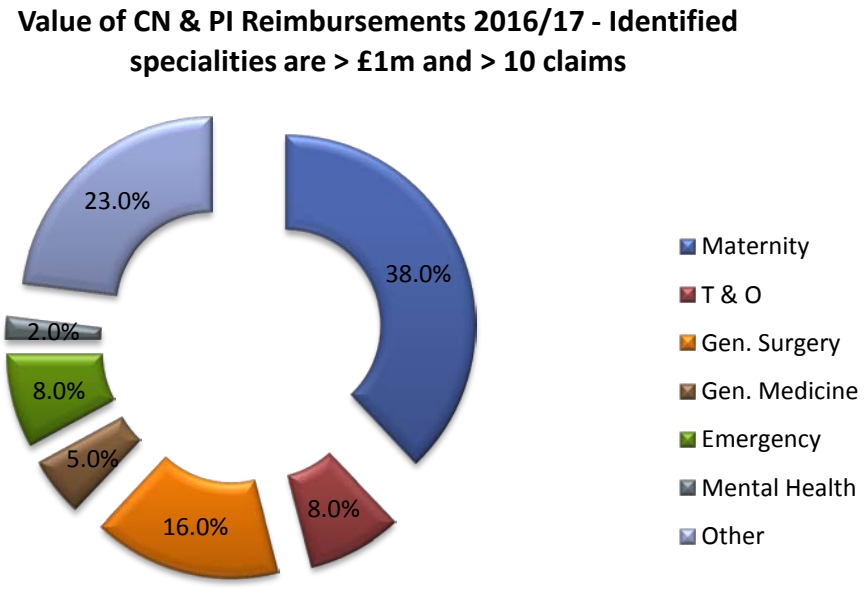
The table below identifies that in Wales 73% of payments were in respect of damages and 23% in relation to claimant costs. The corresponding damages percentage in England is 63%. The costs element of payments in England is therefore considerably higher than in Wales.



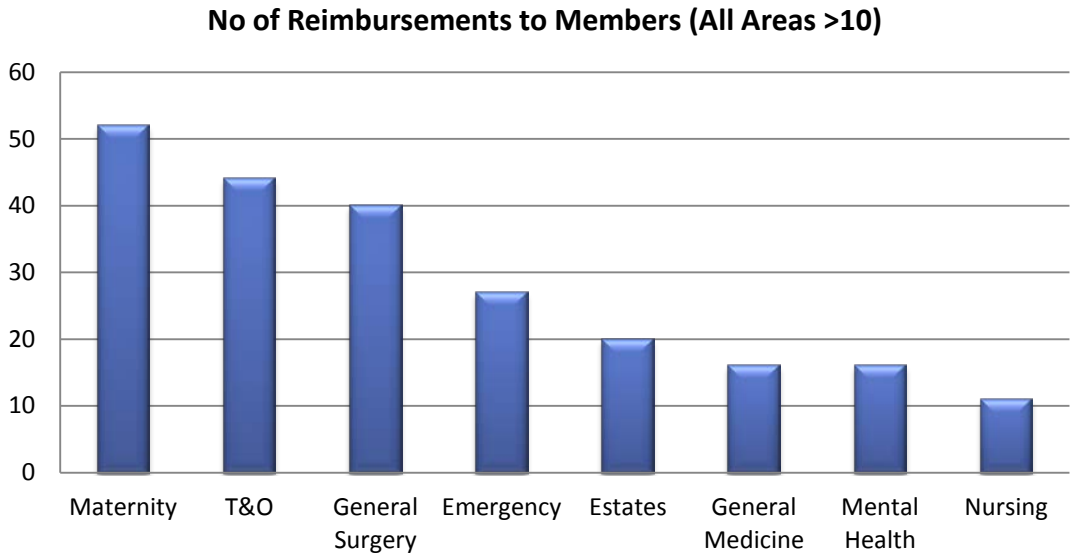
The life cycle of a claim may last many years, especially for large value claims and it is not uncommon for members to submit a number of interim claims for a matter before it is fully concluded. Therefore, the expenditure in year will relate to both finalised and ongoing matters.

Claims received for reimbursement are classified by speciality and the graph below provides a breakdown of the value of reimbursements made. It identifies that maternity cases account for 38% of spend in NHS Wales.

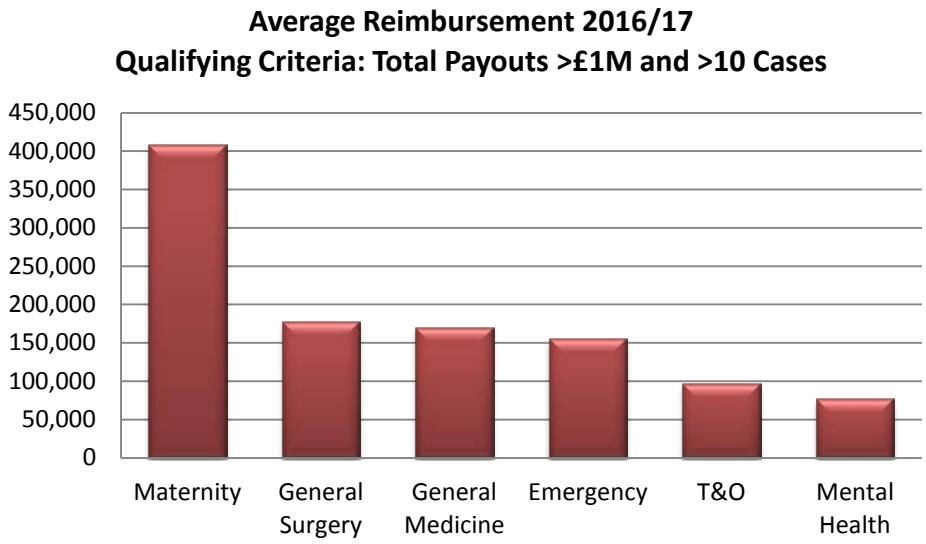
In 2016/17 there were six areas where there were more than 10 cases reimbursed with a total value over £1m. These are shown on the graph below.



Maternity cases cost the NHS the most money in 2016/17 and this was also the highest area in terms of the number of cases that were reimbursed with 52 cases in total.



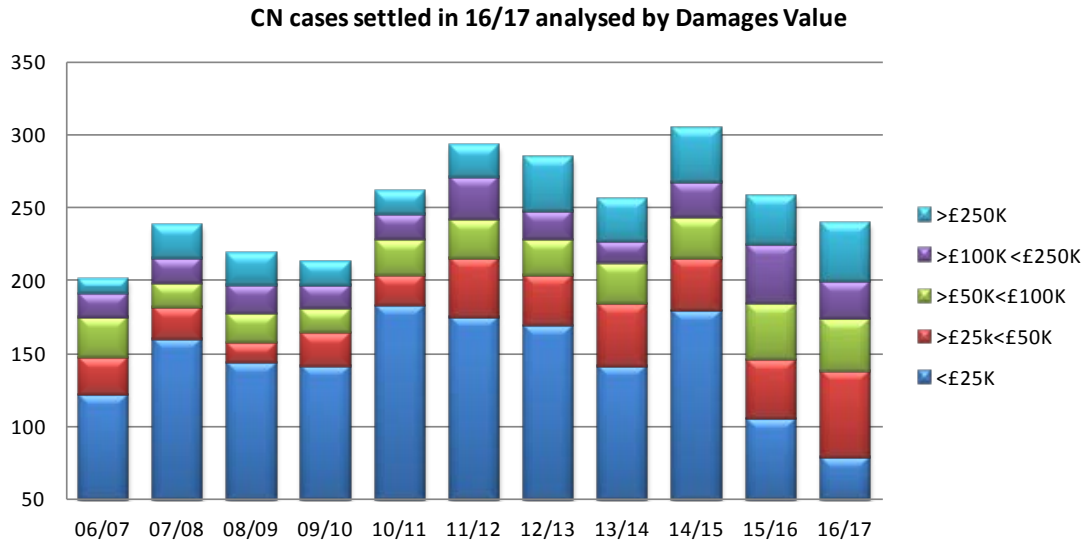
The highest average value of claims paid out was in Maternity with an average reimbursement in excess of £400k.



During 2016/17 the WRPS reimbursed amounts in excess of £1m in respect of 11 clinical negligence matters. The lump sum value of these reimbursements was £19m with ongoing annual payments for ongoing care with an estimated future value of £35.2m.

Whilst claims as a percentage of all care are low the financial impact is much greater and the expenditure of £73.416m represents 1.17% of the total health and social care budget for NHS Wales for 2016/17.

Reimbursements Analysed by Damages



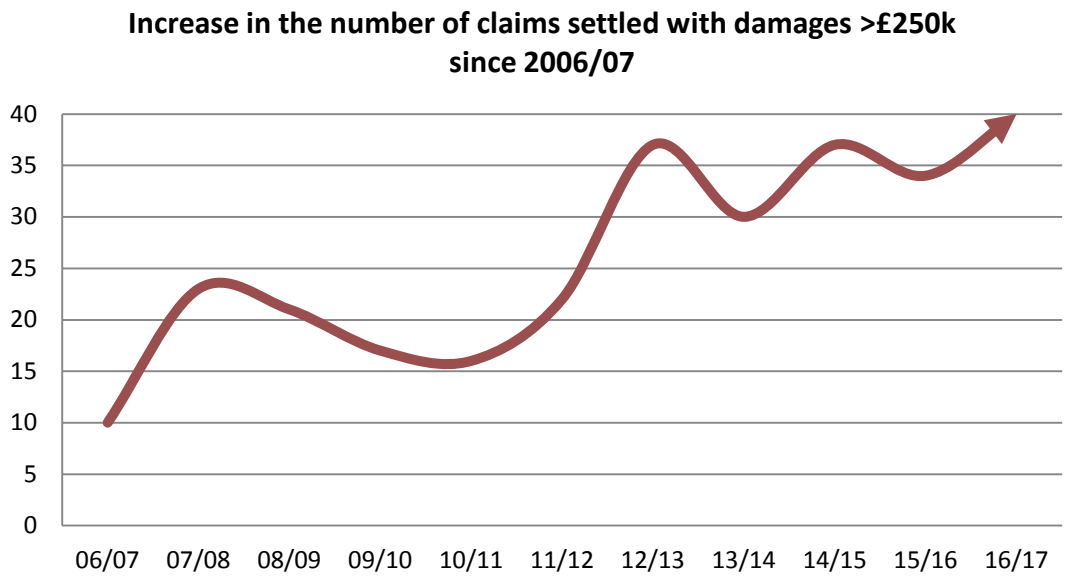
The number of cases closed with damages payable has risen since 2006/07. The total cases closed with damages payable in 2006/07 was 201 and the 2016/17 figure is 239. 2016/17 represents the lowest number of cases settled with damages since 2009/10 as highlighted in the graph below.

However, the cost of reimbursements has risen significantly in this period due to,

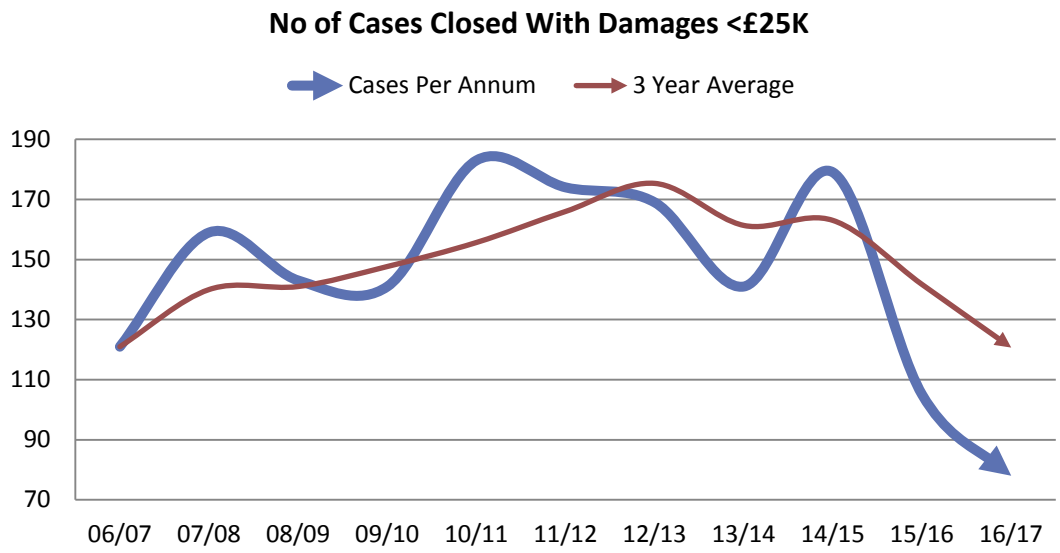
- Larger claimant costs
- An increase in the average damage pay-out

Whilst claimant costs are a lower percentage of total settlement costs in Wales compared to England, there has still been an increase in claimant costs. The graph below also shows the change in the number of cases when split by the level of damage pay-outs. In 2006/07 cases settled with damages less than £25,000 represented 60% of all cases settled. By 2016/17 this has fallen to 33%. This is a combination of,

- The escalating cost of litigation and
- The impact of "Putting Things Right"



The graph below tracks cases settled with damages under £25k and highlights the reducing trend and significant reductions in 2016/17.



CLAIMS MANAGEMENT – FOCUS ON PERSONAL INJURY

The personal injury team has continued to provide a comprehensive and attentive service to its clients across Wales.

The team produces a six monthly 'File Review' report for each of its clients and it is pleasing to note that the reports are growing in popularity.

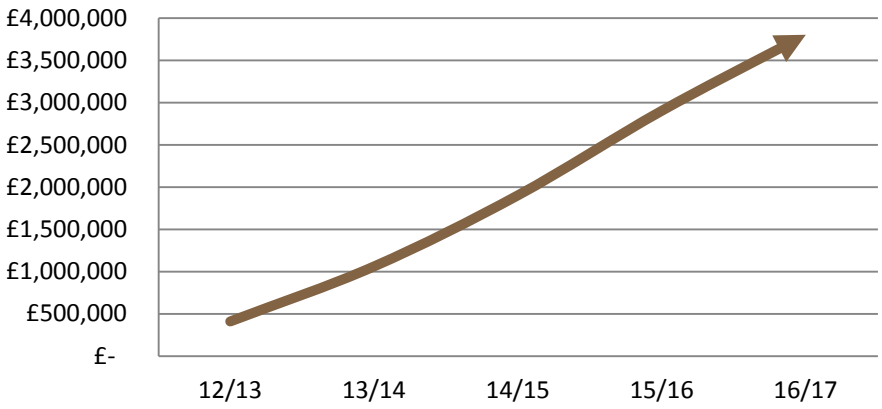
For each client the report provides a snap shot of every claim within its portfolio in addition to rolling graphs which show trends across the portfolio of personal injury claims and trends in relation to specific categories of claims such as violence and aggression. The graphs enable the client to compare data / trends since the file review started in 2012 to the present time. This helps the clients to identify problem areas which require risk management.

The report has developed to include sections on savings and good results, lessons learnt / generic advice and Trials.

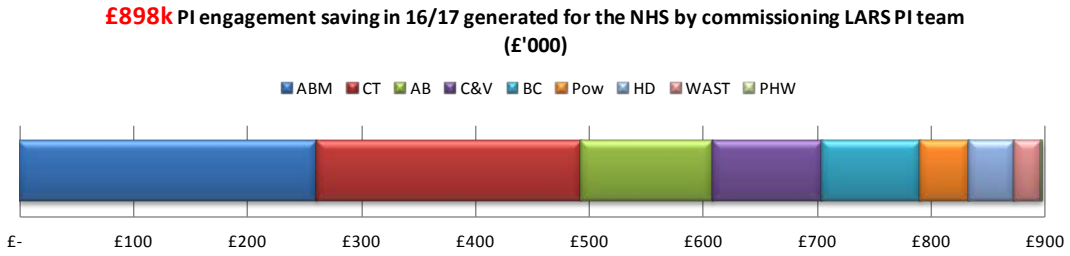
The Personal Injury department has achieved savings on case management of **£4.4m** in 2016/17. **Successes at trial and other successful case management examples are shown highlighted in the final section of this review.**

In addition to these direct savings on cases, by engaging the L&RS PI team rather than commercial solicitors the Service has saved £3.8m in legal fees over the last 5 years. Activity levels are increasing and this saving will continue to grow.

£3.8m of cumulative savings generated for the NHS by Organisations commissioning the LARS internal PI teams



The savings in legal fees to the Service in 2016/17 totalled **£898k.** The graph below splits these savings by Health Organisation:



The personal injury department has taken 8 cases to trial within a 12 month period; four were settled in favour of the Defendant. Three of the cases that were successfully defended arose from falls on a wet floor or spillage. The other successfully defended claim involved a patient assault of a member of staff. The other four claims which the department took to Trial were decided in favour of the Claimant, however, one of the decisions is to be appealed. The team prides itself on providing hands on investigation and personal witness interviews which allows it to take calculated risks in proceeding to trial. The team's message to Claimants is that they simply do not roll over and accept liability for injury.

The department is keen to provide educational seminars and lectures to clients. The team continues to prepare and develop educational talks in response to trends and problems identified within the case portfolio and training requests from clients.

This year the department has delivered seminars across Wales on the following subjects;

- The effect of the Enterprise Act on strict liability
- Introduction into personal injury law for Estates and Facilities
- The lawful use of force by NHS staff
- Work related stress cases in healthcare
- Trends in manual handling litigation
- The role of a witness in Personal Injury claims
- Decoding the low value claims portal
- The effects of one way costs shifting
- Lessons learnt from PI claims
- The pitfalls of trials

- Employment law issues spotted in PI cases
- Legal development affecting occupational health practices
- Health and safety offences act
- Corporate manslaughter

In addition the PI Team have hosted two personal injury on 16th September 2016 and 5th May 2017 which were very successful during these sessions talks were delivered by experienced barristers and members of the personal injury team.

The team has largely met its KPI in relation to billing and was recently recognised as 'team of the year in the NWSSP Staff recognition awards.

In addition, the team is assisting with risk management issues, principally in violence and aggression. The Head of the department is project manager for the revision of the MOU between the Police, CPS and NHS in Wales which reflects the team's reputation as experts in the field.

Finally, the team continues to use social media such as Twitter as a platform to raise its profile within the NHS in Wales. The number of followers has increased this year.

@NWSSP_PI

LEGAL AND RISK SERVICES – THE WIDER REMIT

NWSSP Legal and Risk Services was established by Welsh Government for the purpose of providing a comprehensive, in-house, specialist legal service to Health Service bodies in Wales. In addition, for the past five years there has been an All-Wales contract providing access to external legal services providers where required.

The traditional core business relates to the management of clinical negligence and personal injury claims against NHS Wales, but in addition to the core activities, the following Services are provided.

Highlights from 2016/17 include,

Commercial Team

- The Commercial Team have dealt with over 300 matters from Health Boards during 2016/17.
- Supporting and providing legal advice for the new NHS 111 Emergency and Urgent Care Service for Wales.
- Successfully challenged a local authority ensuring £90,000 was returned to a local health board.
- Fees relating to the use of GP Agencies were successfully contested, saving £19,800.
- Contributing expertise in the NHS Design for Life Framework, used in hospital building worth £4 million and over.
- The team has considerable insider knowledge of NHS Wales, and with members specialising in Procurement, Commercial Contracts and Regulatory Law, health boards are assured they are receiving advice which best suits their needs - eliminating the need to use expensive external resources.

- Assisting and supporting the establishment of the Emergency Medical Retrieval and Transfer Services (EMRTS Cymru), providing a flying ambulance services for the whole of Wales.
- Currently advising on projects which could see Intellectual Property revenues generated for NHS Wales.

The Legal and Risk Employment Team:

- Provide bespoke training sessions to Health Boards and Trusts: this helps keep them abreast of recent employment law changes, ensure that the HB/Trusts are acting in accordance with their policies and the ACAS Code of conduct which both reduces the risk of a successful Tribunal claim being brought against them and ensures that employees are treated fairly.
- Defend employment Tribunal claims, many of our defences result in withdrawal of the claim by the other party, achieving beneficial settlement of claims against the NHS
- Provide cost effective advice on law and procedure to avoid potential claims and to mitigate the risk of existing claims
- Assist with the drafting of policies to ensure that the HB/Trusts follow best practice, to avoid risks of successful claims and minimise issues with employees, ensuring compliance with law (i.e. cp work on All Wales bank and SSP)

Some more specific examples:

- MM claimed unfair dismissal, disability discrimination and unlawful deduction of wages– £373,630.77 claimed, we strongly resisted the Claim and the Claimant withdrew
- FR- constructive unfair dismissal and unlawful deduction of wages claim - £128,258.22 claimed – we strongly resisted the Claim and the Claimant withdrew no order as to costs
- MC claim for unlawful deduction of wages was worth estimated £26,230.68.taking into account ACAS uplift and ET fees. Dismissed at Tribunal.
- PP – claim for unfair dismissal and detriment as a result of making a protected disclosure was dismissed at Tribunal – £53,360.61 was claimed.
- KM – discrimination and whistleblowing – dismissed at tribunal – the damages in this case could potentially have been uncapped.

Property Team

- Negotiating the development of a £5.5M free-to-use hotel by Ronald McDonald House Charities at a major hospital site for the families of children being treated at the hospital. A very complicated, sensitive and time-pressed project to deliver.

- The HQ relocation for Public Health Wales NHS Trust to a new 50,000 sq/ft development at Capital Quarter with an annual rent of circa £1M.

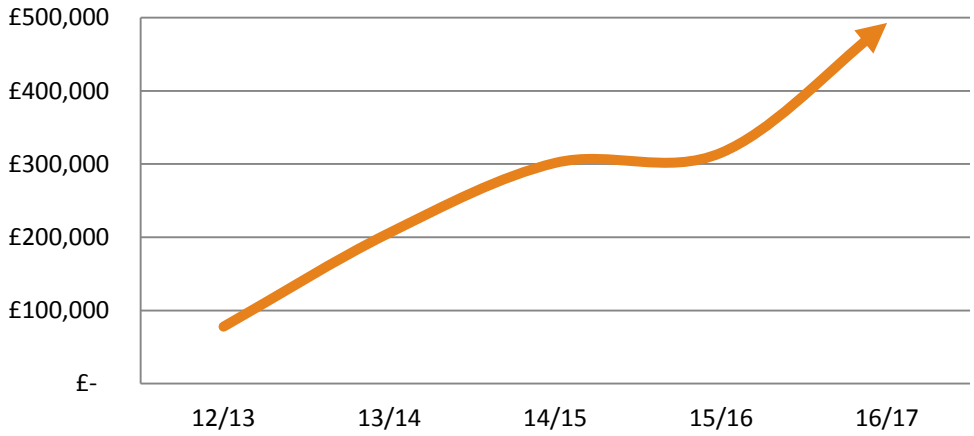
- The sale of surplus land at Cefn Coed Hospital Swansea to Bellway Homes Limited for the purposes of a residential development consisting of 73 dwellings. A very complex and protracted matter.

- The relocation of Public Health Wales and NWSSP from their West Wales office at the Oldway Centre, Swansea to their new regional hub at Matrix House, in Swansea Enterprise Park. A high profile move, reported as one of the biggest office deals in Swansea for years and that sees services housed in modern, state of the art facilities.

- Working with Cardiff University to enable the development of a brand new purpose-built Biobank facility at the University Hospital of Wales. The facility provides a large storage space for up to 900,000 biological samples which are crucial in allowing researchers to find better ways to diagnose, prevent, treat and possibly find a cure to a wide range of medical conditions

THE IMPACT OF COMMERCIAL, EMPLOYMENT AND PROPERTY ADVICE PROVIDED BY L&RS

£1.4m savings generated for the NHS over the last 5 years due to commissioning the internal LARS Commercial Teams with year-on-year increases



A detailed report and guidance note have been issued which outline the process for NHS bodies in Wales to continue their engagement with Legal and Risk Services as the preferred supplier within the new framework contract and to facilitate access to the NPS arrangement where required. Our guidance note was issued in November 2015 and builds on the principles established in the National Procurement Service guidance (September 2015) entitled, "Legal Services by Solicitors Framework - Your guide to engaging advice and guidance from Solicitors."

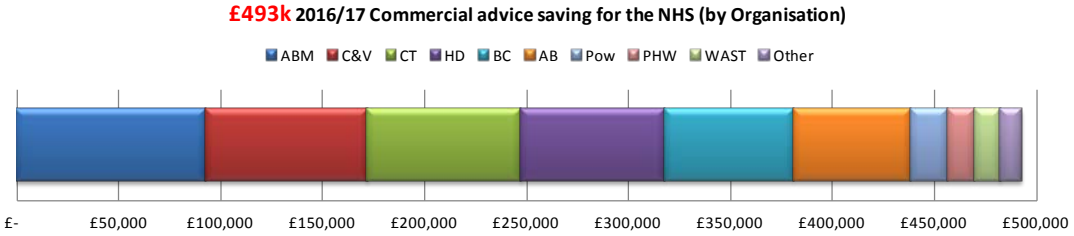
These documents have been circulated to the Board Secretaries of each Local Health Board and Trust and our report highlighted *inter alia* our value for money, past performance and competitiveness against the NPS framework providers.

The Public Accounts Committee (PAC), reinforced by the NPS framework, recommends that NHS Organisations should engage with Legal and Risk Services as their "first port of call", in relation to legal service provision. The National Procurement Service guidance, described in the introduction above, quotes the PAC recommendations on buying consultancy Services stating that the new framework "fully supports the PAC Recommendations" and informs public sector bodies. The PAC guidance and recommendations are,

- Before engaging external services you should always assess the availability of internal or other public sector resource that may be available through a shared service arrangement.
- Many public sector organisations have in house Legal Services teams. Please ensure that you discuss any requirement for legal support with them first.
- A number of organisations have come together to deliver a shared service approach to legal advice and guidance. Again your Legal Services team will be able to advise you if this is the case.

As part of our national commitment to ensuring that all services provided to the NHS in Wales are of the highest quality, at fair and cost effective rates, Legal and Risk Services have developed a portfolio and a strategy building upon the PAC recommendations where all NHS Organisations in Wales should, in the first instance, engage with Legal and Risk Services to determine the best course of action in procuring legal advice.

In 2016/17 activity levels increased by 56%. This enabled the Service to save nearly half a million pounds by engaging with LARS rather than purchasing legal services externally. The graph below highlights the savings per Health Organisation.



A CLOSER LOOK AT THE GROWING REMIT OF THE COMPLEX PATIENT / COURT OF PROTECTION TEAM

The law is at the heart of the doctor/patient relationship. It protects clinicians against criminal charges and from civil liability. With a wealth of experience the team provides timely, and when necessary, immediate advice to ensure that NHS staff comply with their legal obligations. These include:

1. **Mental Capacity Act**

With an increasing percentage of NHS patients and service users lacking capacity to make decisions themselves, there is a growing need for NHS staff to understand and implement the principles and provisions of the Mental Capacity Act. The Healthcare Advice Team offers a rapid and reasoned response to any capacity or best interest related query. By engaging early with clinicians and patients or families they assist in resolving disputes or ethical dilemmas and avoid the need for applications to be made to Court.

2. **Deprivation of Liberty**

The full impact of the Supreme Court decision in *Cheshire West* is still being realised with enormous impact on NHS resources. Until reform of the law is implemented the team provides expert advice to help avoid unlawful deprivations. They regularly advise and represent Health Boards who are subject to an appeal to the Court of Protection.

3. **End of Life Decision Making (adults and children)**

There are no more important decisions than those relating to the end of life. The team are regularly instructed where disputes arise between clinicians and patients or their family about what treatment can lawfully be given. These include:

- Patients in Permanent Vegetative State (PVS) or Minimally Conscious State (MCS)
- Withdrawal of treatment from seriously ill children
- Validity of Advance Decisions to Refuse treatment (ADRs) eg. Jehovah's witness refusal of blood products
- Force feeding of patient's with eating disorders
- Do Not Attempt CPR orders (DNACPR)

4. Court of Protection & High Court Applications

Not all issues can be resolved locally and ultimately some decisions need to be made by a Court. Often these can be highly contentious, complex, and emotive cases with the health, liberty or life of a vulnerable adult or child in the balance. The team have extensive experience of making applications to both the Court of Protection and the High Court, each with their own particular rules and procedures. They offer a service that aims to resolve disputes quickly and sensitively to preserve therapeutic relationships with patients or families. Examples include:

- Treating patients (who lack capacity) against their will
- Authorising deprivations of liberty
- Treatment decisions for children without parents consent.

5. Mental Health

Once seen as a very separate area of law there are increasingly conflicts and interfaces with the Mental Capacity Act and Deprivation of Liberty. We can help staff navigate the legislation and represent Health Board in legal proceedings.

6. Human Tissue, Embryology, and Organ Donation

The team advises and assists NHS staff in these areas which are governed by very complex legislation and which often raise very sensitive issues and dilemmas of consent, Human Rights and confidentiality.

7. Confidentiality

NHS staff are often under pressure from families or the police to reveal confidential patient information. The team guide staff through even the most complex of scenarios with sensitivity and discretion. Examples include:

- Police seeking information or medical samples from victims or perpetrators of crime
- Disclosure of HIV status
- Pregnancy related information of children.

8. Inquests

The team offers specialist advice on inquests that raise issues concerning all specialist areas. For example, where consent, a best interests decision, Mental Health or a deprivation of liberty is involved.

9. Training

The team offer training packages to all levels of NHS staff. These are usually free of charge and the aim is to deliver tailored sessions that focus on specific needs. The team regularly advise NHS bodies individually or on a National Level to ensure compliance with the law.

Case Example

RY was an elderly man who was admitted to ITU with severe hypoxic brain injury after a cardiac arrest. The clinicians did not expect him to recover any reasonable significant degree of awareness or quality of life and felt that continuing treatment would be painful, undignified and lead to a prolonged period of suffering for a man who was physically frail.

The family disagreed and did not want any treatment to be withdrawn. The family threatened staff with criminal and professional prosecutions if treatment was withdrawn. The Complex Patient Team liaised with the family to attempt to mediate the dispute.

When this was unsuccessful proceedings were issued in the Court of Protection to seek a decision on what was in the best interests of RY. The Team provided support to the clinicians through the legal process to protect them and the Health Board against any potential complaints or adverse media attention.

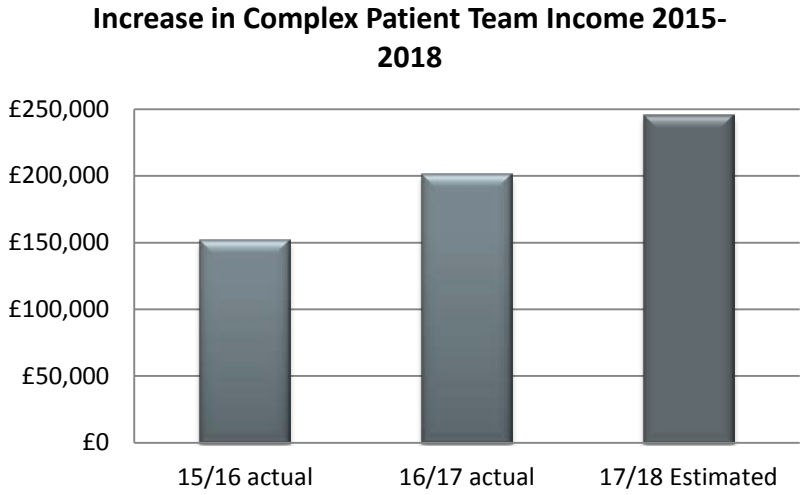
This was a highly charged, emotional case where the Health Board staff and the solicitors themselves were put under extreme pressure by an aggressive family member and their legal representatives.

The case was a prime example of the support that busy clinicians need in dealing with complex legal disputes at the end of life.

The Team have acted for various Health Boards in cases involving withdrawing of clinically assisted nutrition and hydration from patients in a Vegetative State. As a result the Team have identified a number of areas where care planning for such patients can be improved.

They are currently working with the Health Boards and the Welsh Government to review systems on a National level in order to improve patient pathways and compliance with the principles of the Mental Capacity Act.

Activity Levels



The graph above highlights **a 33% increase in income levels from 15/16 to 16/17.** Income has risen by £49k from £152k to £201k. This increase in income was achieved despite a member of staff leaving on secondment for part of the year and a new member of the team learning the business.

There are still significant amounts of "untapped areas" for further income stream growth and it is anticipated that income will exceed £245k in 2017/18. Legal & Risk have seen an increase in the number of referrals for advice relating to patients who lack capacity. This has grown by over 220% in the past 3 years.

REDUCING THE BURDEN OF INVOICING ON NHS WALES

In March 2017, an updated WHC was implemented in respect of the Dispute Arbitration Process – Guidance for Disputed Debts within NHS Wales. This re-clarified the dispute arbitration process for debts and in particular reduced the debtor & creditor arbitration case submission deadline from 21 weeks to 17 weeks.

This reduction in debt collection timescales increases the administrative burden on NHS Wales Organisations to agree and pay invoices within the reduced timeframe. Under the revised deadlines, debts reaching 10 weeks are escalated to Directors of Finance or nominated deputies to chase payment, which utilises a significant volume of senior management time.

Legal and Risk raised a total of 1,016 invoices to NHS Organisations in 2016/17. This covered all commercial activities, personal injury and court fees.

This system will be replaced by quarterly invoices for each Health Board based initially on the previous years activity level. Any under spend at the end of the financial year would be returned to the relevant organisation or any increase in activity added to the quarterly invoice as required. In addition there will be review meetings with each Health Organisation to review:

- Activity to date
- Completed pieces of work
- Ongoing work
- Planned activity
- Unscheduled pressures / need
- All the above fully costed against allocation
- Financial forecasting to year-end
- Future year requirements
- Performance
- Customer satisfaction

The benefits of this system include,

- Cuts out operational clutter
- Reduces time spent by staff chasing invoices around the system
- Clearly defined reporting procedures and processes
- Develops partnership working

- Improves transparency
- Creates a clear plan for Health Board in relation to advice
- Proactive rather than Reactive approach to business
- Enables LARS to plan more strategically for future activity

This system will be in place for the start of the 2018/19 financial year.

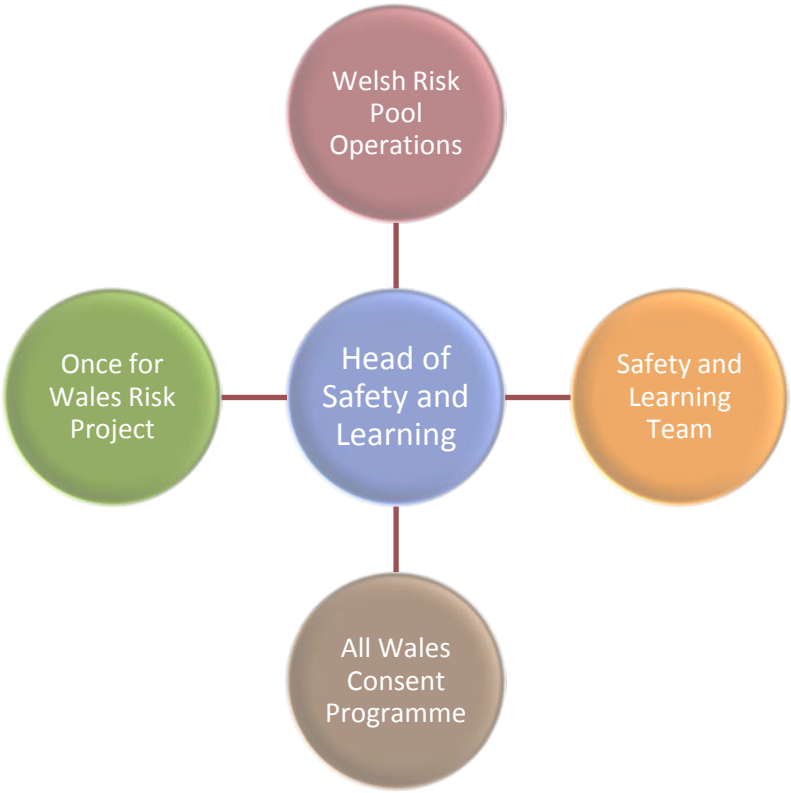
INVESTMENT IN THE WELSH RISK POOL– BUILDING A TEAM TO SUPPORT SAFETY, LEARNING AND IMPROVEMENT

The Welsh Risk Pool has reviewed the organisation of its people and resources to ensure that it is better able to provide support for safety, learning and improvement throughout NHS Wales.

Led by the Director of Legal & Risk Services, the team fully aligns to the work of the Legal & Risk function and compliments to the work of the NHS Wales Delivery Unit and Welsh Government.

The emphasis for the Welsh Risk Pool is to form a strong support and support-structure for health bodies, embracing the principles of Prudent Healthcare and providing maximum benefits to patients and staff. The position is very different to the years when the WRP we had a range of standards and undertook assessments

A key aspect of the Welsh Risk Pool structure is to embrace and support the skills which exist through NHS Wales – by forming a Faculty for the development and delivery of a suite of risk, safety & learning education & development programmes. The new structure comprises four main areas, linked and overseen by the Head of Safety and Learning.



A REVIEW OF THE WELSH HEALTH FRAMEWORK FROM A PATIENT SAFETY AND EXPERIENCE PERSPECTIVE

The new Head of Safety and Learning joined Shared Services in November 2016 and embarked upon reviewing how the governance of patient safety & experience is managed across the health bodies in Wales.

The intention was to identify the priorities in order to shape and build the Welsh Risk Pool service to meet the needs of health bodies in Wales now and into the future.

This review was not about conducting an inspection - but working with, and learning from, staff who undertake healthcare governance duties across Wales. The opportunities of further co-production and reducing unnecessary variation present the chance for wider improvement to the services received by Service Users.

A full report can be obtained by contacting jonathan.webb@wales,nhs.uk but a summary of the key findings are detailed below:

Some themes have emerged, which help develop the WRP services needed to support NHS Wales.

- **Sharing & learning from each other**

A widespread desire for Networking and Peer-Reviewing in a safe learning environment

- **Aligning categorisation of information**

We are stronger as a team and need to collate and present information in a uniform way

- **Enhancing the learning infrastructure**

We need stronger local systems to monitor and track learning from events. We need research to provide us with trends and themes. Bringing learning earlier into the process.

- **Greater local involvement in significant investigations**

Local clinicians and leaders need to be involved in investigations, and to own the findings.

- **Professional Development for Investigators and Governance teams**

A programme of education and development to support and enhance the excellent practice in Wales

- **Develop modern Risk Management Standards**

We need to be able to self-assess and peer-review against an agreed standard

Pilots for improvement:

This is a developing agenda and all organisations are involved in pilots of innovative changes and improvements. The pilots will help inform us on future policy, procedure and guidance development.

Categorisation	All-Wales Data – Once for Wales Project Group, Cwm Taf, ABMU
Appendix S Review	WAST, Hywel Dda, Aneurin Bevan
Concerns Review	ABMU, Cwm Taf
Consent to Treatment	BCU, Powys
Certificate syllabus	BCU, Cardiff & Vale
New Risk Standards	Tbc
Joint Investigations	WAST, Velindre, Cardiff & Vale, Powys

SELF REPRESENTED CLAIMANT AT TRIAL

The claimant, a 36-year-old man, underwent an appendicectomy in June 2005. Two years later he was diagnosed with an incisional hernia. In July 2007 he had an operation performed by a locum surgeon who had not met him before, to repair both the incisional hernia and a small umbilical hernia. The discharge summary said that a mesh had been put in to repair the hernia. This was incorrect. The surgeon had not found the hernia, had removed a small fatty lump under the original incision and had explored no further, recording his findings in full on the operation note.

Twelve months later the claimant had the hernia repaired privately. Few notes were made. Six months later the hernia recurred. In September 2008 the claimant made a complaint to the health board. Subsequently, a third operation, undertaken laparoscopically in 2009 to repair the hernia was successful but was alleged to have resulted in chronic pain.

The claimant issued proceedings, acting on his own behalf. Efforts were made to settle in respect of the first failed operation but the claimant having valued his claim at over £1 million was disinclined to accept. Mediation was attempted but was unsuccessful. The matter proceeded to trial on the issue of liability in November 2016.

The claimant had an expert opinion from an anaesthetist with an interest in pain medicine who considered neuropathic pain was likely to be a complication of the third operation about which there were no allegations of negligence. In the witness box he changed his evidence to assert that it was likely that the number of operations in the same site were the cause of pain.

The health board's consultant surgeon who gave evidence about his findings at the third surgery impressed the court with his clear description of his findings and evidently conscientious approach. He was cross-examined at length by the claimant who was continuing to act on his own behalf.

The judge required the defendant's barrister to sum up the doctrine of material contribution in one sentence which was a very tall order and only achieved with the use of a number of sub clauses. In essence, the court wished to be briefed on material contribution to the risk of harm as opposed to material contribution to the harm itself. The claimant argued the law as he understood it but ultimately his case failed other than in respect of the first operation and the consequence of that.

After eight years, that should have been the end once a short hearing to assess damages had been heard but that has yet to take place. The claimant is appealing on the grounds that the judge was biased and wrong on the facts and in law. He has appealed to the Court of Appeal but no date has been set.

WIN AT TRIAL – January 2017

The Claimant underwent an inguinal hernia repair in July 2010. The Claimant made no complaint about the hernia repair itself but alleged negligence in relation to the subsequent diagnosis and treatment of severe continuing pain in his right groin following the operation. Proceedings were served in September 2015 and the Health Board served a Defence denying liability. The matter proceeded to Trial which was held in January 2017 over three days at Cardiff County Court. Judgment was given in April 2017.

The Court found that it was a breach of duty of care for the clinician not to have expedited further investigations to arrive at an earlier diagnosis of nerve entrapment given the severity of the Claimant's symptoms. However, causation was not established as the Court found that even with an earlier diagnosis, the Claimant would have been referred the same way that he was to the pain clinic and there was no evidence to support that the outcome of earlier treatment by way of a nerve block would have eliminated or substantially alleviated the Claimant's symptoms in any event.

Therefore the Court concluded that the Claimant had not succeeded in establishing that the alleged negligence caused him any loss. The Claimant's claim against the Health Board was dismissed and the Claimant was ordered to pay the Health Board's costs.

SUCCESSFUL DISCONTINUANCE

CJ (deceased) v BCU

A patient was admitted as an emergency to hospital due to abdominal pain and abnormal liver function tests. An ultrasound scan revealed multiple gallstones in a mildly thickened gallbladder indicative of cholecystitis with possible stones in the bile duct and a soft and reducible umbilical hernia. The patient was duly admitted for laparoscopic cholecystectomy and hernia repair. There was post operative bleeding which required an exploratory laparotomy. Whilst on HDU the patient deteriorated further and was transferred to ITU. A CT scan revealed free fluid in the abdomen and pleural lung effusions and a second further laparotomy was required. The patient continued to deteriorate post operatively and sadly died.

It was alleged, that after the bile leak a laparotomy was undertaken to deal with this, but no attempt was made to identify the cause of the bile leak by either MRCP or ERCP before surgery and therefore the major surgery contributed to or caused the deteriorating medical condition, whereas endoscopic treatment would not have involved surgery, thus making recovery quicker and more certain.

The Health Board's position was that MRCP & ERCP was not available on the day in

question as an emergency, the patient was too ill to wait and also to be transferred elsewhere. Furthermore, the Defendant's expert was of the opinion that the patient would not have survived in any event due to co- morbidities.

The Patient's family was persuaded to discontinue the claim before the expert discussion; it was not unreasonable or a breach of duty to not have ERCP available as an emergency at all times and therefore in light of this, a reasonable body of surgeons would have also undertaken an open procedure.

A key factor in this outcome was the very active and willing participation of the two senior consultant surgeons assisting the case in what came down to a very fact sensitive issue about the availability of services within the particular hospital.

SUCCESS AT TRIAL
BP v Aneurin Bevan UHB

The Claimant alleged that he was wrongly diagnosed as suffering from impingement in 2010 when the correct diagnosis was a frozen shoulder. The Claimant's causation case was that but for the wrong diagnosis, he would have had received the appropriate treatment for a frozen shoulder and would have made a quicker and more successful recovery. He moved to the USA and underwent a further procedure there.

The Health Board successfully defended this case at trial and the Claimant's case was dismissed. Furthermore, as the Claimant's case was funded by a pre-April 2013 CFA, the Health Board recovered its costs at £35,500.

DISCONTINUED CLAIM
C v Cwm Taf

The Claimant sustained a Webber C fracture of the ankle whilst intoxicated. It was externally fixed whilst he sobered up in hospital, then he underwent internal fixation. At subsequent reviews, the Claimant was found to have removed his cast against advice, and he was repeatedly verbally abusive to members of staff, leading to the need to involve the police on at least one occasion. His ankle syndesmosis was found to have widened, and he was returned to theatre for further fixation. Various allegations were raised in relation to this second procedure, which had been deliberately chosen to avoid the need to bring the Claimant back to theatre for removal of screws to limit the exposure of the staff to abuse. The claim was strongly denied in the Letter of Response and the Claimant discontinued.

LARGE ADVERSE SETTLEMENT
E v C&V

On 12 January 2011, a decision was made for the Claimant to have surgery for suspected appendicitis "tonight", however, the Claimant did not proceed to surgery until the early hours of 14 January. She consequently underwent more extensive and invasive surgery than would otherwise have been the case. Having previously been a teacher and head of her department, following the surgery, she developed a multiplicity of issues including urinary problems, gynaecological problems and pain. The expert evidence from both parties concluded that the Claimant had fibromyalgia or similar chronic pain condition caused by the stress from the delayed surgery. The Claimant was unable to work, and, following the change to the discount rate, the claim was settled for £1.6 million. This is clearly a highly unusual case but it highlights the potential costs that can arise. Compare the settlement with what the cost of opening a further theatre or taking similar action to avoid the delay would have been. The consultants involved advised L&R that they had to resort to stand up confrontations with other consultants as to whose patient was in more urgent need of surgery, but that this could not be done every time. There also did not appear to be any ongoing assessment of the Claimant as her condition deteriorated the longer the period of time from the initial listing for surgery.

WITHDRAWN CLAIM
CV v ABM

The claimant attended the accident and emergency department complaining of back pain and saddle anaesthesia. The A&E doctor suspected cauda equina syndrome and referred her to the orthopaedic team who diagnosed sciatic pain from a disc prolapse on the S1 and S2 roots. They concluded that there were no signs and symptoms suggestive of cord (presumed cauda equina) compression at that time. The plan was for an urgent MRI scan to be done as an outpatient in one to two weeks' time, followed by a clinic appointment after the scan. The Claimant proceeded to organise a private MRI scan. This showed an L5/S1 disc prolapsed and she underwent a discectomy, 11 days later. Unfortunately, the operation was complicated by breakage of the knife inside the disc resulting in a rather protracted attempt to remove this blade which left the Claimant with some weakness in the S1 distribution, some paraesthesia and also some pain.

The basis of the claim was that it was negligent for the orthopod not to admit for MRI at the time of the original attendance and as such the Claimant's case is that she would have undergone discectomy on a different date and that the unusual complication (scalpel blade breakage) would not have occurred.

Breach of duty was admitted based on expert evidence from an independent orthopaedic surgeon, though the independent neurosurgery expert instructed to deal

with causation disagreed. However the HB did not have a Bolam supportive expert to maintain a defence on breach of duty accordingly tactically breach of duty was admitted and causation vigorously defended.
There were two aspects to this issue – medical and legal causation. The expert neurosurgeons were agreed on medical causation in that the Claimant sustained an injury to the nerve roots at S1-S3. They identified very few consequences of the injury, which, by the time of the expert discussion were minor; a complicating factor was that the claimant was an employee of the Defendant HB and previously had been retired on medical grounds as a result of this injury. The claimant had found alternative employment, mitigating her loss, but there was still a claim for ongoing loss of earning and pension.

The main issue between the Parties was legal causation. The Claimant contended that if she had had the scan on the original attendance, she would have had a discectomy on a different date, and that on the balance of probabilities there would have been no blade breakage on that date. The Claimant was in essence seeking to extend the application of Chester v Afshar where there was departure from normal "but for" causation principles. The Defendant's view was that Chester was designed to have a narrow application in the specific context of a case where the breach of duty was a breach of the duty to provide sufficient information so as to allow the claimant to give informed consent to the procedure. This was not the case here and so normal rules should apply; if not it would have wide ranging repercussions for the NHS generally,

This reasoning was highlighted to the Claimant early on in the process; the Claimant persisted in the hope that the Defendant HB would be worn down and it was the only remaining issue between the Parties two weeks before trial. The Claimant made a number of offers £110k Part 36 offer early on in the process; £145k inclusive of costs (said to be circa 250k with additional liabilities) 2 weeks before trial and when that was rejected the Claimant presumably now persuaded by the HB's view on legal causation made a " drop hand offer. " Again this was rejected and the Claimant agreed to withdraw the claim and pay the Defendant HB's costs of £30,000.

Judge not satisfied

The Claimant on this occasion was a patient at a Hospital, and was recovering following an operation on her left knee. She alleged that as she was making her way to the en-suite toilet within her room, she slipped on liquid on the floor, which caused her to fall and sustain an injury to her head, knee and back as a result. She alleged she had refused the facility of the bed pan.

Detailed investigations were carried out with witness statements being obtained from three members of staff who remained adamant that there was no water on the floor at the time of the index accident. The matter proceeded to trial in October 2016.

The claim for damages was valued at approximately £1500.00, with the costs schedule filed by the Claimant Solicitors in the sum of £32,509.87.
At the trial, no real evidence was provided from the Claimant in relation to the presence of water. However, there were allegations made that the care provided by the nurses was inadequate. These allegations were disputed in full by the Defendants witnesses who provided clear evidence to support the defence.

The Judge concluded that there was insufficient evidence of the presence of water on the floor. The Judge also commented that the Claimant Solicitors had incorrectly pleaded the case and he was therefore unable to consider any arguments made in respect of the insufficient care provided by the nurses.

The Judge subsequently dismissed the Claimants claim in full and made an order for the Claimant to pay the Defendant costs, assessed in the sum of £11,250.00.

Drawing a Line in the Sand

The Claimant, who was an employee within the Health Board, alleged that she slipped on water on the floor, within the shower area on a Ward of the Hospital.

The Claimant had entered the shower room intending to clean a domestic bin and members of staff confirmed that this was not correct procedure within the Health Board.

Liability was denied in November 2014 on the basis that the Health Board had taken all reasonable precautions to prevent staff/patients from slipping and also advising that the Claimant was acting outside of the normal remit of her duties.

Detailed investigations were carried out and witness evidence was obtained from two

members of staff. Throughout the course of the claim, the Claimant altered her version of events, which conflicted with the contemporaneous evidence and the evidence provided by the Defendant's witnesses.

The Claimant Solicitors made an offer to settle damages in the global sum of £5000.00 in August 2016 however a denial of liability was maintained with the intention of proceeding to trial.

A fortnight before trial the Claimant Solicitors made an offer to 'drop the case' with each party bearing their own costs.
We refused.

The Claimant Solicitors lost their nerve and filed a Notice of Discontinuance days before the trial and agreed to pay the Defendant's costs in the sum of £7000.00.
This robust stance saved the Health Board up to £20,000 in costs.

Fall involving post operative patient – Trial Win

The Claimant who was a patient was recovering after an operation on her left knee. She was making her way to the en-suite toilet using crutches late at night when she slipped on liquid on the floor. She fell and sustained injury.

Liability was denied on the basis that there was nothing on the floor that would or may have caused the Patient to slip, trip or fall. In addition the Claimant had refused assistance in getting to the toilet and insisted on walking to the toilet independently. She had been taught how to use crutches and supervised when doing so. Staff were confident that the Claimant was able to mobilise sufficiently using her crutches.

To summarise there was little or no evidence to corroborate the Claimant's case that she slipped due to the presence of water on the floor.

The matter was taken to trial and the Health Board succeeded on liability and recovered its costs.

Witness evidence from staff members was crucial to the success of this case.

Phantom (slipping hazard) of the corridor.

The Claimant worked as a Catering supervisor and was collecting food trays from the wards. He exited a lift and made his way around a corner when he slipped and fell heavily fracturing his right elbow. The Claimant stated that the cause of the fall was a patch of liquid spilt on the floor causing a slipping hazard.

The accident was witnessed by a staff nurse who went to the assistance of the claimant. She provided a statement that there was no liquid present on floor capable of causing the slip. She maintained that the Claimant appeared to trip over his own feet while rushing. The Claimant maintained his position and the matter proceeded to trial. At court the staff nurse witness gave an excellent account which was accepted by the trial judge. While there was no suggestion that the Claimant had lied about the fall the Judge concluded that his evidence was not reliable and the claim was dismissed.

This was an older case and the Health Board was awarded £7,000 for its costs. A damages offer was made during proceedings in the sum of £7,000 and the claimant's cost schedule totalled £31,000.

The total saving for the Health Board including defence costs was £45,000.

Fall following surgery – Trial Win!

The Claimant was recovering after an operation on her left knee. She was making her way to the en-suite toilet when she slipped on liquid on the floor causing her to fall and sustain injury.

Liability was denied and the claim proceeded to trial. The Claimant could not show that there was water on the floor and the Defendant's witnesses categorically said there was not. There were several discrepancies in the Claimant's account.

The Judge found the Defendant's evidence preferable. He held that it was more likely that the Claimant lost her balance as a result of the strong medication she had been prescribed.

The claim was dismissed and costs were awarded to the Health Board in the sum of £11,500.

Fall on wet floor in A&E – Trial Win!

The Claimant and his colleague, both paramedics, were taking a patient into a Bay in the A&E department.

The Claimant alleged that as he manoeuvred the patient on to the stretcher in Bay 5, he slipped on the wet floor which had just been mopped.

The Health Board denied liability on the basis that there were warning signs in place and that due to the nature of the department, it was reasonable that the Health Board would need to mop the floor during the day. In addition, there was no other bay

available to accommodate the Patient.

The Health Board decided to proceed to trial.

The Claimant attempted to settle out of Court by making an offer of £10,000 several days before the trial. This was not accepted by the Health Board and trial took place.

At trial, the Health Board successfully defended the claim.

The judge preferred the evidence of the Health Board's witnesses and was satisfied that there was an adequate system of cleaning in place.

The witnesses clearly took pride in their respective roles and it was their firmness in the belief that the cleaning system was appropriate and that warning signs were always in situ that won the trial.

Saving: £17,000