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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	12th November 2020	Agenda Item	5.2
Report Title	Losses and Special Payments Update		
Report Author	Andrew Biston, Head of Accounting & Governance		
Report Sponsor	Darren Griffiths, Interim Director of Finance		
Presented by	Andrew Biston, Head of Accounting & Governance		
Freedom of Information	Open		
Purpose of the Report	To provide the Audit Committee with an update on losses and special payments for the period 1st August 2020 to 30 th September 2020, to provide an analysis of the gross losses for 1st April 2020 to 30 th September 2020 compared to the period 1st April 2019 to 30 th September 2019 and to provide the details as to how the Welsh Risk Pool risk sharing agreement percentage is derived as requested by the Committee at its last meeting.		
Key Issues	<p>The losses and special payments recorded during the period 1st August to 30th September 2020 totalled £1,519,914 of which £1,238,327 is recoverable from the Welsh Risk Pool, meaning that the actual loss to the Health Board in the period totals £281,587.</p> <p>Of the losses and special payments made in the period a total of £295,084 related to cases pre 31st March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1st April 2019 of which the actual loss after recoveries are taken into account was £63,877.</p> <p>After the recoveries from Welsh Risk Pool are taken into account, the net loss of £925,612 to the Health Board for the period 1st April 2020 to 30th September 2020 is lower than the net loss of £1,111,204 for the comparable period 1st April 2019 to 30th September 2019</p>		
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance
	✓		
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> Note the losses and special payments in the period of £1,519,914, of which £1,238,327 will be recovered from the Welsh Risk Pool (£1,193,166 		

	<p>in respect of clinical negligence and personal injury and £45,161 in respect of redress), leaving an actual loss to the Health Board in the period of £281,587.</p> <ul style="list-style-type: none">• Note that of the £281,587 loss to the health board in the period, that £63,877 relates to cases pre 31st March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1st April 2019.• Note the methodology (outlined in Appendix A) used in developing the risk share matrix where additional payments are required from NHS Wales organisations, where the funding from Welsh Government does not cover the Welsh Risk Pool DEL charge.• These losses and special payments will need to be reported to the Board and disclosed in the Health Board's Annual Accounts.
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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 1st August 2020 to 30th September 2020 and an analysis of the gross losses for 1st April 2020 to 30th September 2020 compared to the period 1st April 2019 to 30th September 2019.

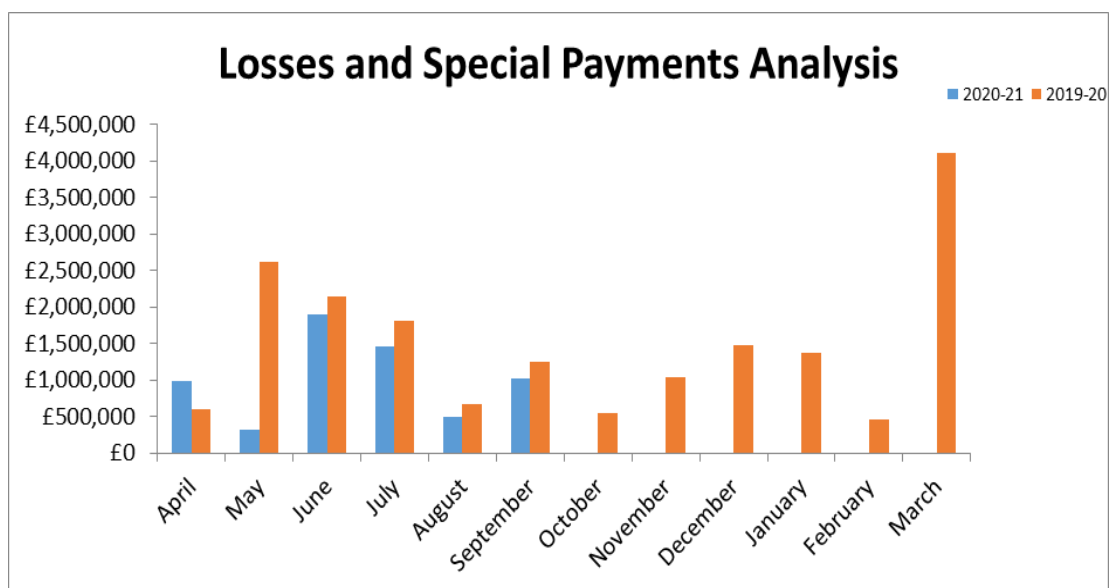
2. BACKGROUND

2.1. The losses and special payments recorded during the period totalled £1,519,914, with the most significant payments relating to Clinical Negligence (£1,310,634), Personal Injury (£112,511) and Redress (£71,561). The remaining losses relate to losses arising as a result of write off of obsolete drug stock, ex gratia payments and bad debts written off.

2.2. These losses are detailed in **Appendices B to H** and are summarised in the table below:

Loss Type	Value £
Obsolete Drug Stock	1,643
Ex Gratia Payments	22,480
Bad Debts Written Off	1,085
Redress Payments	71,561
Clinical Negligence - Defence Fees	106,225
Clinical Negligence – Claimant Costs	335,401
Clinical Negligence – Damages	858,875
Clinical Negligence – CRU Payments	10,133
Personal Injury – Defence Fees	8,600
Personal Injury – Claimant Costs	4,411
Personal Injury - Damages	99,500
Total	1,519,914

2.3. As a result of the losses incurred during the period August to September 2020, the gross loss for the financial year to date amounts to £6,187,306 as compared to £9,108,384 for the period 1st April 2019 to 30th September 2019. 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 to September this financial year compared to the same period in the last financial year (£2.921m) is mainly due to two large settlements of £1.780m in April 2019 and £1.713m in July 2019. For the period 1st April 2020 to 30th September 2020, there were three 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	Orthopaedics	650,000
13RYMMN0225	Singleton	Obstetrics	560,000

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 31st 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 August to September 2020, 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 C, E and G** to this report.

Loss Type	Total (£)	Swansea Bay Locations (£)	Cwm Taf Morgannwg Locations (£)
Clinical Negligence	1,310,634	1,038,401	272,233
Personal Injury	112,511	113,544	-1,033
Redress	71,561	47,677	23,884
Total	1,494,706	1,199,622	295,084

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 basis for calculating the risk sharing percentage for each health board as agreed by Legal and Risk Services with Directors of Finance and Chief Executives which took effect from the 2017/18 financial year is attached as **Appendix A** to this report.
- 4.4. 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.

- 4.5. With effect from 1st 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 1st April 2019 against GP's, (claims prior to 1st April 2019 will continue to be managed by the Medical Defence bodies) the health board has to date only received one claim for which a probability of success has yet to be assigned. As and when claims are lodged and payments made the payments 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.
- 4.6. Of the £1,519,914 paid out in the period 1st August 2020 to 30th September 2020, £1,193,166 in respect of clinical negligence and personal injury claims and £45,161 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 £281,587 as summarised in the table below:

Losses & Special Payments	Amount £
Clinical Negligence	1,310,634
Personal Injury	112,511
Redress Payments	71,561
Obsolete Drug Stock	1,643
Ex Gratia Payments	22,480
Bad Debts Written Off	1,085
Sub Total	1,519,914
Less WRP Recovery	-1,193,166
Less Redress Payments Reimbursed by WRP	-45,161
Health Board Losses in the Period	281,587

- 4.7. Analysing this by location, the net cost to the health board split between those cases which are Swansea Bay cases and those pre 31st 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 £63,877 relates to cases prior to 31st March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1st April 2019.

Loss Type	Total (£)	Swansea Bay Locations (£)	Cwm Taf Morgannwg Locations (£)
Clinical Negligence	194,468	133,893	60,575
Personal Injury	35,511	36,544	-1,033
Redress	26,400	22,065	4,335
Other Losses	25,208	25,208	0
Total	281,587	217,710	63,877

4.8. After the recoveries from Welsh Risk Pool are taken into account, the net loss totals £925,612 for the period 1st April 2020 to 30th September 2020 and £1,111,204 for the period 1st April 2019 to 30th September 2019.

5. RECOMMENDATIONS

- 5.1. The Audit Committee is asked to note the losses and special payments in the period of £1,519,914, of which £1,238,327 will be recovered from the Welsh Risk Pool (£1,193,166 in respect of clinical negligence and personal injury and £45,161 in respect of redress), leaving an actual loss to the Health Board in the period of £281,587.
- 5.2. The Audit Committee is also asked to note that of the £281,587 loss to the health board in the period, that £63,877 relates to cases pre 31st March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1st April 2019.
- 5.3. The Audit Committee is asked to note the methodology (outlined in **Appendix A**) used in developing the risk share matrix where additional payments are required from NHS Wales organisations, where the funding from Welsh Government does not cover the Welsh Risk Pool DEL charge.
- 5.4. These losses and special payments will need to be reported to the Board and disclosed in the Health Board's Annual Accounts.

Appendix A

Welsh Risk Pool Services – Risk Sharing Arrangements for NHS Claims

The Model

Five areas are used in developing the risk sharing percentage per Health Organisation. These areas encompass the principles contained within the English NHS Litigation Authority model and are detailed below.

Area	No. of Measures	Weighting
A HSCS and Prescribing Allocation	1	30%
B Claims History	1	20%
C New Claims transferred from the Service to LARS	1	10%
D Claims potentially affecting next years' spend	2	25%
E Management of Concerns and Learning from Events	2	15%
		100%

More detailed analysis:

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	<i>Last 12 months</i>	10%
D	Claims potentially affecting next years' spend:		
	1. Cases with cash flows < 1 yr	<i>From CN database : 15%</i>	25%
	2. Periodical Payment Order (PPO) Allocation Utilisation	<i>Actual Costs : 10%</i>	
E	Management of Concerns and Learning from Events		
	1. Management of Concerns	<i>Annual Audit : 7.5%</i>	15%
	2. Learning from Events	<i>Annual Audit : 7.5%</i>	

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 (Periodical Payment Orders) 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
- systems and databases are in place which can easily manipulated and analysed in a timely manner to derive the formula for forthcoming years

A. HSCS and Prescribing Allocation (30%)

In recognition of the current allocation method, the HSCS and Prescribing Allocations comprise 30% of the weighting in the risk sharing agreement, reflecting a relevant measure of size and complexity.

B. Claims History (20% of total weighting)

The NHSLA use claims over the last 5 years. However, it has been deemed more relevant in Wales to use a claims history over the last 3 years only. This allows historic large settlements to affect the overall rating for a shorter period of time. Whilst claims history is important and should have an impact on the risk weighting of each organisation it is also vital to ensure that the majority of the weighting relates to current and future impact on the allocation.

C. New Cases passed to Legal and Risk Services for Litigation (RW 10%)

This element reflects the impact of cases passed to Legal and Risk Services over the last year (January – December).

The introduction of Putting Things Right (PTR) in 2011 has provided NHS Wales with a simpler, more responsive and comprehensive complaints procedure which permits a health body to make an offer of redress where harm has arisen from treatment. Unfortunately most claims received by Legal and Risk Services still begin without any previous investigation into the circumstances and often some years after the treatment complained of.

Legal & Risk Services has been providing training, guidance and support to each of the Welsh Health Bodies following the implementation of the Putting Things Right scheme (*NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*). This support comprises both general support in the form of providing training to PTR teams, investigators and clinicians and also provision of advice on individual cases.

In financial terms the difference between the costs once the case enters full litigation as opposed to PTR is £43,926 per case. Given the scale of financial benefits that can be gained by settling cases under PTR there needs to be an incentive to reduce the number of cases being passed to LARS for litigation. Therefore, a risk weighting of 10% has been attached to this element.

D. Claims affecting Next Year's Spend

i Cases with estimated cash flows within a year (RW 15%)

It is felt prudent to recognise the financial burden each Health Organisation is placing on the NHS in the future. Therefore this has been reflected in the following way:

- All remote, possible and finalised cases are ignored
- Only cases with a probability of loss classed as probable or certain are analysed

- All cases with estimated cash flows within a year – as per the LARS database as at the end of each year are included.
- The risk weightings are skewed to ensure cases settling sooner have a bigger impact than those that are not at such an advanced stage of negotiation / settlement

ii **Periodic Payment Orders (PPO) (RW 10%)**

PPO's are increasingly utilising a larger percentage of the in-year budget. The cost of PPOs has almost doubled since 2011/12.

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. As this is the first call on the allocation each year then the relevant percentage of the budget used by each organisation is used in the risk sharing agreement.

E. Management of Concerns and Learning from Events (RW 15%)

The Concerns and Compensation Claims Standard (the Standard) is designed as a framework to support the compliance by health bodies with the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (the Regulations) and the Welsh Government's Guidance on Putting Things Right (the Guidance).

The Standard is drafted by the Welsh Risk Pool Service in conjunction with the Welsh Government and colleagues from the service to ensure that it properly reflects the spirit of the Regulations and Guidance. It is assessed annually by a joint team from the Welsh Risk Pool Service and Legal & Risk Services.

The Standard is broadly split into the following distinct areas:

1. Management of Concerns
2. Management of Redress cases
3. Claims Management
4. Learning From Events

For the purposes of the risk sharing agreement it has been deemed that the Management of Concerns and the Learning from Events areas are the most appropriate and relevant in determining a risk weighting.

Management of Concerns

The key timescales for the management of concerns are:

- Acknowledgment within 2 working days
- Initial response within 30 working days

- Final report within 6 months if the matter cannot be concluded within 30 working days and no qualifying liability in tort is identified
- An offer of Redress within 12 months if a qualifying liability in tort is present.

Compliance against these requirements will therefore form part of the risk sharing agreement.

Learning from Events

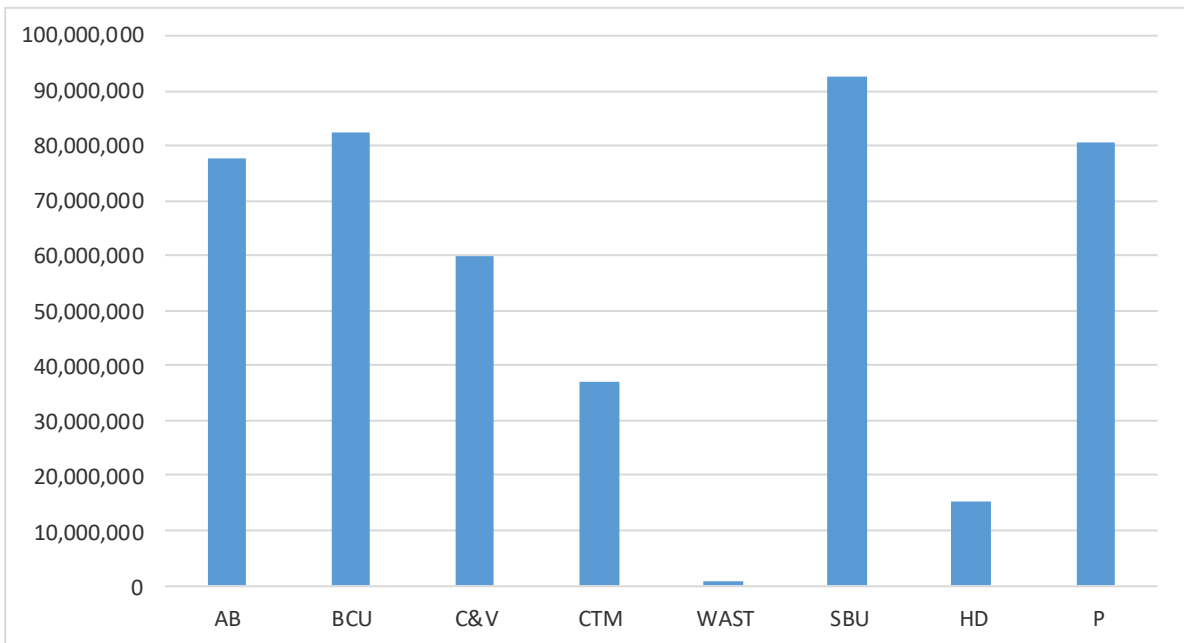
The need to learn from events is critical to ongoing improvements in quality and safety across NHS Wales. There are significant challenges being experienced by NHS Wales and it is recognised that it is a complex area and the basis of Putting Things Right is predicated on learning.

This is a key part of the assessment as the success of the PTR Regulations is predicated upon learning from concerns. The assessments consider how each health body states that it learns from events then how this is evidenced from concerns (incidents, complaints and claims) and all other events at all levels including provision of Board level assurance. This is then translated into a % score which is included within the risk sharing matrix. The average score achieved in this area is 60% and the individual scores range from 20.58% to 81.75%.

The current risk sharing matrix for 2020/21 pending the update for lessons learned (Factor E) is shown below, with the key driver for the increase in Swansea Bay Health Board being the large value of PPO's as detailed in the graph below. (NB the % for the former ABMU Health Board prior to the boundary change in 2018/19 was 17.55%)

	Total 2019/20	Total 2020/21	Movement 1920 - 2021
Aneurin Bevan	17.04	17.87	0.83
SBU	16.09	16.59	0.50
BCu	18.44	17.07	(1.37)
Cardiff & Vale	15.32	15.66	0.34
Cwm Taf	11.97	11.87	(0.10)
Hywel Dda	10.72	9.61	(1.11)
P	5.86	6.45	0.59
PHW	1.20	1.34	0.14
Vel	1.13	1.28	0.15
WAST	2.23	2.26	0.03
Total	100.0	100.0	0.00

Total Value of Periodical Payments Per Organisation



Governance and Assurance		
Link to Enabling Objectives <i>(please choose)</i>	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	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"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	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"/>	
Health and Care Standards		
<i>(please choose)</i>	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"/>
Quality, Safety and Patient Experience		
<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>		
Financial Implications		
The financial implications are detailed in the main body of the report.		
Legal Implications (including equality and diversity assessment)		
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 1st 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

Appendix A provides the methodology applied in devising the risk sharing percentages for NHS Wales bodies. Appendices B to H provide the details of all losses and special payments made in the period 1st August 2020 to 30th September 2020.