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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	14th September 2021	Agenda Item	6.2
Report Title	Losses and Special Payments Update		
Report Author	Andrew Biston, Assistant Director of Finance (Accounting & Governance)		
Report Sponsor	Darren Griffiths, Director of Finance and Performance		
Presented by	Andrew Biston, Assistant Director of Finance (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 April 2021 to 31 st July 2021 and to provide a comparison with the losses payments made in the period 1st April to 31 st July 2020.		
Key Issues	<p>The losses and special payments recorded during the period 1st April to 31st July 2021 totalled £16,586,002 of which £15,959,258 is recoverable from the Welsh Risk Pool, meaning that the actual loss to the Health Board in the period totals £626,744. The gross losses for the period include 3 settlement payments in excess of £2m totalling £12,334,664.</p> <p>Of the losses and special payments made in the period a total of £5,445,042 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 £54,994.</p> <p>After the recoveries from Welsh Risk Pool are taken into account, the net loss of £626,744 to the Health Board for the period 1st April to 31st July 2021 is slightly lower than the net loss of £661,663 for the comparable period 1st April to 31st July 2020.</p>		
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance
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Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> • Note the losses and special payments made in the period which will need to be reported to the Board 		

LOSSES AND SPECIAL PAYMENTS UPDATE

1. INTRODUCTION

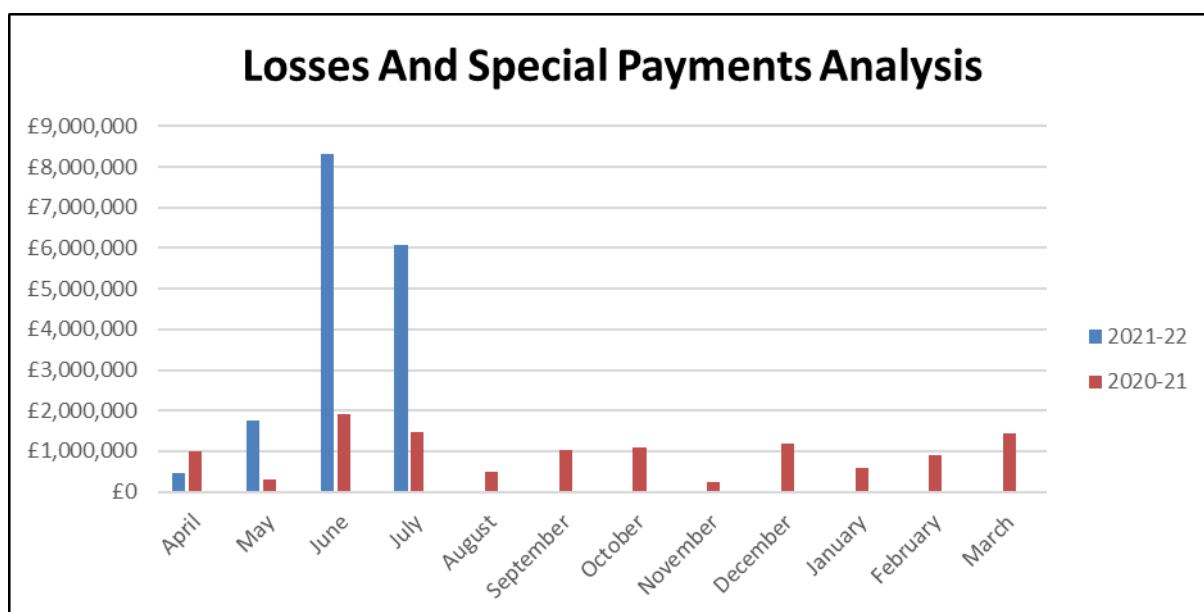
- 1.1. The Audit Committee handbook recommends that losses and special payments made by the Health Board be reported to the Audit Committee. This report addresses that requirement by providing an update on losses and special payments, for the period 1st April 2021 to 31st July 2021 and a comparison to the period 1st April 2020 to 31st July 2020.

2. BACKGROUND

- 2.1. The losses and special payments recorded during the period totalled £16,586,002. This mainly comprised payments in respect of Clinical Negligence (£15,765,179), Redress (£471,228) and Personal Injury (£328,476). The remaining losses relate to losses arising as a result of GP Indemnity payments, write off of obsolete drug stock, ex gratia payments and bad debts.
- 2.2. These losses are detailed in **Appendices A to I** and summarised below:

Loss Type	Value £
Obsolete Drug Stock	6,039
Ex Gratia Payments	11,779
Bad Debts Written Off	802
Redress Payments	471,228
GP Indemnity Claims Payments	2,500
Clinical Negligence - Defence Fees	277,688
Clinical Negligence – Claimant Costs	881,041
Clinical Negligence – Damages	14,529,910
Clinical Negligence – CRU Payments	76,539
Personal Injury – Defence Fees	59,536
Personal Injury – Claimant Costs	171,869
Personal Injury - Damages	97,071
Total	16,586,002

- 2.3. The gross loss of £16,586,002 compares to a gross loss of £4,667,392 for the period 1st April 2020 to 31st July 2020. The chart below analyses these losses and special payments on a month by month basis.



- 2.4. The graph above confirms that there will be variations in payments across the year with there being no discernible trend to when cases are settled. The significant increase in payments during the period April to July this financial year compared to the same period in the last financial year is mainly due to three large settlement payments over £2m amounting to £12,334,664 as detailed in the table below. These settlements are in addition to 2 other settlements over £500,000 in value as detailed below.

Case Reference	Location	Specialty	Amount (£)
10RYMMN0212	Princess of Wales Hospital	Obstetrics	5,084,474
15RYMMN0151	Singleton Hospital	Obstetrics	4,914,339
15RYMMN0040	Morrison Hospital	Neurology	2,335,851
17RYMMN0114	Singleton Hospital	Radiology	1,068,254
15RYMMN0154	Singleton Hospital	Obstetrics	703,222

- 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 April to July 2021, the gross losses split by the post boundary change location for these cases is shown in the table below, with the detail shown in **Appendices B, D and F** to this report.

Loss Type	Total (£)	Swansea Bay Locations (£)	Cwm Taf Morgannwg Locations (£)
Clinical Negligence	15,765,179	10,377,941	5,387,238
Personal Injury	328,476	324,341	4,135
Redress	471,228	417,559	53,669
Total	16,564,883	11,119,841	5,445,042

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

Type of claim	Open Cases Swansea Bay Locations	Open cases Cwm Taf Morgannwg Locations
Clinical Negligence	206	55
Personal injury	63	7
Redress	119	7

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 both 2019/20 and 2020/21 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 in 2019/20 and £2.286m in 2020/21. Early indications are that the DEL limit will again be exceeded in 2021/22 meaning that risk sharing arrangement will be invoked and at this stage the estimated impact for the health board is £2.642m.

- 4.3. The second implication is the net charge to the Health Board's resource limit of costs incurred which comprise the first £25,000 of all clinical negligence and personal injury claims, legal fees for redress claims which are not reimbursed under the Putting Things Right Scheme and the cost of all other losses and special payments.
- 4.4. With effect from 1st April 2019, Welsh Government introduced the GP Indemnity Scheme, administered by Welsh Risk Pool but managed by the health board on a day to day basis. The scheme covers only new clinical negligence claims cases lodged since 1st April 2019 and the health board currently has received 3 claims under this scheme with payments beginning to be made amounting to £2,500 in the period April to July 2021.
- 4.5. Of the £16,586,002 paid out in the period 1st April 2021 to 31st July 2021, £15,545,030 in respect of clinical negligence and personal injury claims and £414,228 in respect of redress claims and GP Indemnity Payments is recoverable from the Welsh Risk Pool. Taking this recovery into account, the actual loss to the Health Board in the period totals £626,744.

Losses & Special Payments	Amount £
Clinical Negligence	15,765,179
Personal Injury	328,476
Redress Payments	471,228
GP Indemnity Claims	2,500
Obsolete Drug Stock	6,039
Ex Gratia Payments	11,779
Bad Debts Written Off	802
Sub Total	16,586,002
Less WRP Recovery	-15,545,030
Less Redress and GMPI Payments Reimbursed by WRP	-414,228
Health Board Losses in the Period	626,744

- 4.6. Analysing this by location, the net cost to the Health Board split between those cases which are Swansea Bay cases and those pre 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 £54,994 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	280,305	234,115	46,190
Personal Injury	268,320	264,185	4,135
Redress	59,499	54,830	4,669
Other Losses	18,620	18,620	0

Total	626,744	571,750	54,994
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- 4.7. After the recoveries from Welsh Risk Pool are taken into account, the net loss totals £626,744 for the period 1st April to 31st July 2021 and £661,663 for the period 1st April to 31st July 2020.

5. RECOMMENDATIONS

- 5.1. The Audit Committee is asked to note the losses and special payments in the period of £16,586,002, of which £15,959,258 will be recovered from the Welsh Risk Pool (£15,545,030 in respect of clinical negligence and personal injury and £414,228 in respect of redress and GP Indemnity), leaving an actual loss to the Health Board in the period of £626,744.
- 5.2. The Audit Committee is also asked to note that of the £626,744 loss to the Health Board in the period, that £54,994 relates to cases pre 31st March 2019 for locations which transferred to Cwm Taf Morgannwg Health Board on 1st April 2019.
- 5.3. These losses and special payments will need to be reported to the Board and disclosed in the Health Board's Annual Accounts.

Governance and Assurance		
Link to Enabling Objectives (please choose)	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		
(please choose)	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
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		
There are no direct staffing implications associated with this report.		

Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)	
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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.	
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Report History	This is a regular report to the Audit Committee in line with the agreed work plan.
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Appendices	Appendices A to I provide the details of all losses and special payments made in the period 1 st April to 31 st July 2021.
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