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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	10th September 2020	Agenda Item	6.3
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 June 2020 to 31 st July 2020 and provide an analysis of the gross losses for 1st April 2020 to 31 st July 2020 compared to the period 1st April 2019 to 31 st July 2019.		
Key Issues	<p>The losses and special payments recorded during the period 1st June to 31st July 2020 totalled £3,365,604 of which £2,987,436 is recoverable from the Welsh Risk Pool. Taking this recovery into account, the actual loss to the Health Board in the period totals £378,168.</p> <p>Of the losses and special payments made in the period a total of £1,636,133 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 £95,005.</p> <p>After the recoveries from Welsh Risk Pool are taken into account, the net loss of £644,025 to the Health Board for the period 1st April 2020 to 31st July 2020 is lower than the net loss of £709,226 for the comparable period 1st April 2019 to 31st July 2019.</p> <p>The risk sharing arrangement is likely to be invoked in 2020/21 asnd based on the month 4 estimate the cost to Swansea Bay Health Board will be £2.285m</p>		
Specific Action Required (please ✓ one only)	Information	Discussion	Assurance
	✓		
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 June 2020 to 31st July 2020 and an analysis of the gross losses for 1st April 2020 to 31st July 2020 compared to the period 1st April 2019 to 31st July 2019.

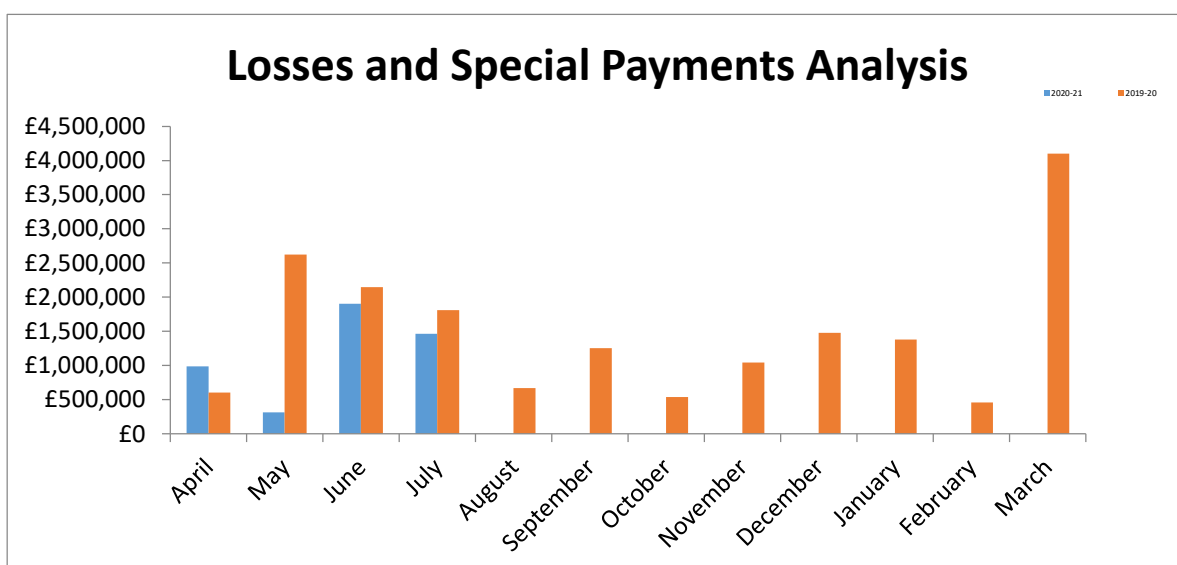
2. BACKGROUND

2.1. The losses and special payments recorded during the period totalled £3,365,604, with the most significant payments relating to Clinical Negligence (£3,197,914), Redress (£89,915) and Personal Injury (£72,529). The remaining losses relate to losses arising as a result of write off of obsolete drug stock and ex gratia payments. There were no bad debts written off during June and July.

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

Loss Type	Value £
Obsolete Drug Stock	4,302
Ex Gratia Payments	944
Redress Payments	89,915
Clinical Negligence - Defence Fees	123,526
Clinical Negligence – Claimant Costs	177,000
Clinical Negligence – Damages	2,816,584
Clinical Negligence – CRU Payments	80,804
Personal Injury – Defence Fees	37,421
Personal Injury – Claimant Costs	4,764
Personal Injury - Damages	30,344
Total	3,365,604

2.3. As a result of the losses incurred during the period June to July 2020, the gross loss for the financial year to date amounts to £4,667,392 as compared to £7,185,990 for the period 1st April 2019 to 31st July 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 July this financial year compared to the same period in the last financial year (£2.519m) 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 31st July 2020, there were two 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

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 June to July 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 B, D and F** of this report.

Loss Type	Total (£)	Swansea Bay Locations (£)	Cwm Taf Morgannwg Locations (£)
Clinical Negligence	3,197,914	1,601,308	1,596,606
Personal Injury	72,529	40,641	31,888
Redress	89,915	82,276	7,639
Total	3,360,358	1,724,225	1,636,133

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 does 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. In 2019/20 for the first time, this 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.
- 4.2. At the last Audit Committee meeting it was requested that a deeper analysis on the risk sharing agreement be undertaken taking into consideration the COVID- 19 repercussions and the GP Indemnity Scheme. Each of these issues is considered in the following paragraphs.
- 4.3. The GP Indemnity Scheme covers claims for compensation from the care, diagnosis and treatment of a patient following incidents that happen on or after 1st April 2019 in relation to GMS work. Claims are reimbursed without application of the £25K excess applied to clinical negligence claims and the total value of claims will be met by Welsh Government. As a result there is no impact on the risk sharing arrangement affecting health boards. As at the end of July there are only 5 cases currently being managed across Wales, all of which are classes as contingent liabilities, with none of these cases being in Swansea Bay UHB.

- 4.4. The position on COVID-19 is more complex. In practical terms, there may be delays in hearing round table meetings/cases/access to expert opinions as a result of the disruption caused in the early part of this year. Welsh Risk Pool have reflected that in the reported position for Mth 4 with some cases now falling in 2021/22. Welsh Risk Pool will track this for the rest of the year. In terms of future cases as a result of COVID19 deaths/injury, it is far too early to tell and could be years before we understand the COVID19 impact. The Welsh Risk Pool solicitors have been providing advice and guidance on potential Clinical Negligence and Personal Injury claims and preparedness for a public inquiry to all health boards.
- 4.5. The forecast outturn provide by Welsh Risk Pool based on the month 4 position reflects a charge of £121m for the current year. This is based on the Welsh Risk Pool solicitor's current best estimate of the resource required this year, but it is still early in the year and a lot could change. There is still a lot of risk in the forecast this year as we continue to see the trend of high value cases settling with lump sums only and quite often this is not known until the final Round Table Meetings negotiation. There are 21 cases across the Risk Pool >£1M forecast to settle this year, each with the potential to settle on a lump sum basis only so these will be reviewed frequently. Based on the month 4 forecast there will be a requirement to invoke the risk sharing agreement with an additional £13.775m being required through this arrangement, the Swansea Bay share being £2.285m (16.59%).
- 4.6. 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.
- 4.7. 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 not yet received any claims. 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.
- 4.8. Of the £3,365,604 paid out in the period 1st June 2020 to 31st July 2020, £2,917,051 in respect of clinical negligence and personal injury claims and £70,385 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 £378,168, as summarised in the table below:

Losses & Special Payments	Amount £
Clinical Negligence	3,197,914
Personal Injury	72,529
Redress Payments	89,915
Obsolete Drug Stock	4,302
Ex Gratia Payments	944
Sub Total	3,365,604
Less WRP Recovery	-2,917,051
Less Redress Payments Reimbursed by WRP	-70,385
Health Board Losses in the Period	378,168

- 4.9. 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 £95,005 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	284,375	223,247	61,128
Personal Injury	69,017	37,129	31,888
Redress	19,530	17,541	1,989
Other Losses	5,246	5,246	0
Total	378,168	283,163	95,005

- 4.10. After the recoveries from Welsh Risk Pool are taken into account, the net loss totals £644,025 for the period 1st April 2020 to 31st July 2020 and £709,226 for the period 1st April 2019 to 31st July 2019.

5. RECOMMENDATIONS

- 5.1. The Audit Committee is asked to note the losses and special payments in the period of £3,365,604, of which £2,987,436 will be recovered from the Welsh Risk Pool (£2,917,051 in respect of clinical negligence and personal injury and £70,385 in respect of redress), leaving an actual loss to the Health Board in the period of £378,168.
- 5.2. The Audit Committee is also asked to note that of the £378,168 loss to the health board in the period, that £95,005 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 <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

Appendices A to G provide the details of all losses and special payments made in the period 1st June 2020 to 31st July 2020.