

# Audit of Accounts Report – Swansea Bay University Local Health Board

Audit year: 2021-22

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We welcome correspondence and telephone calls in Welsh and English. Corresponding in Welsh will not lead to delay. Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg a Saesneg. Ni fydd gohebu yn Gymraeg yn arwain at oedi.

# Contents

We intend to issue an unqualified true and fair audit opinion on your accounts. The audit opinion in respect of the regularity of expenditure is however proposed to be qualified in two respects. Firstly, because the Health Board did not meet its revenue resource allocation over the three-year period ending 2021-22 and secondly, as following a Ministerial Direction, the accounts include expenditure and funding in relation to clinicians' pension tax liabilities. We will also report that the health board did not meet its financial duty to have an approved three-year integrated medium-term plan for the period 2019-20 to 2021-22.

## Audit of Accounts Report

Introduction	4
Impact of COVID-19 on this year's audit	4
Proposed audit opinion	5
Significant issues arising from the audit	7
Recommendations	9
Appendices	
Appendix 1 – Final Letter of Representation	10
Appendix 2 – Proposed Audit Report	13
Appendix 3 – Summary of Corrections Made	21
Appendix 4 – Recommendations	23

# Audit of Accounts Report

## Introduction

1. We summarise the main findings from our audit of your 2021-22 accounts in this report.
2. We have already discussed these issues with the Director of Finance and his team.
3. Auditors can never give complete assurance that accounts are correctly stated. Instead, we work to a level of 'materiality'. This level of materiality is set to try to identify and correct misstatements that might otherwise cause a user of the accounts into being misled. We set this level at £14.06 million for this year's audit.
4. There are some areas of the accounts that we judge may be of more importance to the reader and we have set a lower materiality level for these, as follows:
  - Remuneration report/senior pay disclosures;
  - Related party transactions; and
  - the Ministerial Direction for Clinician's Pension Tax.
5. We have now substantially completed this year's audit. There are a few queries outstanding. We will update the Audit Committee at its meeting on 8 June if any issues arise from these.
6. In our professional view, we have complied with the ethical standards that apply to our work; remain independent of yourselves; and our objectivity has not been compromised in any way. There are no relationships between ourselves and yourselves that we believe could undermine our objectivity and independence.
7. As communicated to the Health Board by email in April 2022 it was necessary to make a change to the audit Engagement Lead to that advertised in the Audit Plan. Derwyn Owen, a Director within Audit Wales, was the Engagement Lead for the audit of accounts.

## Impact of COVID-19 on this year's audit

8. The COVID-19 pandemic has had a continuing impact on how our audit has been conducted. We summarise in **Exhibit 1** the main impacts. Other than where we specifically make recommendations, the detail in **Exhibit 1** is provided for information purposes only to help you understand the impact of the COVID-19 pandemic on this year's audit process.

## Exhibit 1 – impact of COVID-19 on this year’s audit

<b>Timetable</b>	<ul style="list-style-type: none"><li>• The deadline for completing your accounts was 29 April 2022.</li><li>• We received the draft accounts on 29 April 2022.</li><li>• Our deadline for completing our audit is 15 June 2022.</li><li>• We expect your audit report to be signed on 15 June 2022.</li></ul>
<b>Audit evidence</b>	As in previous years, we received the majority of audit evidence in electronic format. We have used various techniques to ensure its validity. Where we have been unable to obtain access to paper documents, eg personnel files because of Covid-19 restrictions we have devised alternative audit methodologies to obtain sufficient audit evidence.
<b>Electronic signatures</b>	If still necessary at the time of approval and signing, we will accept electronic signatures and electronic transfer of files.

## Proposed audit opinion

9. We issue a ‘qualified’ audit opinion where we have material concerns about some aspects of your accounts; otherwise we issue an unqualified opinion
10. The Letter of Representation contains certain confirmations we are required to obtain from you under auditing standards along with confirmation of other specific information you have provided to us during our audit.
11. We intend to issue an unqualified true and fair opinion but a qualified regularity opinion on your Accounts once you have provided us with a Letter of Representation based on that set out in Appendix 1.
12. Our proposed audit report is set out in Appendix 2. The audit report explains that the regularity opinion for 2021-22 is qualified in two respects. Firstly, and in line with prior years, the regularity opinion is qualified because the Health Board did not meet its revenue resource allocation over the three-year period ending 2021-22. The Auditor General’s substantive report also reports the fact that the Health Board did not meet its financial duty to have an approved three-year integrated medium-term plan for the period 2019-20 to 2021-22 (the period extant when the process for the 2020-23 integrated plan was paused in spring 2020). The regularity opinion is not qualified for this.
13. Secondly a new regularity opinion qualification arises due to the accounts including £1.9million of expenditure and funding in respect of clinicians’ pension tax liabilities. The amounts are included following a Ministerial Direction issued

on 18 December 2019 to the Permanent Secretary of the Welsh Government to proceed with plans to commit to making payments to clinical staff to restore the value of their pension benefits packages for additional work undertaken. If NHS clinicians opted to use the 'Scheme Pays' facility to settle annual allowance tax charges arising from their 2019-20 NHS pension savings (i.e. settling the charge by way of reduced annual pension, rather than by making an immediate one-off payment), then their NHS employers would meet the impact of those tax charges on their pension when they retire. The Ministerial Direction was required because this solution could be viewed by HMRC to constitute tax planning and potentially tax avoidance, hence making the expenditure irregular. Managing Welsh Public Money (which mirrors its English equivalent) specifically states that 'public sector organisations should not engage in...tax evasion, tax avoidance or tax planning'.

14. A Ministerial Direction does not make regular what would otherwise be irregular, but it does move the accountability for such decisions from the Accounting Officer to the Minister issuing the direction.
15. The solution applies only to annual allowance tax charges arising from an increase in the benefits accrued in the NHS Pension Scheme during the tax year ended 5 April 2020. For the tax year ended 5 April 2021, the Chancellor increased the thresholds for the tapered annual allowance and, as a result, it is anticipated that the risk to the supply of clinical staff has been mitigated.
16. The LHB has received sufficient information during the year to calculate and recognise an estimate of the potential costs of compensating senior clinical staff for pension benefits that they would otherwise have lost, by using the 'Scheme Pays' arrangement. As a result, expenditure has been recognised as a provision as shown in note 20 of the financial statements.
17. All NHS bodies will be held harmless for the impact of the Ministerial Direction. However, in my opinion, the transactions included in the LHB's financial statements to recognise this liability are irregular and material by their nature. This is because the payments are contrary to paragraph 5.6.1 of Managing Public Money and constitute a form of tax planning which will leave the Exchequer as a whole worse off. The Minister's direction alone does not regularise the scheme. Furthermore, the arrangements are novel and contentious and potentially precedent setting. As a result, the 'regularity' opinion for 2021-22 has been qualified.

## Significant issues arising from the audit

### Uncorrected misstatements

18. There is one misstatement above our trivial level (£0.70m) but lower than materiality (£14.06m) that we identified in the accounts, which has been discussed with management but remains uncorrected. We request that this is corrected. If you decide not to correct this misstatement, we ask that you provide us with the reasons in writing.
19. Land and building assets on NHS bodies balance sheets have full revaluations every five years and are subject to indexation annually. The District Valuer (DVS) provides the indices in each interim year between the full revaluation exercise. The rates to be used in 2021-22 were provided in August 2021. The index quoted for buildings was 111 compared to a base rate of 100 from 2017-18 when the last full revaluation exercise was completed.
20. Due to movement in building costs in quarter four of 2021-22, the DVS provided an updated index for buildings (113) in March 2022. In line with all other Welsh health bodies and in compliance with instructions from Welsh Government under Technical Update 7, the Health Board has not applied the latest rate in their calculation of indexation within the financial statements.
21. This has resulted in the following misstatements:
  - an understatement of £7.81m in the indexation (cost) figures
  - an understatement of £0.82m in the indexation (accumulated depreciation) figures
  - an understatement of £6.89m in the indexation (NBV) figures
  - an understatement of £4.05m in the reversal of impairment figures credited to the Statement of Net Comprehensive Expenditure
  - an understatement of £2.83m in gains posted to the revaluation reserve
  - an understatement of £0.07m in depreciation charged to the Statement of Net Comprehensive Expenditure
  - an overstatement of £3.99m in the net operating costs for the financial year

### Corrected misstatements

22. There were initially misstatements in the accounts that have now been corrected by management. However, we believe that the more significant of these should be drawn to your attention and they are set out with explanations in **Appendix 3**.

### Other significant issues arising from the audit

23. In the course of the audit, we consider a number of matters relating to the accounts and report any significant issues arising to you. There are some issues regarding the governance and controls over Senior Officer Remuneration that we need to bring to your attention. These concerns are set out as follows:

## **Board Secretary departure**

24. The former Board Secretary (who was also the Director of Corporate Governance) resigned on 28th November 2021.
25. Prior to her departure a report seeking approval of a backdated increase in salary was presented to the Remuneration & Terms of Service Committee (RATS). The report set out additional responsibilities that had been undertaken as part of the role during the previous two years. The report was approved by the RATS Committee on 10th November 2021. This decision resulted in a salary uplift to the top of her pay band which was retrospectively applied to April 2019 and resulted in back-pay of £11,411 (before deductions).
26. Whilst there is evidence of additional responsibilities undertaken, the amended executive portfolio agreement that was shared with the Board Secretary in August 2020 did not mention any financial remuneration to compensate for the additional responsibilities. The Health Board is unable to provide us with contemporaneous evidence to support that it intended for these additional responsibilities to result in an increased salary. Where changes are made to Executive portfolios there should be a contemporaneous and clear audit trail of whether additional or changed responsibilities are intended to lead to a change in remuneration.

## **Bonus payments to Independent Members**

27. In May 2021, NHS staff in Wales were paid a bonus of £735 for work undertaken during the pandemic. A Welsh Government pay circular issued to NHS bodies on 25th March 2021 set out the criteria for payment. This specifically stated that Independent Members were not to be paid the bonus. Our testing identified that two independent members were paid the bonus in error. The Health Board is taking steps to recover these payments and has fully disclosed this fact in the Remuneration Report.

## **Welsh Government approval for Senior Officer pay**

28. Where the Chief Executive or any Executive Director is remunerated in excess of the maximum of the specified salary band range for their role, written Welsh Government approval is required.
29. The Director of Workforce was appointed on an interim basis in August 2021, before being made permanent in November 2021. The role was remunerated in excess of the salary band range from the date of the interim appointment and continued when the appointment became permanent. Whilst Welsh Government approval was sought and obtained for the higher salary at the point the role was made permanent, no approval was sought when the initial interim appointment was made.
30. The approval received highlights that the Welsh Government was satisfied with the reasons behind the need for a higher salary, but the Health Board had not

received these assurances at the point the interim appointment was made. The Health Board should ensure that Welsh Government approval is obtained at the point that any appointments are made on salaries above the pay band for that role.

## Recommendations

31. The recommendations arising from our audit are set out in **Appendix 4**. Management has responded to these, and we will follow up progress against them during next year's audit. Where any actions are outstanding, we will continue to monitor progress and report it to you in next year's report.

# Appendix 1

## Final letter of representation

[Audited body's letterhead]

Auditor General for Wales  
Wales Audit Office  
24 Cathedral Road  
Cardiff  
CF11 9LJ

8th June 2022

### Representations regarding the 2021-22 financial statements

This letter is provided in connection with your audit of the financial statements (including that part of the Remuneration Report that is subject to audit) of Swansea Bay University Local Health Board (the Health Board) for the year ended 31 March 2022 for the purpose of expressing an opinion on their truth and fairness, their proper preparation and the regularity of income and expenditure.

We confirm that, to the best of our knowledge and belief, having made enquiries as we consider sufficient, we can make the following representations to you.

### Management representations

#### Responsibilities

As Chief Executive and Accountable Officer I have fulfilled my responsibility for:

- Preparing the financial statements in accordance with legislative requirements and the Treasury's Financial Reporting Manual. In preparing the financial statements, I am required to:
  - observe the accounts directions issued by [Welsh Ministers/HM Treasury], including the relevant accounting and disclosure requirements, and apply appropriate accounting policies on a consistent basis;
  - make judgements and estimates on a reasonable basis;
  - state whether applicable accounting standards have been followed and disclosed and explain any material departures from them; and
  - prepare them on a going concern basis on the presumption that the services of the Health Board will continue in operation.
- Ensuring the regularity of any expenditure and other transactions incurred.

- The design, implementation and maintenance of internal control to prevent and detect error.

## Information provided

We have provided you with:

- Full access to:
  - all information of which we are aware that is relevant to the preparation of the financial statements such as books of account and supporting documentation, minutes of meetings and other matters;
  - additional information that you have requested from us for the purpose of the audit; and
  - unrestricted access to staff from whom you determined it necessary to obtain audit evidence.
- The results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- Our knowledge of fraud or suspected fraud that we are aware of and that affects the Health Board and involves:
  - management;
  - employees who have significant roles in internal control; or
  - others where the fraud could have a material effect on the financial statements.
- Our knowledge of any allegations of fraud, or suspected fraud, affecting the financial statements communicated by employees, former employees, regulators or others.
- Our knowledge of all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing the financial statements.
- The identity of all related parties and all the related party relationships and transactions of which we are aware.
- Our knowledge of all possible and actual instances of irregular transactions.

## Financial statement representations

All transactions, assets and liabilities have been recorded in the accounting records and are reflected in the financial statements.

The methods, the data, and the significant assumptions used in making accounting estimates, and their related disclosures, are appropriate to achieve recognition, measurement or disclosure that is reasonable in the context of the applicable financial reporting framework.

Related party relationships and transactions have been appropriately accounted for and disclosed.

All events occurring subsequent to the reporting date which require adjustment or disclosure have been adjusted for or disclosed.

All known actual or possible litigation and claims whose effects should be considered when preparing the financial statements have been disclosed to the auditor, accounted for, and disclosed in accordance with the applicable financial reporting framework.

There is one uncorrected misstatement in the financial statements. The effects of uncorrected misstatements identified during the audit are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. A summary of these items is set out below:

- The Health Board has not applied the latest index rate (113) in the calculation of indexation within the financial statements, in line with all other Welsh NHS bodies and instruction from Welsh Government. This has resulted in the following misstatements.
  - an understatement of £7.81m in the indexation (cost) figures
  - an understatement of £0.82m in the indexation (accumulated depreciation) figures
  - an understatement of £6.89m in the indexation (net book value) figures
  - an understatement of £4.05m in the reversal of impairment figures credited to the Statement of Net Comprehensive Expenditure
  - an understatement of £2.83mm in gains posted to the revaluation reserve
  - an understatement of £0.07m in depreciation charged to the Statement of Net Comprehensive Expenditure
  - an overstatement of 3.99m in the net operating costs for the financial year

## **Representations by those charged with governance**

We acknowledge that the above representations made by management have been discussed with us.

We acknowledge our responsibility for ensuring that the company maintains adequate accounting records.

We acknowledge our responsibility for the preparation of true and fair financial statements in accordance with the applicable financial reporting framework. The financial statements were approved by the Health Board on 8 June 2022.

We confirm that we have taken all necessary steps to make ourselves aware of any relevant audit information and to establish that it has been communicated to you. We confirm that, as far as we are aware, there is no relevant audit information of which you are unaware.

Signed by:

Signed by:

Chief Executive as Accountable Officer

Chair of Board

Date:

Date:

DRAFT

# Appendix 2

## Proposed Audit Report

### The Certificate of the Auditor General for Wales to the Senedd

#### Opinion on financial statements

I certify that I have audited the financial statements of Swansea Bay University Local Health Board for the year ended 31 March 2022 under Section 61 of the Public Audit (Wales) Act 2004. These comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Cash Flow Statement and Statement of Changes in Taxpayers' Equity and related notes, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and UK adopted international accounting standards as interpreted and adapted by HM Treasury's Financial Reporting Manual.

In my opinion the financial statements:

- give a true and fair view of the state of affairs of Swansea Bay University Local Health Board as at 31 March 2022 and of its net operating costs for the year then ended;
- have been properly prepared in accordance with UK adopted international accounting standards as interpreted and adapted by HM Treasury's Financial Reporting Manual; and
- have been properly prepared in accordance with the National Health Service (Wales) Act 2006 and directions made there under by Welsh Ministers.

#### Opinion on regularity

In my opinion, except for the matters described in the Basis for Qualified Regularity Opinion section of my report, in all material respects, the expenditure and income in the financial statements have been applied to the purposes intended by the Senedd and the financial transactions recorded in the financial statements conform to the authorities which govern them.

#### Basis for Qualified Opinion on regularity

The Health Board has breached its resource limit by spending £64.987 million over the £3,073 million that it was authorised to spend in the three-year period 2019-2020 to 2021-2022. This spend constitutes irregular expenditure.

I have qualified my opinion on the regularity of Swansea Bay University Local Health Board's financial statements because those statements include a provision of £1.9 million relating to the estimated liability arising from the Ministerial Direction dated 18 December 2019 on senior clinicians' pensions. In my view, this expenditure is irregular and material by its nature.

Further detail is set out in the attached Report.

## **Basis of opinions**

I conducted my audit in accordance with applicable law and International Standards on Auditing in the UK (ISAs (UK)) and Practice Note 10 'Audit of Financial Statements of Public Sector Entities in the United Kingdom'. My responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of my report. I am independent of the Board in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK, including the Financial Reporting Council's Ethical Standard, and I have fulfilled my other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinions.

## **Conclusions relating to going concern**

In auditing the financial statements, I have concluded that the use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the body's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from when the financial statements are authorised for issue.

My responsibilities and the responsibilities of the directors with respect to going concern are described in the relevant sections of this report.

## **Other Information**

The other information comprises the information included in the annual report other than the financial statements and my auditor's report thereon. The Chief Executive is responsible for the other information contained within the annual report. My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my report, I do not express any form of assurance conclusion thereon. My responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or knowledge obtained in the course of the audit, or otherwise appears to be materially misstated. If I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. If I conclude that there is a material misstatement of this other information based on the work I have performed, I am required to report that fact.

I have nothing to report in this regard.

## Report on other requirements

### Opinion on other matters

In my opinion, the part of the remuneration report to be audited has been properly prepared in accordance with the National Health Service (Wales) Act 2006 and directions made thereunder by Welsh Ministers.

In my opinion, based on the work undertaken in the course of my audit:

- the information given in the Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and the Governance Statement has been prepared in accordance with Welsh Ministers' guidance;
- the information given in the Foreword and Accountability Report for the financial year for which the financial statements are prepared is consistent with the financial statements and the Foreword and Accountability Report has been prepared in accordance with Welsh Ministers' guidance.

### Matters on which I report by exception

In the light of the knowledge and understanding of the Board and its environment obtained in the course of the audit, I have not identified material misstatements in the Foreword and Accountability Report or the Governance Statement.

I have nothing to report in respect of the following matters, which I report to you, if, in my opinion:

- adequate accounting records have not been kept, or returns adequate for my audit have not been received from branches not visited by my team;
- the financial statements and the audited part of the Remuneration Report are not in agreement with the accounting records and returns;
- information specified by HM Treasury or Welsh Ministers regarding remuneration and other transactions is not disclosed; or
- I have not received all the information and explanations I require for my audit.

## Responsibilities

### Responsibilities of Directors and the Chief Executive for the financial statements

The Directors and the Chief Executive are responsible for the preparation of financial statements which give a true and fair view and for such internal control as the Directors and Chief Executive determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. This is explained more fully in the Statements of Directors' and Chief Executive's Responsibilities

In preparing the financial statements, the Directors and Chief Executive are responsible for assessing the board's ability to continue as a going concern disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless deemed inappropriate.

## **Auditor's responsibilities for the audit of the financial statements**

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

Irregularities, including fraud, are instances of non-compliance with laws and regulations. I design procedures in line with my responsibilities, outlined above, to detect material misstatements in respect of irregularities, including fraud.

My procedures included the following:

- Enquiring of management, the audited entity's head of internal audit and those charged with governance, including obtaining and reviewing supporting documentation relating to Swansea Bay University Local Health Board policies and procedures concerned with:
  - identifying, evaluating and complying with laws and regulations and whether they were aware of any instances of non-compliance;
  - detecting and responding to the risks of fraud and whether they have knowledge of any actual, suspected or alleged fraud; and
  - the internal controls established to mitigate risks related to fraud or non-compliance with laws and regulations.
- Considering as an audit team how and where fraud might occur in the financial statements and any potential indicators of fraud. As part of this discussion, I identified potential for fraud in the following areas: revenue recognition, posting of unusual journals, and biases in accounting estimates;
- Obtaining an understanding of Swansea Bay University Local Health Board's framework of authority and other legal and regulatory frameworks that Swansea Bay University Local Health Board operates in, focusing on those laws and regulations that had a direct effect on the financial statements or that had a fundamental effect on the operations of Swansea Bay University Local Health Board.

In addition to the above, my procedures to respond to identified risks included the following:

- reviewing the financial statement disclosures and testing supporting documentation to assess compliance with relevant laws and regulations discussed above;
- enquiring of management, those charged with governance and legal advisors about actual and potential litigation and claims;
- reading minutes of meetings of those charged with governance and the Board; and
- in addressing the risk of fraud through management override of controls, testing the appropriateness of journal entries and other adjustments, assessing whether the judgements made in making accounting estimates are indicative of a potential

bias, and evaluating the business rationale of any significant transactions that are unusual or outside the normal course of business.

I also communicated relevant identified laws and regulations and potential fraud risks to all audit teams and remained alert to any indications of fraud or non-compliance with laws and regulations throughout the audit.

The extent to which my procedures are capable of detecting irregularities, including fraud, is affected by the inherent difficulty in detecting irregularities, the effectiveness of Swansea Bay University Local Health Board controls, and the nature, timing and extent of the audit procedures performed.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of my auditor's report.

#### **Responsibilities for regularity**

The Chief Executive is responsible for ensuring the regularity of financial transactions.

I am required to obtain sufficient evidence to give reasonable assurance that the expenditure and income have been applied to the purposes intended by the Senedd and the financial transactions conform to the authorities which govern them.

#### **Report**

Please see my Report on pages 19 to 21.

Adrian Crompton  
Auditor General for Wales  
15 June 2022

24 Cathedral Road  
Cardiff  
CF11 9LJ

# Report of the Auditor General to the Senedd

## Introduction

Under the Public Audit Wales Act 2004, I am responsible for auditing, certifying and reporting on Swansea Bay University Local Health Board's (the LHB's) financial statements. I am reporting on these financial statements for the year ended 31 March 2022 to draw attention to three key matters for my audit. These are the failure against the first financial duty and consequential qualification of my 'regularity' opinion, the failure of the second financial duty, and the qualification of my 'regularity' opinion relating to expenditure recognised as a result of the ministerial direction on senior clinicians' pensions. I have not qualified my 'true and fair' opinion in respect of any of these matters.

## Financial duties

Local Health Boards (LHBs) are required to meet two statutory financial duties, known as the first and second financial duties.

For 2021-22, Swansea Bay University Local Health Board (the Health Board) failed to meet both the first and the second financial duty.

### Failure of the first financial duty

The **first financial duty** gives additional flexibility to LHBs by allowing them to balance their income with their expenditure over a three-year rolling period. The three-year period being measured under this duty this year is 2019-20 to 2021-22.

As shown in Note 2.1 to the Financial Statements, the LHB did not manage its revenue expenditure within its resource allocation over this three-year period, exceeding its cumulative revenue resource limit of £3,073 million by £64.987 million.

Where an LHB does not balance its books over a rolling three-year period, any expenditure over the resource allocation (i.e. spending limit) for those three years exceeds the LHB's authority to spend and is therefore 'irregular'. In such circumstances, I am required to qualify my 'regularity opinion' irrespective of the value of the excess spend.

### Failure of the second financial duty

The **second financial duty** requires LHBs to prepare and have approved by the Welsh Ministers a rolling three-year integrated medium-term plan. This duty is an essential foundation to the delivery of sustainable quality health services. An LHB will be deemed to have met this duty for 2021-22 if it submitted a 2019-20 to 2021-22 plan approved by its Board to the Welsh Ministers who then approved it by the 30 June 2019. This duty is unchanged from 2019-20 because the duty to prepare a new three-year plan for the period 2021-22 to 2023-24 was paused due to the pandemic, leaving the previous year's duty in place.

As shown in Note 2.3 to the Financial Statements, the LHB did not meet its second financial duty to have an approved three-year integrated medium-term plan in place for the period 2019-20 to 2021-22.

## **Ministerial direction on senior clinicians' pensions**

NHS Pension scheme and pension tax legislation is not devolved to Wales. HM Treasury's changes to the tax arrangements on pension contributions in recent years included the reduction in the Annual Allowance limit from over £200k in 2011-12 to £40k in 2018-19. As a result, in cases where an individual's pension contributions exceed certain annual and / or lifetime pension contribution allowance limits, they are taxed at a higher rate on all their contributions, creating a sharp increase in tax liability.

In a Written Statement on 13 November 2019, the Minister for Health and Social Services noted that NHS Wales bodies were: 'regularly reporting that senior clinical staff are unwilling to take on additional work and sessions due to the potentially punitive tax liability'. In certain circumstances this could lead to additional tax charges in excess of any additional income earned.

On 18 December 2019, the First Minister (mirroring earlier action by the Secretary of State for Health and Social Care for England) issued a Ministerial Direction to the Permanent Secretary to proceed with plans to commit to making payments to clinical staff to restore the value of their pension benefits packages. If NHS clinicians opted to use the 'Scheme Pays' facility to settle annual allowance tax charges arising from their 2019-20 NHS pension savings (i.e. settling the charge by way of reduced annual pension, rather than by making an immediate one-off payment), then their NHS employers would meet the impact of those tax charges on their pension when they retire.

The Ministerial Direction was required because this solution could be viewed by HMRC to constitute tax planning and potentially tax avoidance, hence making the expenditure irregular. Managing Welsh Public Money (which mirrors its English equivalent) specifically states that 'public sector organisations should not engage in...tax evasion, tax avoidance or tax planning'.

A Ministerial Direction does not make regular what would otherwise be irregular, but it does move the accountability for such decisions from the Accounting Officer to the Minister issuing the direction.

The solution applies only to annual allowance tax charges arising from an increase in the benefits accrued in the NHS Pension Scheme during the tax year ended 5 April 2020. For the tax year ended 5 April 2021, the Chancellor increased the thresholds for the tapered annual allowance and, as a result, it is anticipated that the risk to the supply of clinical staff has been mitigated.

The LHB has received sufficient information during the year to calculate and recognise an estimate of the potential costs of compensating senior clinical staff for pension benefits that they would otherwise have lost, by using the 'Scheme Pays' arrangement. As a result, expenditure has been recognised as a provision as shown in note 20 of the financial statements.

All NHS bodies will be held harmless for the impact of the Ministerial Direction however, in my opinion, the transactions included in the LHB's financial statements to recognise this liability are irregular and material by their nature. This is because the payments are contrary to paragraph 5.6.1 of Managing Public Money and constitute a form of tax planning which will leave the Exchequer as a whole worse off. The Minister's direction alone does not regularise the scheme. Furthermore, the arrangements are novel and contentious and potentially precedent setting. As a result, I have qualified my 'regularity' opinion for 2021-22.

**Adrian Crompton**

**Auditor General for Wales**

**15 June 2022**

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# Appendix 3

## Summary of Corrections Made

During our audit we identified the following misstatements that have been corrected by management, but which we consider should be drawn to your attention due to their relevance to your responsibilities over the financial reporting process.

**Exhibit 3: summary of corrections made**

Value of correction	Nature of correction	Reason for correction
<p><b>£17.5m understatement</b> – Salaries and wages for permanent staff</p> <p><b>£312k overstatement</b> – Salaries and Wages for agency staff</p>	<p>An error in the compilation of Note 9.1 Employee Benefits and Staff Numbers has led to incorrect salaries and wages amounts being disclosed in the note for permanent and agency staff.</p> <p>It should be noted that the total staff costs recognised in the Statement of Comprehensive Net Expenditure and Note 3.3 Expenditure on Hospital and Community Health Services are correct, but errors were noted in the supporting note.</p> <p>There is no net effect on the primary statements.</p>	<p>To ensure accuracy of Note 9.1 Employee Benefits and Staff Numbers</p>
<p><b>£7.7m understatement</b> – Non-NHS Payables</p> <p><b>£5.1m overstatement</b> – Capital Payables – Tangible</p> <p><b>£2.6m overstatement</b> – Other NHS</p>	<p>An error in the compilation of Note 18 Trade and Other Payables has led to a classification error between three different categories within the note. The net impact on the total payables balance is nil.</p>	<p>To ensure the correct classification of payables within Note 18.</p>

	<p>There is also a corresponding impact on the Cash Flow Statement in relation to movements in working and capital and purchase of property, plant and equipment, and Note 27 Movements in Working Capital within the fixed asset creditors and other adjustment lines.</p> <p>There is no net effect on the primary statements.</p>	
Various	Several amendments have been made to Note 30 Related Party Transactions including changes to the total value of transactions with related parties and the inclusion of a disclosure in respect of the Health Board's charity	To ensure completeness of Note 30 Related Party Transactions
Various	A number of other minor amendments were made to the financial statements relating to either revisions to disclosures of information, narrative changes or typos	To ensure accuracy of the financial statements.
Various	A number of amendments were made to the remuneration and staff report including corrections to the salary bandings and pension benefits, and revisions to disclosures of information.	To ensure accuracy of the remuneration and staff report

# Appendix 4

## Recommendations

We set out all the recommendations arising from our audit with management's response to them. We will follow these up next year and will include any outstanding issues in next year's audit report:

### Exhibit 4: Matter arising 1

Matter arising 1 – Senior Officer Remuneration	
<b>Findings</b>	<p>Audit testing identified areas where the governance and controls over senior officer appointments and departures should be strengthened. In particular:</p> <ul style="list-style-type: none"><li>• The Board Secretary resigned on 28th November 2021. The Remuneration and Staff Committee agreed a business case to pay her £11,411 of back pay for additional responsibilities over the previous 2years. Whilst there is evidence of additional responsibilities undertaken, the amended executive portfolio agreement that was shared with the Board Secretary in August 2020 did not mention any financial remuneration to compensate for the additional responsibilities. The Health Board is unable to provide us with contemporaneous evidence to support that it intended for these additional responsibilities to result in an increased salary.</li><li>• The Director of Workforce was appointed in an interim position for 3months on pay above the pay band for that role. This should have been approved by Welsh Government (as was the case when the position was made permanent).</li></ul>
<b>Priority</b>	High
<b>Recommendation</b>	<p>Governance arrangements over Senior Officer appointments and departures should be strengthened to ensure that:</p> <ul style="list-style-type: none"><li>• Where changes are made to Executive portfolios there should be a contemporaneous and clear audit trail of whether additional or</li></ul>

	<p>changed responsibilities are intended to lead to a change in remuneration;</p> <ul style="list-style-type: none"> <li>• Welsh Government approval should be obtained where necessary at the time of appointment whether into an interim or permanent post.</li> </ul>
<b>Benefits of implementing the recommendation</b>	Improved governance and controls.
<b>Accepted in full by management</b>	Yes
<b>Management response</b>	Agreed
<b>Implementation date</b>	1 <sup>st</sup> June 2022

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We welcome correspondence and telephone calls in Welsh and English.  
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg a Saesneg.