

DOCUMENT TITLE:	Scope of The Welsh Risk Pool (WRP)
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CONTENTS

- 1.0** Background to the Welsh Risk Pool (WRP)
 - 1.1** Management and governance arrangements for the WRP
 - 1.2** Funding arrangements for the Risk Pooling Arrangements

- 2.0** Scope of the Risk Pooling Arrangements
 - 2.1** Clinical negligence claims
 - 2.2** Negligence of non-clinical staff
 - 2.3** Personal injury, including employer and owner occupier liability
 - 2.4** Equipment, supplies and consumables
 - 2.5** Buildings
 - 2.6** Motor claims involving ambulances
 - 2.7** Non-emergency vehicles

- 3.0** General Risk Management Principles

- 4.0** Approval of Claims

- 5.0** Queries Regarding Scope of Risk Pooling Arrangements

- Appendix A** – Indemnity Query Form

- Appendix B** – Welsh Risk Pool Building Insurances Flow Chart

- Appendix C** – Action to be taken when a staff member is asked for confirmation of insurance arrangements

1.0 Background to the Welsh Risk Pool (WRP)

The NHS Wales Risk Pool was established in 1996 when responsibility for meeting the cost of clinical negligence claims was transferred directly to NHS Wales. Initially, the day to day management arrangements rested with Welsh Health Common Services Authority (WHCSA) with policy oversight by a WRP Management Group. More latterly the WRP has been administered as part of the NHS Wales Shared Service Partnership (NWSSP).

1.1 Management and governance arrangements for the WRP

The WRP is part of NWSSP management and governance arrangements. The Managing Director of NWSSP is the Accountable Officer and the NWSSP Committee is responsible for overseeing the overall governance arrangements. In support of this function, the WRP Committee is a formal sub-committee with agreed Terms of Reference and meetings held on a bi-monthly basis. The functions of the WRP Committee include establishing the scope of the risk pooling arrangements and also ensuring that risk sharing agreements are in place in the event of a shortfall in funding.

1.2 Funding arrangements for the Risk Pooling Arrangement.

The costs associated with the risk pooling arrangement are met from funds available for NHS Wales. The WRP receives a base allocation derived from the budget for NHS Wales and any shortfall is met directly from members on an agreed risk sharing basis. All claims are subject to an excess.

2.0 Scope of the Risk Pooling Arrangement

The WRP was established in 1996 to cover losses arising from legal obligations (with the exception of contractual claims), losses defined by the losses and special payment manual and arson or malicious damage to premises. In 2000, the Welsh Government issued a further circular prohibiting NHS bodies from purchasing commercial insurance with the exception of Private Finance Initiative (PFI), income generation, motor claims and personal accident insurance. Personal accident insurance allows for payments to staff who sustain injury during the course of their employment where the health body has not been negligent.

The 2010 reorganisation of NHS Wales and service developments in recent years has necessitated a further review of the scope of the risk pooling arrangement. The current approach is that the risk pooling arrangements should be sufficiently flexible to enable

appropriate service development within a robust risk management framework which does not unduly expose NHS Wales to significant or unnecessary risk.

The general principle adopted within this document is that the risk pooling arrangements apply to health body provided core activities. Core activities relate to services provided from the allocation received from the Welsh Government or to activities funded from alternative sources where they are in furtherance of the core activities (e.g. additional grants).

Services which have been contracted out are excluded from the risk pooling arrangement and the underlying contractual arrangements should ensure that appropriate professional indemnity or commercial insurance are in place. It is highly recommended that contracts are legally reviewed prior to signature to ensure sufficiency of these aspects. This work can be undertaken by the Commercial Team within Legal and Risk Services.

The main areas of risk covered by the WRP are outlined below with confirmation of the risk pooling arrangement. These provide a general framework which is supplemented by technical notes on specific risks.

2.1 Clinical negligence claims

The principles of NHS Indemnity for clinical negligence claims were first established in Welsh Health Circular 8 (WHC 08) which was issued in 1998. The document pre-dates the integrated healthcare arrangements which were introduced in 2009. Whilst the principles remain valid further clarification is provided for services which have historically been contracted out to independent contractors, but are now directly provided by health bodies (e.g. Health Board-managed GP practices). A health body provided service is one for which the health body retains responsibility for managing and delivering the service rather than one which is contracted to a third party in which case the arrangement becomes one of contract management.

The risk pooling arrangement will cover clinical negligence claims received from those persons to whom the health body owes a duty of care (i.e. for health body provided activities).

NHS Indemnity will apply to the actions of the following:

- Persons working under a contract of employment and the negligence occurred in the course of that employment. (WHC 08 (98)).

- Persons not working under a contract of employment but who were contracted to an NHS body to provide services to which the NHS body owed a duty of care. (WHC 08 (98)).
- Persons not employed under a contract of employment but who owe a duty of care to the persons injured (e.g. locums, medical academic staff with honorary contracts, students, those undertaking clinical trials, charitable volunteers, and those undergoing further professional education and training (derived from WHC 08 (98)).

Care delivered as part of an income generation scheme is generally excluded from the risk pooling arrangements although there are a number of exceptions to this. Further clarity is provided in a separate technical note.

The following technical notes provide further guidance and clarification:

- Income generation activities
- Private patient work
- Clinical research
- Training to external bodies
- Staff secondments and arrangements for staff working with non NHS partners (to be drafted)
- Reimbursement of inquest costs

2.2 Negligence of non-clinical staff

NHS indemnity is afforded to all staff and Board Members including those working outside of a clinical setting. This will include directors, independent members and officers acting in the course of their employment or engagement with the health body. The financial losses arising from such obligations are within scope of the risk pooling scheme with the exceptions of losses arising from fraud or criminal activity or fines issued to the organisation or individual under legislation e.g. Health and Safety.

2.3 Personal Injury, including employer and owner occupier liability

The risk pooling arrangements include claims arising from the health body's legal obligations towards those to whom it owes a duty of care as an owner or occupier of a building, to employees or those working within the organisation, or the wider general public. This will include the actions of employees working under their contract of employment outside of their normal working environment (e.g. public liability for health promotion stands in outside events).

Care should be taken when inviting or allowing third parties to undertake events on NHS premises to ensure that they have sufficient public liability insurance in place.

The risk pooling arrangement only includes negligence claims and specifically excludes any payments made for harm sustained where there is no negligence (i.e. personal accident cover). WHC 04 (2000) contains an addendum which specifically allows personal accident cover to be purchased where a health body considers it relevant or appropriate to do. The decision to enter into agreements for cover for non-negligent harm rests with individual health bodies and cannot be recouped from the WRP.

2.4 Equipment, supplies and consumables

Loss or damage sustained to equipment, supplies or consumables will only be considered within scope of the risk pooling arrangement under exceptional circumstances and subject to an excess of £50,000. Exceptional circumstances cannot be fully prescribed but will include acts of God (i.e. flood, storm and other weather damage). Other losses will be considered on a case by case basis by the WRP Committee with due regard for the impact that the loss has on service delivery, the foreseeability of the loss and the precautions taken, where possible, by the health body to limit or prevent the loss.

When submitting a claim, the health body will need to demonstrate that the equipment has been reasonably maintained and, where appropriate, that all statutory inspections were undertaken. In the event of a claim being approved by the WRP Committee, the loss will be calculated with reference to the existing asset and may be reduced for any element of betterment. Where the claim involves bringing a damaged asset back into use the claim may include the costs of staff time where the health body can clearly demonstrate that they were additional and wholly necessary.

2.5 Buildings

Losses to buildings whether owned or leased by NHS Wales are within scope of the risk pooling arrangements. Efforts to maximise the use of properties through collaboration with non NHS bodies have increased the complexity in this area and further guidance is provided within Appendix B

The risk pooling arrangement does not provide new for old cover and claims received will be adjusted to reflect any element of betterment. Claims may also, at the discretion of the WRP Committee, be adjusted where it is evident that there was foreseeable knowledge of the potential loss and reasonable steps were not taken to

prevent such a loss. This may include, for example, failure to act on incidents arising within a vacant property.

The WRP will reimburse losses incurred by members in bringing operational assets back into use following either damage or total destruction. Any element of betterment will be discounted and for these members will need to demonstrate compliance with the requirements of the NHS Wales Manual for Accounts for Capital Accounting and if necessary, obtain further assurance from the District Valuer on the reliance of the pre-incident valuation.

Where the asset is not brought back into operational use the WRP will not automatically reimburse the net book value and any loss will only be determined when a decision on the future use or sale of the asset is determined.

The risk pooling arrangement extends to empty buildings. However, there are additional risks associated with empty buildings and members should ensure that a documented risk assessment is undertaken when the building becomes vacant and reasonable action is taken to address known risks. This should include the security arrangements, physical inspections, removal of combustible materials and disconnection of non-essential utilities.

In the event of an incident that may give rise to a building claim, members are required to contact the WRP at the earliest opportunity. This will enable advice and guidance to be given in terms of documentation and evidence required by the WRP Committee prior to a formal submission of a claim.

The risk pooling arrangement specifically excludes NHS owned properties wholly leased to non NHS bodies. In these circumstances appropriate insurance arrangements should be in place.

2.6 Motor claims involving ambulances

Motor claims involving ambulances and other supporting emergency vehicles are within the scope of the risk pooling scheme. This may include multiple claims arising from the same incident and for the purposes of the excess these may be treated as a single reimbursement from the WRP.

The risk pooling arrangement includes losses arising from the use of operational vehicles from other sources (e.g. military or voluntary sector) in the event of service need. The risk pooling arrangement will also include losses arising from other service personnel driving ambulances under exceptional circumstances.

Further guidance is provided in the following technical notes:

- Use of non NHS ambulances
- Ambulances driven by other emergency services

2.7 Non-emergency vehicles

The risk pooling arrangement does not extend to losses arising from non-emergency vehicles for which the health body is permitted under WHC 2000 (04) to purchase commercial insurance. The commercial insurance should cover normal risks associated with operating the vehicle including damage, theft, fire and personal injury.

The above paragraph includes vehicles used to deliver NHS services (e.g. mobile screening units etc). However, where injury or loss is sustained during the delivery of such services paragraph 2.4 applies.

3.0 General Risk Management Principles

The NHS in Wales delivers a vast range of services in complex settings. Therefore, it is not possible to provide a prescriptive document which comprehensively sets out what is within and what is excluded from the risk pooling arrangements. The principles set out in this document are designed to allow sufficient flexibility to NHS Wales to innovate and develop service delivery models.

The principle underpinning the risk pooling arrangements is that organisations should have management and governance arrangements in place to ensure that effective risks management is applied across the organisation. This covers risks associated with delivering services and also risks in relation to facilities, equipment, and buildings.

This is especially the case when developing or redesigning service delivery options where there is a greater degree of collaboration and engagement with other public sector bodies or organisations including the voluntary sector.

4.0 Approval of Claims

All claims against the risk pooling scheme should be made in accordance with the WRP reimbursement procedures. All claims are reviewed by the WRP Committee and will only be approved for payment upon the Committee being assured that the item is within scope of the risk pooling arrangement and that appropriate action has been taken to reduce the risk of recurrence.

5.0 Queries regarding Scope of Risk Pooling Arrangements

Queries regarding specific arrangements can be submitted to the WRP for further consideration. The standard form (Appendix A) should be used to outline the nature of the query and be submitted to the WRP using the following email address welsh.riskpool@wales.nhs.uk. An acknowledgement will be issued within 24 hours and either a full response or an interim response for complex matters will be issued within 15 working days. Where queries are complex in nature the final decision on whether the items fall outside of the risk pooling arrangement will lie with the WRP Committee which meets bi-monthly.

APPENDIX A – INDEMNITY QUERY FORM

Appendix A form to be used to submit a query to the WRP on whether an item is within scope of the risk pooling scheme. Please email to: Welsh.RiskPool@wales.nhs.uk

Name of person making enquiry:

Contact Details:

Date request submitted:

Date response required (if urgent) (normal response time is 15 working days):

Service/Location/Organisation related to query:

Risk Assessments (please provide details of risk assessments that have been completed in relation to this issue):

Nature of Query (please provide supporting information and attach relevant documents where appropriate):

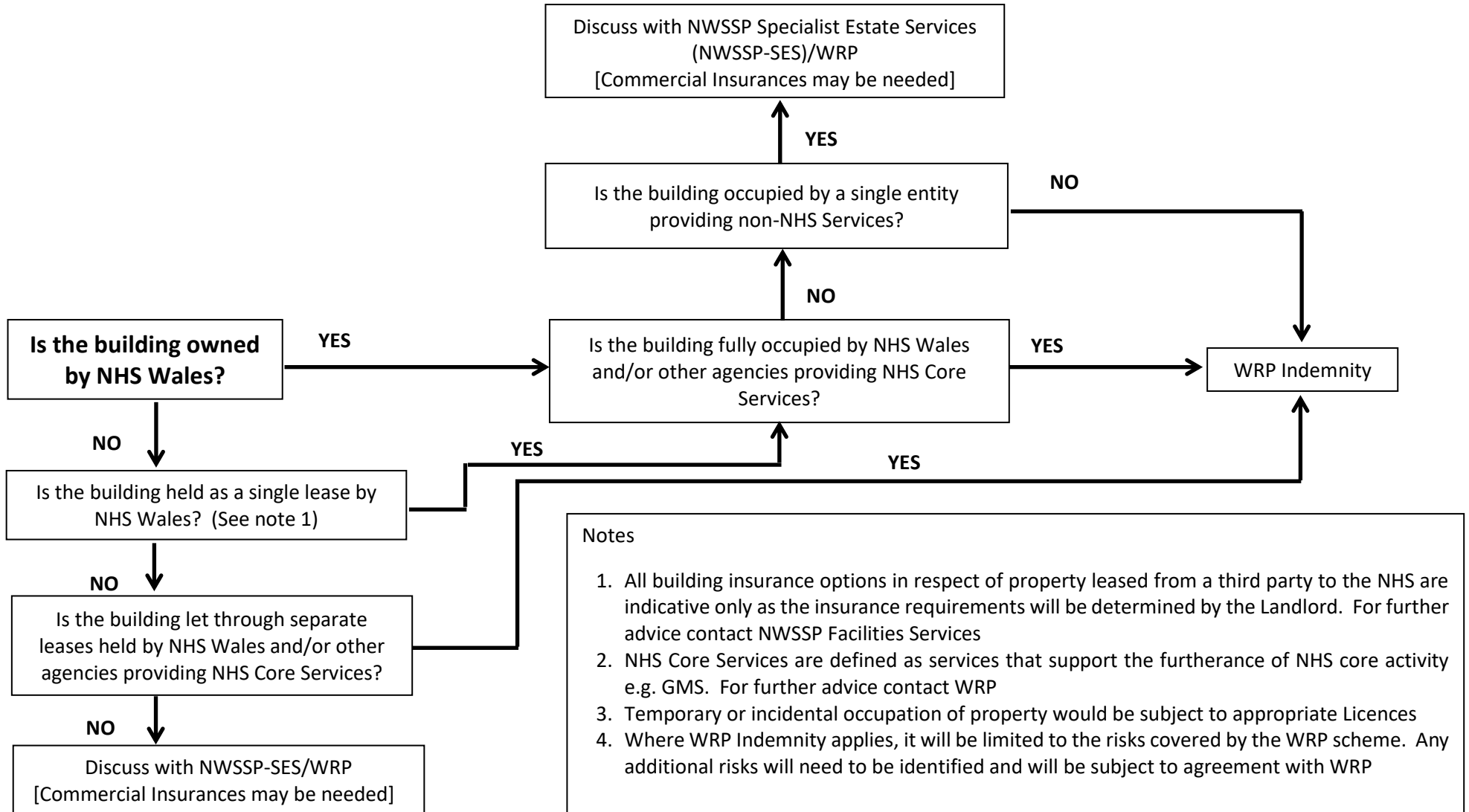
For use by WRP only:

WRP Committee approval: Y / N

Date of Committee:

WRP Committee decision:

Appendix B – Welsh Risk Pool Building Insurances Flow Chart



Appendix C – Action to be taken when a staff member is asked for confirmation of insurance arrangements

When a member is asked to confirm its insurance arrangements the member of staff should ensure the activity in question falls within the WRP risk pooling scheme. If having assessed the activity against the framework within this document and following review of the technical notes referred to within this document a member of staff remains unclear, a request for clarification can be submitted to the WRP using the standard form provided (Appendix A refers). Where the member is satisfied that the activity is within scope of the WRP, the wording below can be used in correspondence with 3rd parties.

The health body is not permitted to purchase commercial insurance but in recognition of its legal obligations to staff and others affected by its work it is a member of the WRP. The WRP is a risk pooling scheme for NHS Wales which includes activities of health bodies. The WRP risk pooling scheme includes losses and special payments arising where a legal obligation has been determined either by the courts or by relevant legal advice.