

Title:	<b>The Management of Losses and Special Payments</b>
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Ratified and approved by:	Governing Body
Distribution:	All staff and GP members of the CCG.
Compliance:	Mandatory for all permanent and temporary employees of NHS Rotherham CCG.
Equality & Diversity Statement:	In applying this policy, the Organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

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## **1. Introduction**

- The Integrated Governance Handbook, and the principles set out in ‘Managing Public Money’ requires health bodies to have systems for:
  - the control and safe custody of health service property
  - administration of a patients’ and the NHS body’s property, and
  - recording, reporting and investigation of losses.

## **2. Purpose**

- The prevention of loss is a prime requirement of sound financial control, and control systems should be designed to achieve this. Losses do nevertheless occur, and internal checks, regular supervision and internal audit must be used to ensure these are minimised.
- This policy informs all CCG employees of what constitutes a loss or special payment, and what to do if they discover a loss or have a requirement for a special payment.

## **3. Scope**

- Losses and special payments are items that Parliament would not have contemplated when agreeing the initial funding for the NHS. By their nature, they are items that ideally should not arise. They are therefore subject to special control procedures compared with the generality of payments, and special notation in the accounts to draw them to the attention of Parliament. They are divided into different categories, which govern the way each individual case is handled.
- In considering losses and special payments, it is always important to look beyond whether the proposed write off or payment represents value for money. The need for corrective action must also be carefully assessed to minimise the number (and cost) of future cases. This includes any wider lessons for the NHS as a whole.
- This guidance is not applicable to any losses or special payments that arise from inter-NHS transactions (this does not apply to transactions with Foundation Trusts).
- For those NHS bodies who are members of the NHS Litigation Authority (NHLA) scheme, the NHLA has financial responsibility for clinical negligence liabilities so no losses should normally be included in respect of clinical negligence liabilities that are covered under the scheme.

## **4. Roles and responsibilities**

- The Governing Body will approve this and any significant amendments to this policy.
- The Audit and Quality Assurance Committee will monitor and review the implementation and use of this policy and escalate to Governing Body any significant changes and/or significant losses or special payments made.
- The Chief Finance Officer will monitor compliance of this policy.
- The losses and special payments register within the CCG may be subject to periodic audit scrutiny.

## **5. Types of Loss and special payments**

### **5.1 Loss**

A loss is defined as any loss of money or property belonging to the NHS body itself. There are different categories of loss which are:

- losses of cash
- fruitless payments, including abandoned capital schemes, and constructive losses
- bad debts and claims abandoned

- damage to buildings, their fittings, furniture and equipment and loss of equipment and property in stores and in use

Each of these categories is described in more detail in Appendix 1.

## **5.2. Special Payment**

Special payments are those payments that fall outside the normal day-to-day business of the CCG, or exceptionally, those for which no statutory authority exists. They fall into one of five main categories:

- compensation payments made under legal obligation
- extra contractual payments to contractors
- ex-gratia payments
- extra statutory or extra regulatory payments, and
- special severance payments

Each of these categories is described in more detail in Appendix 2.

## **6. Discovery of Loss**

6.1. With the exception of suspected fraud, any officer discovering or suspecting a loss of any kind shall immediately report it to the Chief Finance Officer who will be responsible for ensuring the following action is taken:

- reporting the loss and action taken to the appropriate bodies
- immediately ending the loss and attempting to recover it (other than where fraud is suspected)
- finding out the cause and taking appropriate corrective action
- correcting any weakness in controls or supervision
- establishing responsibility in so far as it involves inadequate supervision, negligence or misconduct, and taking appropriate disciplinary action
- ensuring that any general lessons are picked up and applied in future, and if appropriate, referred to the Department of Health for wider dissemination
- if it is not fully recovered at once, recording the loss and all stages of subsequent action
- seeking approval, regardless of value, from the Department of Health if the case is novel, contentious or repercussive
- reporting the loss to the Audit and Quality Assurance Committee.

6.2. For losses apparently caused by theft, arson, neglect of duty or gross carelessness (except if trivial) the Chief Finance Officer must immediately notify the Governing Body and the external auditor. If any level of theft or criminal damage is suspected, the Chief Finance Officer will consider informing the police. In all cases of alleged fraud, bribery or corruption, the Chief Finance Officer must inform the Counter Fraud Specialist in accordance with NHS CFA Standards for Commissioners. Disciplinary and recovery action should also be taken, where appropriate.

6.3. The Chief Finance Officer shall be authorised to take any necessary steps to safeguard the CCG's interests in bankruptcies and company liquidations.

6.4. For any loss, the Chief Finance Officer should consider whether any insurance claim could be made.

## **7. Requirement for a Special Payment**

7.1. Special payments should only be authorised after a careful appraisal of all the facts. The CCG should satisfy itself that there is no feasible alternative to making a special payment. In dealing with individual cases the CCG must always consider:

- the soundness of its control systems
  - the efficiency with which they have operated, and
  - any necessary steps required to put matters right.
- 7.2. The only exceptions to this are personal injury cases, in which case the guidance on the NHSLA website ([www.nhsla.com](http://www.nhsla.com)) should be followed.

## **8. Authorisation for losses and Special Payments**

- 8.1. The authority to write off losses or to make special payments will be in line with the CCG scheme of delegation.

## **9. Accounting for losses and Special Payments**

- 9.1. The Audit and Quality Assurance Committee will be informed of all losses written off and special payments authorised by officers. This will be achieved by the CCG maintaining a register in which details of losses and special payments are entered as they become known.
- 9.2. If any general lessons emerge from a loss or special payment which would be of interest to other NHS bodies then the Department of Health should be informed. Any novel, contentious or repercussive cases should be referred to the Department of Health for approval.

## **10. Annual Account reporting**

- 10.1. The CCG as per HM Treasury's "Managing Public Money" must report losses and special payments within the Annual Accounts where the total value exceeds £300,000.
- 10.2. As per the Department of Health's Group Accounting Manual, referred to as the GAM, the CCG must disclose (including values less than £300,000) a note to the Annual Accounts. The note to the Accounts must include the following information.
- separately the total number and total value of losses and special payments
  - a brief description of individual losses and special payments over £300,000, including those relating to clinical negligence, fraud, personal injury, compensation under legal obligation and fruitless payments
  - a statement that these amounts are reported on an accruals basis but excluding provisions for future losses, and
  - any other explanation considered necessary.
- 10.3. For bad debts, each case is an individual debtor and not each invoice. For stores losses, the total net losses revealed at any one store within the year must be aggregated and treated as one case. Losses of property must be aggregated to produce a total loss per case.

## **11. Interaction with Other Policies and Procedures**

This policy should be read in conjunction with the following document:

- The CCG's Prime Financial Policies
- Incident Management Policy.

Further support in the understanding and use of this policy can be obtained from the CCG finance team.

## **12. Equality and Diversity Statement**

The organisation is committed to ensuring that it treats its employees fairly, equitably and reasonably and that it does not discriminate against individuals or groups on the basis of their ethnic origin, physical or mental abilities, gender, age, religious beliefs or sexual orientation.

### **13. Monitoring and Review**

- Monitoring of compliance to this policy will be the responsibility of the Chief Finance Officer.
- the implementation and use of this policy will be monitored by the Audit and Quality Assurance Committee

## 14. Appendix 1: Categories of Loss

### i. Losses of cash

These may be due to:

- theft, fraud, arson, sabotage, neglect of duty or gross carelessness
- overpayments of salaries, wages, fees and allowances
- other causes, including un-vouched or incompletely vouched payments, overpayments other than those included above; physical losses of cash and cash equivalents eg stamps due to fire (other than arson), accident, or similar causes.

### ii. Fruitless payments, including abandoned capital schemes, and constructive losses

A payment which cannot be avoided because the recipient is entitled to it, even though the CCG will receive nothing of use in return, should be classified as a fruitless payment or a constructive loss. A "fruitless payment" is a payment for which liability ought not to have been incurred, or where the demand for the goods and service in question could have been cancelled in time to avoid liability. In other words, there must have been a degree of blame.

Examples are:

- forfeiture under contracts as a result of some error or negligence by the CCG
- payment for travel tickets or hotel accommodation wrongly booked; or for goods wrongly ordered or accepted
- the cost of rectifying design faults due to lack of diligence or defective professional practices
- extra costs due to failure to allow for foreseeable changes in circumstances.

Many degrees of error might be involved; the criterion is not whether the error is considered serious enough to warrant disciplinary action, but simply whether the CCG was at fault in incurring, or not avoiding, the liability to make the payment.

Because fruitless payments will be legally due to the recipient they are not regarded as special payments. However, as due benefit will not have been received in return, they should be regarded as losses.

If there is no element of blame the payment should be classified as a "constructive loss" which need not be entered in the losses register but, if significant, should be recorded in the notes to the accounts. Costs associated with abandoned works should, however, be treated as fruitless payments if the CCG was at fault in incurring, or not avoiding the liability to make, payments. They should not be recorded as a fruitless payment if the work was purely exploratory and intended from the outset to determine whether or not the scheme should be adopted.

### iii. Bad debts and claims abandoned

These cover cases involving:

- private patients (Sections 65 and 66 of the NHS Act 1977)
- overseas visitors (Section 121 of the NHS Act 1977)
- cases other than private patients and overseas visitors
- waiver or abandonment of a claim occurs if it is decided not to pursue a claim which could be, or has been, properly made. Examples are:
  - a decision to reduce the rate of interest on a loan, and therefore to waive the right to receive the amount of the reduction
  - claims actually made and then reduced in negotiations or for policy reasons

- claims which it was intended to make, but which could not be enforced, or were never presented, eg due to inability to identify the persons to whom they should be addressed, or because the whereabouts of those responsible could not be established
- failure to make claims or to pursue them to finality eg due to procedural delays allowing the Limitations Acts to become applicable
- claims arising from actual or believed contractual or other legal obligations which are not met, whether or not pursued, eg under default or liquidated damages clauses of contracts
- the amounts by which claims are reduced by compositions (ie the result of creditors coming together to take unified action) in insolvency cases, or in out of court settlements, other than reductions due to corrections of facts
- claims dropped on legal advice, or due to inability to determine the amounts of liabilities.

If it is established that a claim has been presented in error or is otherwise discovered to be ill-founded, the claim should be withdrawn (whether or not it has actually been presented) and need not be noted. However, a claim which is, *prima facie*, well-founded should not be regarded as withdrawn solely because there is doubt as to whether it would succeed if pursued in a Court of Law, or if the liability of the debtor has not been, or cannot be, accurately assessed.

A claim for refund of an overpayment which fails or is waived should be regarded as a cash loss, and not treated as a claim waived or abandoned. In considering the note to the account, a claim not presented should normally be noted at its original figure.

Bad debts and claims abandoned should be entered in the losses register when it has been determined that a loss is irrecoverable. Where the termination of a contract, e.g. on the bankruptcy or liquidation of a contractor, gives rise to additional contractual expenditure and attempts to obtain recovery under the contract provisions are unsuccessful, the amount should be recorded as a claim abandoned.

When bad debts written off in one year are recovered in subsequent financial years, a credit entry should be made in the losses register with a corresponding entry within the annual losses and special payments statement.

#### **iv. Damage to buildings, their fittings, furniture and equipment and loss of equipment and property in stores**

These cover cases including:

- culpable causes e.g. theft, fraud, arson or sabotage (whether proved or suspected), neglect of duty or gross carelessness;
- other causes for example:
  - losses by fire (other than arson)
  - losses by weather damage or by accident proved on due enquiry to be beyond the control of any responsible person
  - losses due to deterioration in use and deterioration in store due to some defect in administration such as:
    - over provisioning
    - retention of excess or obsolete stocks
    - storage of items with a known shelf life in quantities greater than could be turned over within that life
    - failure to turn over stocks in proper sequence
    - failure to set and to observe property standards to keep stock in good condition.

- In the case of buildings the amount to be written off is the value of the building (or part) and lost contents immediately prior to the incident if a decision is made not to repair it. If it is repaired, the cost of repair of the building and contents, or the estimated value of the contents if destroyed, less any sum received from the sale of scrap.

In the case of vehicles the cost of repairs to the vehicle (if readily ascertainable) less any sums recovered from an insurance company or other party should be treated as a stores loss. Payments to an insurance company or other party should be treated as compensation payments (made under legal obligations). If the vehicle is a total loss the amount to be written off is the value immediately prior to the accident less any sum received from the sale of scrap.

Unless there are special features or circumstances which justify exceptional treatment, all losses of bedding and linen in use should be valued at 50% of the current replacement cost. This advice is in line with current Treasury guidance to government departments on the valuation of losses of clothing and textiles in use. Where stores losses and write offs occur they should be valued at book value less net disposal proceeds.

If, on the bankruptcy or liquidation of a main contractor and after consideration of the alternatives available, the CCG decides to make a payment direct to a sub-contractor with whom there is no contractual relationship, the amount should be treated not as a loss but as an ex-gratia payment. Where equipment on loan to patients is lost or becomes valueless in circumstances not justifying recovery of the cost, it should be treated in the same way as articles which have deteriorated in use. Failure to recover a sum due to be paid by a patient should be treated as a bad debt.

## 15. Appendix 2: Categories of Special Payments

### i. Compensation payments made under legal obligation

Payments fall into this category only if a clear liability exists as a result of a court order or a legally binding arbitration award. Payments into court and out of court settlements are not payments made under legal obligation. The category can include compensation for injuries to persons, damage to property and unfair dismissal.

### ii. Extra contractual payments to contractors

An extra contractual payment is one which, although not legally due under the original contract or subsequent amendments, appears to be an obligation which the courts might uphold. Such an obligation will usually be attributable to action or inaction by a CCG in relation to the contract. A payment may be regarded as extra contractual even where there is doubt whether or not the CCG is liable to make it, e.g. where the contract provided for arbitration but a settlement is reached without recourse to arbitration. A payment made as a result of an arbitration award is contractual.

An ex gratia payment to a contractor is one not legally due under the contract or otherwise, and usually represents compensation on grounds of hardship. Any such payment would have to be fully justified on value for money grounds. Where a CCG has delegated powers to make extra contractual payments to contractors, the aggregate of payments from whatever cause under a single contract governs the need for prior reference to the NHS Executive. If the body has any reason to suspect that the ultimate total will exceed its delegated powers it should consult the NHS Executive. Any case in which a CCG proposes to revise an unexpired contract specifically to regularise losses which the contractor would incur in the future if the terms of the contract remained unchanged, must be reported to the NHS Executive unless covered by specific delegation arrangements.

### iii. Ex gratia payments

Ex gratia payments are payments which a CCG is not obliged to make or for which there is no statutory cover or legal liability. An example is a payment to compensate for financial loss resulting from an act or failure of the body or its servants which does not give rise to a legal liability or the payment of compensation claims or damages. Such payments must be clearly related to and arise from the services which the body is authorised or required to provide. Other examples are payments made to meet hardship caused to persons by official failure or delay, or special payments to avoid legal proceedings against the Government on grounds of official inadequacy.

Types of ex gratia payments are:

- maladministration cases
- loss of personal effects
- clinical negligence and Personal injury cases
- settlements on termination of employment
- other cases.

### iv. Extra statutory or extra regulatory payments

These are payments considered to be within the broad intention of a statute or statutory regulation but which go beyond a strict interpretation of its terms. In some cases where CCGs have followed departmental guidance, such as payments in respect of oxygen services, the Department will advise the CCGs to classify the payments as extra statutory. In all other cases where CCGs would be acting, or believe they may have acted, beyond the strict interpretation of statute or statutory

regulation they must inform the Department who will advise them whether the payments may be treated as extra statutory or that the payments are beyond their powers (*ultra vires*). Extra statutory or extra regulatory payments must not be classified as *ex gratia*.

v. **Special severance payments**

Most payments to staff on termination of their employment will be statutory or contractual, but *ex gratia* payments may also arise when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract.