

Staffordshire and Stoke-on-Trent ICB Losses and Special Payment Guidance



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1 Introduction and guidance statement

- 1.1.1 The Losses and Special Payments guidance is prepared as procedural guidance for integrated Care Boards (ICBs).
- 1.1.2 The purpose of this document is to establish best practice that can be incorporated into the ICBs Standing Financial Instructions.
- 1.1.3 It should be noted that the user of this procedural guidance should be compliant with the respective ICB SFIs. If there is a need to interpret or difficulty in application of this guidance, please send an email to the NHS England, head of assurance and counter fraud: england.assurance@nhs.net.
- 1.1.4 HM Treasury retains the authority to approve losses and special payments which are classified as being either:
- novel or contentious;
 - contains lesson that could be of interest to the wider community;
 - involves important questions of principle;
 - might create a precedent; and/or
 - highlights the ineffectiveness of the existing control systems.
- 1.1.5 Therefore, HMT Treasury approval is required if a transaction exceeds the delegated authority, or if transactions will set a precedent, are novel, contentious or could cause repercussions elsewhere in the public sector.
- 1.1.6 Losses and special payments are therefore subject to special control procedures compared to the generality of payments, and, special notation in the accounts to bring them to the attention of parliament. The annual accounts reporting requirements are detailed herein.
- 1.1.7 For the avoidance of doubt, all cases relating to ICB losses and special payments must be submitted to NHS England for approval if the proposed transaction values exceed the delegated limits that are detailed below or satisfy the conditions in section 1.1.4.

| Expenditure type | Delegated limit |
|---|-----------------|
| All losses | up to £300k |
| Special Payments including Extra-Contractual/ Statutory/ regulatory/ compensation & Ex gratia | up to £95k |
| Special severance & Retention payments | £0 |
| Consolatory payments | £500 |

1.1.8 Losses and/or special payments that indicate or give rise to suspicion of fraud or corruption, please follow the guidance as provided by your local counter fraud specialist.

1.1.9 In dealing with individual cases, ICBs must consider the soundness of their internal control systems, the efficiency with which they have been operated, and take any necessary steps to put failings right.

1.1.10 The outcome of the review of the case under consideration (1.1.9) must be clearly indicated when submitting cases to NHS England as part of the account's consolidation process at yearend or as part of the approval process.

2 Scope

2.1.1 This procedural document is applicable to the following NHS bodies;

- Integrated Care Boards

3 Definitions

3.1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this document will have the same meaning as set out in HMT managing public money. As per the DHSC Group Accounting Manual, Managing Public Money applies to all DHSC group bodies.

3.2 Losses

3.2.1 A loss refers to any case where full value has not been obtained for money spent or committed.

3.2.2 Examples of types of losses which cannot be treated as business as usual are cash losses, bookkeeping losses, fruitless payments and claims waived or abandoned.

3.3 Special Payment

3.3.1 Special Payments relate to the following;

- any compensation payments;
- extra-contractual or ex-gratia payments; and
- any payment made without specific identifiable legal power In accordance with the National Health Service Act 2006, as amended by the Health and Care Act 2022.

3.4 Special Severance and retention payments

3.4.1 ICBs have not been delegated a limit to approve the special severance or retention payments. For detailed guidance, please refer to the ICB special severance payments document as published on the NHSEI SharePoint finance library.

3.4.2 For clarity, any special severance payments that are being considered for approval must be submitted to NHS England HR regional advisory teams prior to settlement.

3.4.3 The table below lists all the various expenditure classifications for losses and special payments and the applicable approvals if the final settlement sum exceeds the ICB delegated limit.

| Category | Classification | Approval required from | Further approvals | Description of category |
|-----------------------------------|-----------------|--|--------------------------|--|
| Fruitless Payment | Loss | Payment Type | Classification | value exceeds delegated limit |
| Bookkeeping Losses | Loss | Assurance team | NHSE/ DHSC/ HMT | Bookkeeping losses (un-vouched or incompletely vouched payments) including missing items or inexplicable or erroneous debit balances |
| Constructive loss | Loss | Assurance team | NHSE/ DHSC/ HMT | A constructive loss is a similar form of payment to stores losses and fruitless payments, but one where procurement action itself caused the loss. For example, stores or services might be correctly ordered, delivered or provided, then paid for as correct; but later, perhaps because of a change of policy, they might prove not to be needed or to be less useful than when the order was placed |
| Administrative costs | Loss | Assurance team | NHSE/ DHSC/ HMT | An expense incurred in controlling and directing an organisation, |
| Claims Waived or Abandoned | Loss | Assurance team | NHSE/ DHSC/ HMT | Losses may arise if claims are waived or abandoned because, though properly made, it is decided not to present or pursue them |
| Extra-contractual payments | Special Payment | Assurance team | NHSE/ DHSC/ HMT | Payments which, though not legally due under contract, appear to place an obligation on a public sector organisation which the courts might uphold. Typically, these arise from the organisation's action or inaction in relation to a contract. Payments may be extra-contractual even where there is some doubt about the organisation's liability to pay, e.g. where the contract provides for arbitration, but a settlement is reached without it. A payment made as a result of an arbitration award is contractual |
| Extra-statutory | Special Payment | Assurance team | NHSE/ DHSC/ HMT | Payments which are within the broad intention of the statute or regulation but go beyond a strict interpretation of its terms. |
| Extra-regulatory payments | Special Payment | Assurance team | NHSE/ DHSC/ HMT | Payments which are within the broad intention of the statute or regulation but go beyond a strict interpretation of its terms. |
| Compensation payments | Special Payment | Assurance team | NHSE/ DHSC/ HMT | Payments made to provide redress for personal injuries, traffic accidents, and damage to property They include other payments to those in the public service outside statutory schemes or outside contracts |
| Special severance payments | Special Payment | NHSE Regional Director of Workforce and OD | EHRSG DHSC GAC HMT | Payments made to employees, contractors and others beyond above normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract |

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| | | | | Regional and further Approval is required regardless of the value of the non contractual pay package. |
| Ex gratia payments | Special Payment | Assurance team | NHSE/ DHSC/ HMT | Go beyond statutory cover, legal liability, or administrative rules, including payments; <ul style="list-style-type: none"> • made to meet hardship caused by official failure or delay; • out of court settlements to avoid legal action on grounds of official inadequacy; and, • payments to contractors outside a binding contract, e.g. on grounds of hardship |
| Retention payments | Special Payment | Regional Director of Workforce and OD | | Payments, designed to encourage staff to delay their departures, particularly where transformations of ALBs are being negotiated, are also classified as novel and contentious. Such payments always require explicit Treasury approval, whether proposed in individual cases or in groups. Treasury approval must be obtained before any commitment, whether oral or in writing , is made. |

3.5 Annual assurance statements

3.5.1 As part of the new compliance and control procedures over exit packages, ICBs must submit an annual assurance statement confirming the following:

- details of all¹ exit packages (including special severance payments) that have been agreed and/or made during the year;
- that NHS England and HMT ² approvals have been obtained (in relation to non-contractual pay elements or amounts that exceed the ICB delegated limits) before any offers, whether verbally or in writing, are made; and
- adherence to the special severance payments guidance as published by NHS England.

3.5.2 Further guidance will be provided to ICBs on this process

3.6 Interpretation

3.6.1 Should any difficulties arise regarding the interpretation or application of any part of this losses and special payment guidance, the advice of the NHS England Head of assurance and counter fraud (england.assurance@nhs.net) must be sought before acting.

3.7 Delegation of Function, Duties and Powers

3.7.1 The ICB Constitution must have a governing body that makes provision for the appointment of the Audit Committee.

3.7.2 The ICB standing financial instructions should clearly indicate the role that the audit committee has in reviewing and approving losses and special payments.

3.7.3 The ICB standing financial instructions should indicate the delegated limits that have been agreed by the governing body for operational purposes.

¹ The assurance statement must include all exit packages, thus, contractual and non contractual.

² This is only applicable to elements of the exit packages that are classified as non contractual

4 Integrated care board reporting requirements

4.1 Capturing of losses and special payments

- 4.1.1 The ICB chief financial officer is responsible for ensuring that processes and procedures that facilitate the capturing and reporting of losses and special payments are in place and ensure that a losses and special payments register is maintained.
- 4.1.2 All losses and special payments for ICBs must be recorded in the register and reviewed as part of the internal controls process.

4.2 Parliamentary accountability and audit report

- 4.2.1 The ICB must maintain a losses and special payments register that provides the requested information to complete the NHS England group account.
- 4.2.2 It should be noted that ICBs do not have a mandatory requirement to produce a Parliamentary accountability and audit report as other entities that report directly to Parliament. However, it is a mandatory requirement that ICBs produce an audit certificate and report.

There will be a need to collect data for the NHS England consolidated account. NHS England will also use this information to complete the DHSC summarisation schedule for the DHSC consolidated account. Therefore, regardless of applicability of this report, all ICBs must ensure the summarisation schedule is completed.

- 4.2.3 If there are any individual cases or a group of losses or special payments that exceed or the aggregate value of £100,000, the related payment should be noted separately on the ICB yearend template completed for the NHS England group account.

5 Roles and responsibilities

5.1 Financial Control

5.1.1 Chief Financial Officer

5.1.2 It is noted and acknowledged that the roles and responsibilities for the chief financial officer vary in all the ICBs. The chief financial officer should implement a system of internal control that details the process for reporting losses, recording losses, monitoring and reporting the losses and special payments to the ICB's audit committee based on existing reporting cycles.

5.1.3 The reporting cycle should also clarify the delegated sum that the chief financial officer can authorise as a loss or special payment. The delegated sum should be in line with the ICB escalation process for losses and special payments.