



**PWYLLGOR ARCHWILIO A SICRWYDD RISG
AUDIT AND RISK ASSURANCE COMMITTEE**

DYDDIAD Y CYFARFOD: DATE OF MEETING:	20 June 2023
TEITL YR ADRODDIAD: TITLE OF REPORT:	Execution of the Contract for the Construction of the Day Surgery Unit, Prince Philip Hospital
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Lee Davies, Director of Strategy and Planning
SWYDDOG ADRODD: REPORTING OFFICER:	Lee Davies, Director of Strategy and Planning

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Ar Gyfer Trafodaeth/For Discussion

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

The purpose of this report is to report a breach in Standing Orders to the Audit and Risk Assurance Committee in regard to the execution of the amended JCT Design and Build Contract 2016 dated 23 December 2021 (the Contract) between the Health Board and Vanguard Healthcare Solutions Limited (Vanguard) for the construction of the Day Surgery Unit in Prince Philip Hospital. The sealing of the contract was not undertaken in accordance with Section 9 (Signing and Sealing Documents) of Standing Orders.

Cefndir / Background

Standing Orders

It became apparent on 15 January 2023 that Standing Orders in relation to signing and sealing of documents had not followed in relation to the execution of the contract valued at £14m between the Health Board and Vanguard Healthcare Solutions Limited for the construction of the Day Surgery Unit in Prince Philip Hospital. The Committee is advised that an issue remains with the execution of this Contract. It should be noted that the Health Board has a robust process in place for signing and sealing of documentation which was not followed on this occasion.

Furthermore, Standing Orders state full details of any non-compliance with the SOs, including an explanation of the reasons and circumstances must be reported in the first instance to the Director of Corporate Governance/Board Secretary, who will ask the Audit and Risk Assurance Committee to formally consider the matter and make proposals to the Board on any action to be taken. All Board members and LHB officers have a duty to report any non-compliance to the Director of Corporate Governance/Board Secretary as soon as they are aware of any circumstance that has not previously been reported.

Asesiad / Assessment

The Board approved the award of the Contract (Day Surgery Unit, Prince Philip Hospital) to Vanguard at its Public Board meeting on 25 November 2021.

Due to the urgency to sign the aforementioned contract, due process was not followed including bypassing governance processes, leading to the common seal not being applied and the contract not being signed, sealed and reported to the Board.

The version of the agreement held by Vanguard was signed by the Director of Nursing, Quality and Patient Experience and the copy held by the Health Board has been signed by the Chief Executive. Vanguard has applied its seal to the version of the contract provided to the Health Board.

The Health Board's Standing Orders provide: Standing Orders and Standing Financial Instructions - Hywel Dda University Health Board (nhs.wales):

- SO 9.0.1 (Signing and Sealing of Documents) states that the seal is to be used for legal documents such as transfers of land and leases and other important key contracts. The seal can only be applied if the Board has determined it shall be sealed, or the transaction has been agreed by Board.
- SO 9.0.2 states that for documents where the seal is to be applied, the seal is fixed in the presence of the Chief Executive and Chair (or their nominated deputies), who sign the document as evidence that it was sealed. A register is maintained recording each document sealed and this is reported to the Board as part of the Chief Executive's Report.
- SO 9.2.1 states that a legal document shall be signed by the Chief Executive or anyone who has delegated authority/directed by the Board.

As there is no evidence of this document being sealed by the Health Board, the Committee is advised that this is a technical breach of the Standing Orders, however authority to sign sits solely with the Chief Executive/Deputy Chief Executive and needs to be counter signed by the Chair or Vice Chair.

Following legal advice and considering the impact of negotiating with Vanguard at this current time (whilst there are on-going discussions about non-performance on the Contract), the Health Board has decided to accept that the Contract takes effect as a simple contract and not as a Deed (under seal). The main difference between the Deed and the simple contract is that the Deed has a limitation period of 12 years (the period when a party can make a claim for breach of contract) and a simple contract is six years from the date the cause of action accrued.

As the Common Seal was not on the final Contract, it is most likely that the Contract would not be a valid Deed but a simple contract.

Taking account of the legal advice, the Health Board has decided to accept the Contract as a simple contract and not as a Deed (under seal). Whilst this provides a shorter limitation period of six years, there are limited options available and the risk of a future claim is considered low.

The sealing of contracts is a standard procedure that is undertaken frequently within the Health Board without issue. Whilst this is believed to be an isolated incident, the procedures for sealing have been reinforced within the team to reduce the risk of a further occurrence with a reminder governance advice must be sought and processes followed in relation to awarding of contracts that require the application of the seal.

Argymhelliad / Recommendation

The Committee is asked to **NOTE**, and **REPORT** to the Board, the Health Board's decision to mitigate the breach of Standing Orders by proceeding with the JCT Design and Build Contract 2016 dated 23 December 2021 between the Health Board and Vanguard for the construction of the Day Surgery Unit in Prince Philip Hospital, as a simple contract, with a limitation period of six (6) years from the date the cause of action accrued.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	Not Applicable
Galluogwyr Ansawdd: Enablers of Quality: Quality and Engagement Act (sharepoint.com)	1. Leadership
Parthau Ansawdd: Domains of Quality Quality and Engagement Act (sharepoint.com)	Not Applicable
Amcanion Strategol y BIP: UHB Strategic Objectives:	6. Sustainable use of resources
Amcanion Cynllunio Planning Objectives	Not Applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022	9. All HDdUHB Well-being Objectives apply

Gwybodaeth Ychwanegol:

Further Information:

Ar sail tystiolaeth: Evidence Base:	Standing Orders
Rhestr Termiau: Glossary of Terms:	Included within the body of the report
Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Cyfarfod Bwrdd Iechyd Prifysgol: Parties / Committees consulted prior to University Health Board:	Chief Executive Officer Director of Corporate Governance

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	Any issues are identified in the report
Ansawdd / Gofal Claf: Quality / Patient Care:	Any issues are identified in the report
Gweithlu: Workforce:	Any issues are identified in the report
Risg: Risk:	Detailed within the paper
Cyfreithiol: Legal:	The legal advice has not been provided in full in this SBAR due to legal professional privilege
Enw Da: Reputational:	Any issues are identified in the report
Gyfrinachedd: Privacy:	Not Applicable
Cydraddoldeb: Equality:	<ul style="list-style-type: none"> • Has EqIA screening been undertaken? No • Has a full EqIA been undertaken? No