



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

<b>DYDDIAD Y CYFARFOD: DATE OF MEETING:</b>	09 May 2024
<b>TEITL YR ADRODDIAD: TITLE OF REPORT:</b>	Industrial Action – Salary Overpayments
<b>CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:</b>	Dr Ardiana Gjini, Director of Public Health
<b>SWYDDOG ADRODD: REPORTING OFFICER:</b>	Sam Hussell, Head of EPRR Heather Hinkin, Head of Workforce

**Pwrpas yr Adroddiad (dewiswch fel yn addas)**

**Purpose of the Report (select as appropriate)**

Er Sicrwydd/For Assurance

**ADRODDIAD SCAA**

**SBAR REPORT**

**Sefyllfa / Situation**

The Industrial Action Planning Group (IAPG) was made aware, from undertaking internal debriefs and from national discussions, of a potential financial issue relating to payment to Consultants and SAS Doctors for covering shifts during recent BMA Junior Doctor industrial action (15-18 January 2024 and 21-24 February 2024).

Following early scoping that commenced on 9 February 2024 and focused on payroll validation, the IAPG arranged a lessons learned session with Rota Co-ordinators and Service Managers. The focus of the session was to understand how the financial issues had arisen and to minimise repeat errors for the February payments. In addition to the suspected errors, it became apparent that in the absence of advance clear guidance in the period leading up to the Junior Doctor industrial action in January, some operational teams had based their negotiations with affected staff on informal and unofficial interpretations of anticipated rates, which were also being used to underpin negotiations for the IA dates in February.

The Health Board was asked by NHS Employers on 23 February 2024 to give assurance by close of play on 26 February 2024 that no issues of concern had arisen across Hywel Dda UHB as they had received a payroll report indicating there may be occurrences of potential overpayments. The IAPG did have concerns (an initial high-level assessment undertaken by the IAPG indicated several potential issues with top-up payments) and a response indicating this position was submitted confirming further investigation was underway to clarify the situation.

**Cefndir / Background**

In the period leading up to the dates of the initial Junior Doctors' action in January 2024, there was significant uncertainty and operational concern amongst clinical leads and operational managers regarding the rates to be applied in negotiations with senior staff (consultants and SAS doctors) for cover of junior doctor absences. In the absence of confirmed guidance, unofficial draft interpretations of anticipated rates were in circulation amongst clinical teams which varied from the national rates of pay which were not agreed

and published until Friday 12 January 2024, one working day before commencement of the industrial action on Monday 15 January 2024. Upon receipt of confirmation of the national rates, communication of these rates was cascaded throughout the Health Board via a slide deck for Operational Managers, the intranet Industrial Action page (that indicated an additional payment was available, but did not include specific pay rates), and a letter from the Medical Director on 12 January 2024. Rates and associated guidance were also included in the payroll returns spreadsheet each service area was required to submit.

Rota Co-ordinators for all services were tasked with completion and submission of the payroll returns for their service area following each period of industrial action. These returns identified Junior Doctors who had taken industrial action and required pay deductions. Consultants who worked additional hours or undertook different duties and SAS Doctors who worked additional hours to ensure service continuity where possible were also detailed to facilitate payment.

Service level returns were collated into one Hywel Dda UHB return and submitted to payroll by payroll cut off –2 February 2024.

### Asesiad / Assessment

Chronology of payrate implementation:

22/12/23	Confidential pay rate reference guide v.3 issued to restricted circulation (CEOs and DWODs) by NHS Employers.
10/01/24	Pay rate reference guide v.6 agreed by CEOs across NHS Wales.
11/01/24	Remuneration & Terms of Service Committee approve nationally agreed rates.
12/01/24	Slide deck of Information for Operational Managers including pay rates & guidance issued via Operational Leads.
12/01/24	Letter from CEO sent to medical workforce confirming industrial action rates.
12/01/24	Pay rate reference guide v.7 received from NHS Employers.
12/01/24	Request for Chair's action or further Remuneration & Terms of Service Committee to approve application of amended Pay Rate Reference Guide v.7.
12/01/24	Approval given to communicate v.7 with retrospective consideration by Remuneration & Terms of Service Committee at their next meeting.
12/01/24	Strike Pay Management Payroll Guidance and Deduction Form v.9 received from NHS Employers (which contained the nationally agreed pay rates from the Pay Rate Reference Guide v.7).
17/01/24	Remuneration & Terms of Service Committee retrospectively approved amended Pay Rate Reference Guide v.7
17/01/24	A training session was undertaken on Friday 16 February 2024 with Rota Co-ordinators and Service Managers to go through the submission requirements and validation process of information entered. Clarity was also given on finer contractual issues impacting pay e.g. differentiating between "additional" and "different" duties plus the inclusion of "acting down" in SAS Doctors contracts thus making them ineligible for top-up payments.

Initial assessment indicated a number of potential issues being identified:

1. Over-payment of Consultants. This appeared to have resulted from the normal hourly rate not being deducted from top-up IA payments during payroll calculation resulting in a double payment. Potential figure involved was £61,379.

2. Over-payment of SAS Doctors. This also appears to have resulted from the normal hourly rate not being deducted from top-up IA payments correctly claimed during payroll calculation resulting in a double payment.
3. Incorrect payment of some SAS Doctors. This is due to ineligibility for payments claimed (i.e., SAS Doctors asked to cover work within the limits of their contract during their scheduled working hours will already be being paid for that time and cannot claim additional payment). Potential figure involved across both SAS issues was £51,090.
4. Junior Doctors – some who have taken on additional shifts and have claimed senior doctor rates incorrectly. Potential figure involved was £13,804.

## **ACTIONS**

A training session was undertaken on Friday 16 February 2024 with Rota Co-ordinators and Service Managers to go through the submission requirements and validation process of information entered. Clarity was also given on finer contractual issues impacting pay e.g. differentiating between “additional” and “different” duties plus the inclusion of “acting down” in SAS Doctors contracts thus making them ineligible for top-up payments unless they had swapped from a day to a night shift.

Following the email of 23 February 2024 from NHS Employers, in order to accurately reassess the extent of the over-payment position, an urgent request was sent to all service rota co-ordinators asking them to validate their submissions for the February 2024 round of industrial action in light of the above concerns, in order to prevent a recurrence. A deadline of 11am on 27 February 2024 was given for this review.

A revised Strike Pay Management Payroll Guidance and Deduction Form v.12 was received from NHS Employers on 23 February 2024 which contained additional columns for recording and deducting hourly pay information. This would prevent a repeat of the January top-up overpayment issues identified. The IAPG took the decision to undertake completion of the additional columns as a back-office function by the Workforce & OD teams as local service rota co-ordinators would not have access to the level of individual pay information required.

A thorough scrutiny process was undertaken to validate each line of both the January 2024 and February 2024 payroll submissions (proactively for February and retrospectively for January submissions). Each line of the submission was discussed in detail with the relevant rota co-ordinator and/or service manager. The February submission was scrutinised first, prior to payroll cut off, in order to prevent any further potential over-payments being processed. The Health Board submission for February 2024 industrial action was then submitted to payroll by the cut-off of 4 March 2024.

## **JANUARY SUBMISSION ANALYSIS**

The over-payment of Consultants and a small number of SAS Doctors appeared to be due to a number of issues:

- All Wales documentation did not allow for the normally hourly rate, the top-up rate and the differential due to be captured and therefore the full top up rate was uploaded.
- This resulted in the batch upload of information in Payroll paying both normal hourly rate and full top-up rate rather than the difference between the two.
- The absence of agreed and published nationally agreed rates until very late in the planning process and incorrect reliance by some teams on unofficial draft interpretations of the anticipated rates, which varied from those ultimately published.

This resulted in some clinical leads and managers having incorrect information to hand when negotiating rotas with staff.

The over-payment of the majority of SAS Doctors was more complex. Whilst payroll returns could be clarified, and any over-payment reclaimed there was a risk of harming the goodwill of the workforce to support future rounds of industrial action (which are likely to be on-going in for several months) should they feel that the rates offered/negotiated and accepted at the time at service level were reneged on.

**Consultants:** 57 instances of over-payment were identified, all of which have now been reclaimed (or have agreed a re-payment plan over 2-3 months). The initial potential over-payment indicated was £61,379 and the amount being recouped is confirmed as **£63,685.70** (due to confirmation that too many hours had been put through for payment for one individual than had been worked; therefore, the overpayment value increased accordingly).

**SAS Doctors:**

The initial potential over-payment indicated was £51,090 and the amount subsequently confirmed was £39,326.56. Details of this group were escalated to the Executive Team for discussion and agreement on contractual obligations, risk factors and whether recovery was appropriate.

Group 1	Confirmed as over-paid (ineligible to claim as within contracted duties) with full recovery proposed by Service (5 individuals).	£9,103.00
Group 2	Confirmed as over-paid. A. Rate incorrectly offered/negotiated and accepted locally (9 individuals) <b>PLUS</b> B. Over-payment of the normal hourly rate not being deducted from the top-up payments.	£15,246.56
Group 3	Confirmed as over-paid. A. Actual rate not discussed but understood as applicable (7 individuals). <b>PLUS</b> B. Over-payment of the normal hourly rate not being deducted from the top-up payments.	£14,977.00
	<b>TOTAL</b>	<b>£39,326.56</b>

Following discussion, the Executive Team agreed that Group 1 should be reclaimed in full. For Groups 2 & 3 it was agreed to reclaim part B only (£9,417) as part A constituted a contractual agreement and was therefore not an overpayment. This has been actioned and will be recovered in May pay. The total being recovered in the SAS Doctor group is therefore **£18,520.00** (impacting 21 staff).

**Junior Doctors:** The initial potential over-payment indicated was £13,804.

- 1 individual who swapped shifts – therefore no entitlement to an additional payment. Full recovery of the amount overpaid has been initiated but is being challenged.
- 1 individual where there was an overpayment but not to the extent initially queried due to them having worked evening and night shifts on top of annual leave by day. Letter issued for recovery through finance due to them having left the Health Board in January 2024 (after the action).
- The other 4 individuals identified as having potentially received an overpayment were correct and paid at the correct rate they were due, for the hours worked (should have been processed through normal payment methods).

Final position in the Junior Doctor category was an overpayment of **£2,635**. This is in the process of being recovered through our usual mechanisms.

**FEBRUARY SUBMISSION ANALYSIS** Ambiguity of the information required in the national payroll return for the January industrial action was recognised and rectified nationally via an amendment used for the February 2024 return. A revised Strike Pay Management Payroll Guidance and Deduction Form v.12 was received from NHS Employers on 23 February 2024 which contained additional columns for recording and deducting hourly pay information. This would prevent a repeat of the January top-up overpayment issues identified.

Due to the late circulation of the revised Strike Pay Management Payroll Guidance and Deduction Form v.12, the IAPG took the decision to undertake completion of the additional columns as a back-office function by the Workforce & OD teams as local service rota co-ordinators would not have access to the level of individual pay information required.

Confirmation from Payroll on 28 March 2024 indicated that the February 2024 Payroll return went a lot smoother compared to January 2024 and the recovery of over-payments instigated seems to have gone well. Twenty nine late claims for January 2024 and February 2024 rounds of industrial action were received and validated in April 2024 which will be received in May 2024 pay.

## **CONCLUSION**

Despite the amendments made in v.12 there still appeared to be a potential for error. In order to address this, a meeting was held on 11 March 2024 between NHS Employers; NWSSP (Payroll) and a number of Health Boards including Hywel Dda UHB. A further review of the system used to collect, collate, and process the payroll information was undertaken and agreement reached on changes required to minimise the risk of future issues:

- Addition of supplementary information to enable easier scrutiny of returns at Health Board level prior to submission.
- Exploration of electronic systems that could be utilised to facilitate submissions.
- Discussion with Payroll & NHS Employers to review level of Payroll support of the process as this varied significantly across Health Board areas.

Reliance by some teams on unofficial draft interpretations of the anticipated pay rates which ultimately proved to be inaccurate, prior to the nationally agreed rates being cascaded, led to variances from the nationally agreed pay rates being offered and claimed for at service level. The late publication of the nationally agreed rates appears to have been a contributory factor, despite efforts undertaken to communicate the nationally agreed rates across the organisation on Friday 12 January 2024.

### Argymhelliad / Recommendation

The Committee is asked to take assurance from this report that a thorough investigation of the situation was undertaken, and financial recovery steps actioned. Further assurance can be taken from the remedial actions implemented to minimise risk of reoccurrence.

### **Amcanion: (rhaid cwblhau)**

#### **Objectives: (must be completed)**

Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor:	
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	1548
Parthau Ansawdd: Domains of Quality <a href="#">Quality and Engagement Act (sharepoint.com)</a>	7. All apply
Galluogwyr Ansawdd: Enablers of Quality: <a href="#">Quality and Engagement Act (sharepoint.com)</a>	6. All Apply
Amcanion Strategol y BIP: UHB Strategic Objectives:	6. Sustainable use of resources 3. Striving to deliver and develop excellent services
Amcanion Cynllunio Planning Objectives	8c Financial Roadmap Not Applicable Choose an item.
Amcanion Llesiant BIP: UHB Well-being Objectives: <a href="#">Hyperlink to HDdUHB Well-being Objectives Annual Report 2021-2022</a>	10. Not Applicable

### **Gwybodaeth Ychwanegol:**

#### **Further Information:**

Ar sail tystiolaeth: Evidence Base:	Workforce rotas Payroll Returns Clarification with Service Managers
Rhestr Termiau: Glossary of Terms:	
Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Archwilio a Sicrwydd Risg Parties / Committees consulted prior to Audit and Risk Assurance Committee:	Industrial Action Planning Group Executive Team

<b>Effaith: (rhaid cwblhau)</b> <b>Impact: (must be completed)</b>	
<b>Ariannol / Gwerth am Arian:</b> <b>Financial / Service:</b>	There is a financial impact, but this is in relation to recouping a financial over-payment rather than a spend implication.
<b>Ansawdd / Gofal Claf:</b> <b>Quality / Patient Care:</b>	The knock-on impact of the outcome of this issue could impact on patient care in future rounds of industrial action.
<b>Gweithlu:</b> <b>Workforce:</b>	There may be impact to certain workforce groups as the over-payment detailed were in salary payments for payments during industrial action.
<b>Risg:</b> <b>Risk:</b>	Risks are highlighted in the SBAR relating to potential for reduced engagement in covering future rounds of industrial action
<b>Cyfreithiol:</b> <b>Legal:</b>	Application of recovery of over-payments covered by the Wages Act 2023 and Employment Rights Act 1996.
<b>Enw Da:</b> <b>Reputational:</b>	There was the potential for this issue to impact staff morale.
<b>Gyfrinachedd:</b> <b>Privacy:</b>	No issues identified.
<b>Cydraddoldeb:</b> <b>Equality:</b>	Not applicable.