

Summary of the Personal Injury and Clinical Negligence Claims Market in England and Wales July 2015

Abstract:

In this annual summary of the state of the Personal Injury and Clinical Negligence Claims Market in England and Wales, bringing together the figures from the various Government bodies, the Courts, the CRU and the NHSLA, Andrew Ritchie QC concludes that: Clinical Negligence incidents in hospitals are increasing, the NHSLA is becoming more efficient and most PI and CN cases are settling long before trial.

Terminology:

PI = Personal Injury; CN = Clinical Negligence.

1. How many accidents and claims are there in England and Wales each year?

Every PI or CN claims for damages must be registered with the CRU if there is a potential for state benefits to be paid out to the injured person.

The CRU figures are as follows¹:

Year	Clinical Negligence	Employer	Motor	Other	Public	Liability not known	Total
2014/15	18,258	103,401	761,878	12,972	100,072	1,778	998,359
2013/14	18,499	105,291	772,843	14,467	103,578	2,123	1,016,801
2012/13	16,006	91,115	818,334	17,695	102,984	2,175	1,048,309
2011/12	13,517	87,350	828,489	4,435	104,863	2,496	1,041,150
2010/11	13,022	81,470	790,999	3,855	94,872	3,163	987,381

Analysis and comments:

These figures show that:

- The totals number of PI and CN incidents which lead to claims (whether issued or not) in England and Wales has been around **1 million per annum**

¹ Source, The Compensation Recovery Unit.

for 5 years. That means **2,740 negligent or potentially negligent acts occur per day.**

- Clinical negligence has become more and more of a problem in the National Health Service since 2010. The number of claims has grown by 40% since 2010/2011.
- It is noteworthy that NHS funding cuts were made by the coalition Government in 2010 as a result of the financial crisis of 2008-2009.
- The increase in clinical negligence claims is probably not explained away by blaming *claims farmers, lawyers, or Ambulance chasers*, because heavy advertising to capture CN and PI claims has been in existence nationwide for over 10 years.
- The number of RTA claims is decreasing but only a little.
- The number of Employers Liability claims is steadily increasing.
- The Government’s abolition of strict liability for breach of health and safety regulations in 2014 and the reduction in funding of the HSE 4-5 years ago are probably to blame for the increase in Employers negligence and hence claims.

2. How many personal injury and clinical negligence claims are issued in Courts each year?

The court reporting system for claims is that they are either “money claims” or “non money claims”. Within “money claims” there are two parts: claims for a specified sum (debt) and claims for an “unspecified sum”: PI and CN. About 17% of the “money claims” issued were for an unspecified sum of money so for PI and CN in 2013 and 12% in 2015. No High Court Figures are published.

The number of PI and CN claims was on an upward trend from 2000 to 2010 and then decreased. In 2010 over 190,000 claims were issued. By 2014 this had reduced to 140,428. This was in part due to the introduction of new Portal for road traffic accident personal injury cases which started for accidents on or after 6 April 2010.²

Year	Quarter	Specified money claims	Unspecified money claims
2000		1,438,673	113,273
2001		1,301,312	129,380
2002		1,201,583	142,883
2003		1,153,697	151,204
2004		1,185,688	143,166

² Source: Civil Justice Statistics Main table 1st quarter 2015.

2005	1,429,438	147,120
2006	1,570,962	145,195
2007	1,408,448	144,128
2008	1,426,365	160,248
2009	1,281,132	178,969
2010	1,040,598	190,582
2011	995,879	178,234
2012	894,822	172,587
2013	945,197	160,258
2014 (r)	1,137,483	140,428

Analysis and comment

- The government statistics in relation to PI and CN clearly show that the number of cases being issued in the county courts is falling. Since 2010 it has fallen by 26%.
- The government does not publish figures for the High Court. We consider that they should do so starting in 2015.
- Of the 1 million CRU registered claims each year only 140,000 (to 160,000) pa are issued, so 860,000 claims are either settled before issue or withdrawn. So on average only 14% of potentially negligent events become issued claims.
- Bear in mind that the High Court statistics are not produced.

3. How many of these County Court cases are multi track?

Of the total number of cases issued in 2015 (1,595,441) only 232,049 were defended. Furthermore the 2015 figures show that of all issued cases (not just PI and CN) 17,547 were allocated to the multi track. 56,688 were allocated to the fast track.³

Analysis and comment

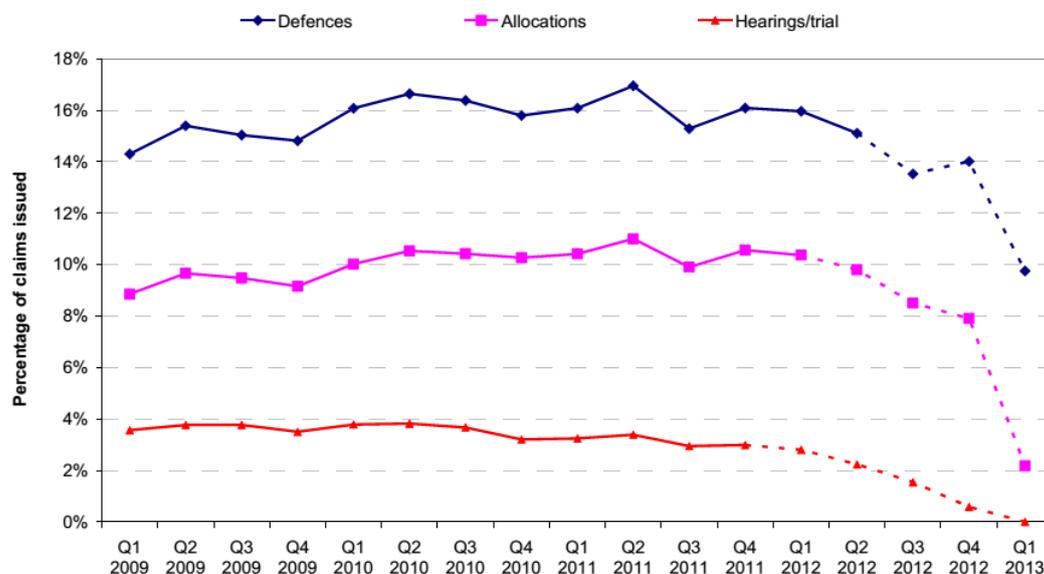
- A tiny percentage of issued cases are allocated to the multi track. About 0.01%.
- In PI and CN the percentage is probably much higher than the overall percentage. The percentage cannot be higher than $17,547 / 140,428 = 12.5\%$.
- It is therefore likely that around 10% of PI and CN cases issued are allocated to the multi track.

4. How many PI and CN cases go to trial?

Less than 4% of all issued civil claims (all categories) go to trial (QCS Q1 2013 p 10).

³ Source: Civil Justice Statistics Main table 1st quarter 2015.

Figure 1.1: Percentage of claims that have been defended, allocated or proceeded to trial in England and Wales, Q1 2009 to Q1 2013¹



Note: The lines are dashed towards the end of the period because there has been insufficient time to allow the majority of the cases to progress through the county court system. Therefore the presented values are likely to be substantially different from the final values and are shown just for information only.

The total number of trials in County Courts in all types of cases has steadily gone down year on year since 2000. There were 44,805 in 2014 down from 71,223 in 2000.

Analysis and Comment:

- These figures support the view that the vast majority of PI and CN cases are settling every year without trial, so the objective of Lord Justice Woolf when he made his reforms to Civil Procedure in 1999 has been achieved.
- Very few cases go to trial, probably under 4% of those issued.

5. Detailed Assessment of Costs in Civil Proceedings

The office of the Senior Courts Cost Office (SCCO) is responsible for detailed assessment of costs and the process of examining and, if necessary, reducing the bill of costs of a solicitor or Litigant in Person. Costs include not only the solicitor’s own professional fees, but also disbursements incurred including barristers’ and experts’ fees. In 2012 the SCCO assessed 11,307 bills, a reduction of 2% on the 11,561 assessed in 2011. This has been driven by a 47% decrease in “Between parties” assessments, from 2,031 in 2011 to 1,067 in 2012.

Analysis and Comment:

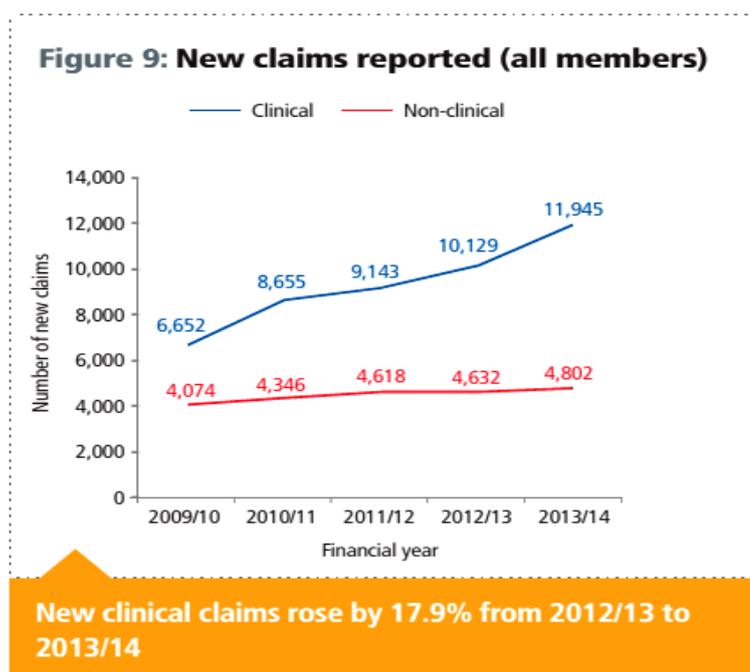
- Costs budgeting has bunged up the courts with Costs Case Management Hearings, creating 9 months of delay clinical negligence cases before the CCMC.

- A moratorium has been placed upon holding any such hearing in CN cases from the autumn of 2015 until the spring of 2016.
- Delays of between 6 months and a year in the SCCO after cases have settled or been tried has led to further delays in the recovery of costs by claimant lawyers in clinical negligence cases.

6. NHSLA annual reports

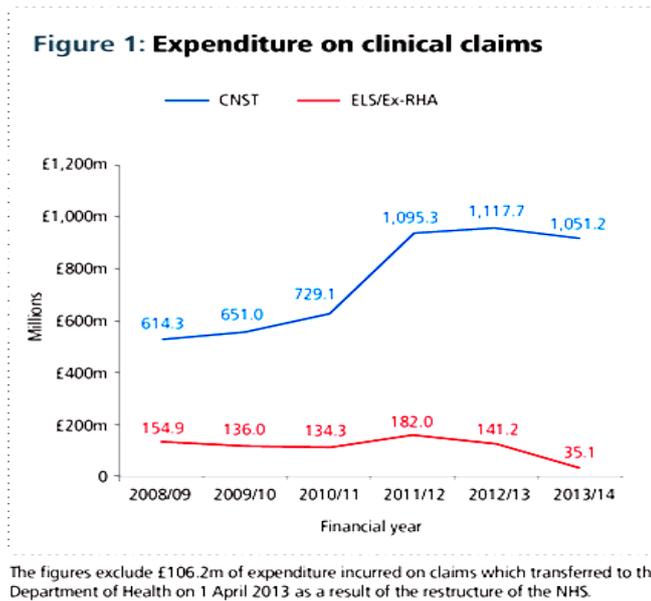
6.1 New claims for CN

The NHSLA figures match the Government figures to show that the annual incidence of clinical negligence claims continue to rise sharply:



6.2 How much is paid out?

The figures from the NHSLA annual report 2013/2014 on damages paid out do not match the Government's statistics or the CRU figures. They show that spending on clinical claims rose to 2012 and has levelled off or reduced since. See below.

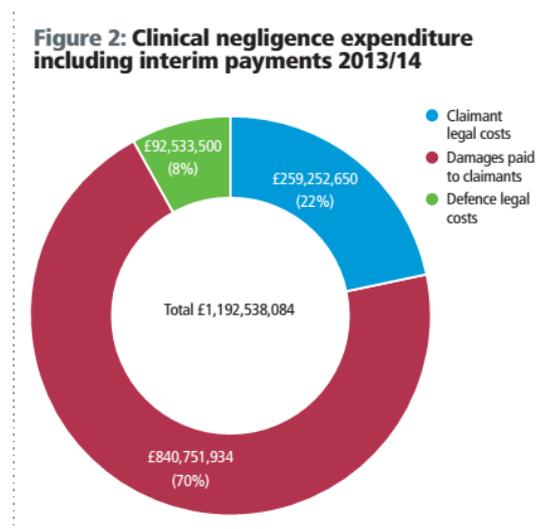


Analysis and Comment:

- This fall in payments out will most probably be as a result of NHSLA efficiency because the number of claims being brought is rising.

6.3 How much does the NHSLA spend on damages and how much on costs?

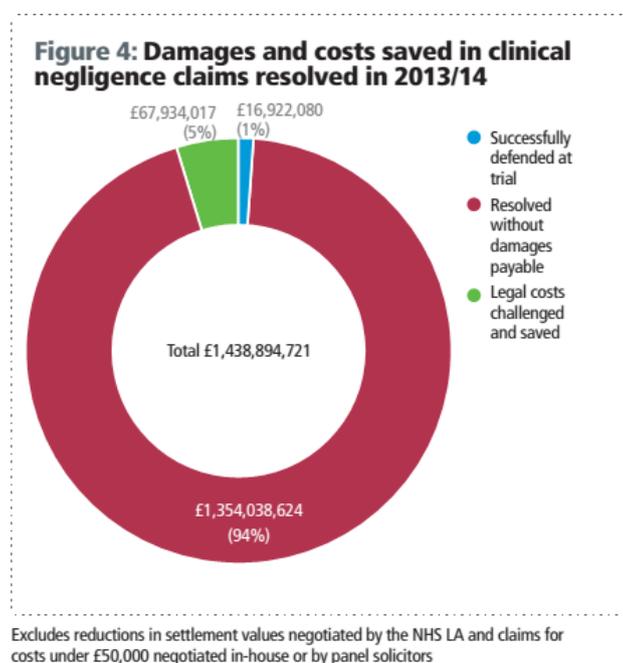
These questions are neatly answered in the pie chart in the 2013/2014 report. 70% is spent on damages and 8% on defence legal costs and 22% on claimant lawyers costs. The NHSLA paid out £840 million in damages and £259 million in costs for claimant lawyers, and £92.5 million on defence lawyers.



Analysis and Comment:

- Ill informed journalists and better informed Government Ministers generally criticise claimant lawyers for costing more than defence lawyers in clinical negligence cases.
- It is a fundamental tenant of our civil law that the burden of proof is on the claimant. To prove the case it has to be built on evidence and to collect the evidence costs time and money.
- Defending a case involves choosing which issues to fight and gathering evidence on those alone. Defending is less time consuming than building a claim.
- In addition the NHSLA does some of the legal work in defending cases so the figures for defence costs are reduced.

6.4 How many CN cases settle and how many fight?



The NHSLA record that they “*Saved over £1.4 billion for the NHS by robustly defending unjustified clinical negligence claims so that 44% of the clinical claims that we dealt with in the past year were resolved with no payment of damages and 79% of the relatively small proportion of cases that were decided in court were successfully defended at trial.*”

Analysis and Comment:

- The investigation and preparation of CN cases takes a lot of lawyers and experts time, and so costs a lot more than RTA and most EL claims.
- It is right to say that many CN cases fall by the wayside when the experts’ reports on liability and causation are completed and exchanged.

- With the abolition of Legal Aid in all but brain damaged baby CN cases and the capping of success fees to a very low level, lawyers are paid nothing to start, prepare and fight cases at trial. Lawyers' fees are only paid if they win and only then about 18 months after they win because the court system for approving the level of fees payable is very slow. As a result it is much tougher for the injured to bring clinical negligence claims today than it was 2 years ago.
- The rise in the number of CN claims brought is most likely due to increased negligence in NHS hospitals around the country.

Andrew Ritchie QC, 16 July 2015

Sources:

Government Statistics from the Compensation Recovery unit (CRU); the Quarterly Court Statistics⁴ (QCS) and the NHSLA annual Reports.

END

⁴Email: statistics.enquiries@justice.gsi.gov.uk