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Evaluating the low value Road Traffic Accident process

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Context

This report looks at the impact of the low value Road Traffic Accident (RTA) process on general damages, costs, and speed of settlement in low value RTA claims, one year after implementation.

The scheme was introduced to reduce costs and improve efficiency in RTA claims valued between £1,000 and £10,000 where liability is admitted. It introduced set stages in the claims process with fixed recoverable costs and success fees for each stage and an electronic Portal facilitating the exchange of information.

Approach

This report assesses whether mean general damages, mean costs and mean speed of settlement differed before and after the RTA process was introduced in May 2010, through a comparison of pre- and post-Portal data. The pre-Portal sample included information on low value RTA claims made with accident dates between May 1st 2009 and April 30th 2010, whilst the post-Portal sample included the same information for claims with accident dates between May 1st 2010 and April 30th 2011.

The information was drawn from three claimant solicitor firms and two defendant insurers, and following data cleaning, separate pooled claimant and defendant samples were created. Whilst the management information from the five firms includes claims from all major insurers and a large number of Personal Injury law firms, the data may not be representative of all claims. As such, the results may only relate to this sample of RTA claims and should be treated with a degree of caution.

It was assumed that any changes observed between the pre- and post-Portal periods would be attributable to the RTA process, as this was the only significant policy change during the period analysed. However, other unknown factors impacting on claimant and/or defendant behaviour may also have affected the results.

Results

Small but statistically significant reductions in mean general damages, mean costs and mean speed of settlement in low-value RTA claims were found. The evidence suggests around a 6% reduction in mean general damages, a fall of around 3–4% in average costs, and a

reduction of around 5–7% in the average delay to settlement. The results are based on a total of 7,416 pre-Portal and 8,584 post-Portal claims that reached a settlement within the observation periods.

In the post-Portal samples, these completed cases included some which were settled within the RTA process, and some which left the process and were settled under standard cost rules. Drawing on data provided by the Portal Co, around 50% of cases were found to have exited the RTA process.

Implications and recommendations

The results have a series of implications for policy development, particularly in light of the government's continued inclination to extend the current RTA process both to claims of higher value and to more types of personal injury claims. However, due to the limitations of this study, including the small number of data providers and the limited time period in which claims could be settled, the results should be treated with caution. Moreover, any extrapolation of the results of this study to an extended process would depend critically on the number of claims which remained within the process rather than opting out to be dealt with under standard rules.

In light of these limitations, the key recommendation is that the current RTA process and the existing Fixed Recoverable Cost Scheme (FRCS) should be jointly reviewed to shape future policy in this area. This review should be undertaken against the background of Jackson LJ's recommendations in respect of fixed costs for all fast track claims and include an assessment of why such a large proportion of claims exit the process, as well as how costs could be affected by other policy changes, for example the ban on referral fees. It should also consider the linkage between damages and solicitors' costs and incentives.

1. Context

This report was commissioned by the Ministry of Justice with the agreement and co-operation of Portal Co, which run the electronic Portal put in place to support the Pre-Action Protocol for Low Value Personal Injury (PI) Claims in Road Traffic Accidents (RTAs). The brief was to undertake data collection and analysis in order to evaluate the extent to which the existing low value RTA claims process has achieved its objectives in reducing costs and improving efficiency. The data collection was facilitated by Portal Co and took place during May, June and July 2011. This report represents a summary of the findings together with relevant background, context and recommendations.

The low value RTA claims process was implemented on 30 April 2010. It was designed for RTA PI claims valued between £1,000 and £10,000 and was intended to reduce costs and improve efficiency. For claims where liability was admitted, it replaced the standard civil court process, in which there was an existing fixed cost regime for road traffic accidents, and in which a set of general cost rules applied. In cases where liability is not admitted, the claim drops out of the process and is continued under the standard civil court process. As detailed in section 3.4, approximately half of all claims that enter Stage 1 of the RTA claims process subsequently exit and are pursued under the standard process.

The existing RTA process sets a timetable for action and is divided into three stages:

Stage 1: All claims pass through Stage 1 of the process. This is the initial stage where the claimant notifies the defendant of the claim. At this stage the defendant can either admit or deny liability and must do so within 15 days.

Stage 2: Involves cases where liability is admitted and the claimant sends a medical report, evidence of disbursements,[1] and an offer that specifies the amount claimed from the defendant. This stage also involves offers to settle being made by both parties and time for the parties to negotiate a settlement.

Stage 3: Involves cases that are not settled at Stage 2 and for which proceedings are issued for the court to assess the amount of damages due to the claimant. At this stage, the parties may agree a settlement before the court assessment or progress to an assessment, which may be on paper or at a hearing.

[1] Payments made by solicitors to third parties relating to work undertaken on the case e.g. expert reports.

Total recoverable costs[2] (including success fees[3]) are fixed for each stage (£400 at the end of Stage 1 and a further £800 at the end of Stage 2; £250 for a paper hearing and £500 for an oral hearing).[4] The claimant receives payment at the end of each stage. This means that by the time a claim reaches trial, the fixed recoverable costs for Stage 1 and Stage 2 will have already been paid by the defendant together with the appropriate success fee, agreed disbursements and interim damages.

A key part of the RTA process is an electronic Portal used to exchange information. The 'Portal' developed by the industry to accommodate the electronic exchange of information required by the process has been well utilised since its introduction, although data is still being gathered and tested.

2 Under the current 'two-way recoverability' cost rules, the legal costs of the winning party are paid by ('recoverable' from) the losing party.

3 If a case is funded on a 'no win no fee' basis, solicitors agree a 'success fee' payable when a case is won, which is typically a percentage uplift of the legal costs incurred on the case.

4 These costs were initially agreed through negotiations between representatives of claimants and defendants. This process, which was moderated by the Ministry of Justice, was designed to identify a set of costs which reflected reasonable amounts of work for these types of claims.

2. Approach

The methodological approach taken in this study was to use relevant data and analysis in order to estimate the impact of the RTA process on three key issues:

- Speed of settlement
- Average general damages
- Average cost (including base costs, success fees, ATE premiums and disbursements)

These three key issues are those identified by the Ministry of Justice and Portal Co as capturing the likely impact of the new process.

Speed of settlement is clearly an aspect of claims handling which is explicitly built in to the process – it was designed from the outset to facilitate the speedy settlement of claims where there was little in dispute between the parties, and therefore little reason for delay. Time constraints were specified for the notification of claims and responses, such that, in principle, any claim where there were serious concerns about liability would not be delayed or impeded by the process, while those with no such concerns would settle quickly within stage 2 of the process. The likely impact of the process on average speed of settlement therefore depends on the extent to which any stalling effect on disputed claims outweighed the expedited settlement of non-disputed claims.

Average general damages should, in principle, be unaffected by changes to the process; once liability has been admitted, the negotiations over quantum should end with similar agreements. However, it could be argued that the incentives faced by solicitors under the existing Fixed Recoverable Costs Scheme (FRCS) differ from those under the RTA process. The FRCS rewards the negotiation of higher damages as recoverable costs are a function of damages agreed; there is no such relationship under the RTA process. Consequently the possibility of lower damages under the RTA process needs to be tested.

Finally, the main rationale for the introduction of the RTA process was to facilitate less costly litigation for those claims where liability is admitted. Clearly, it needs to be tested whether the experience under the new process bears this out.

Because the Portal Co's own management information system has limited scope for identifying a benchmark against which to evaluate its performance, it was recognised at an

early stage that any evaluation of the process would have to draw on data from those companies on both sides of the industry which had experience of settling claims before and after the process was introduced. A period of negotiation took place with those industry representatives who had offered to provide assistance with the evaluation, through the agency of the Portal Co Board, to gain acceptance of the study design and data sharing.

2.1 Study design

To test the hypotheses set out above with a degree of statistical confidence, it was first necessary to find a way of obtaining data on a large number of low value RTA claims settled before and after the RTA process was introduced. Given the limited time initially allocated to the completion of the study, to obtain data on large numbers of claims it was essential that the information was available on existing management information systems from which extracts could easily and quickly be obtained, rather than through a customised survey of a sample of claims.

The first stage of the negotiation process therefore involved discussions with data providers (or their representatives) with a view to identifying the minimum core data requirements that would (a) be sufficient for the analysis to be undertaken; and (b) be recorded on all management information systems in a consistent way. The minimum core set that met these requirements was agreed as follows:

- Date of accident
- Date of claim notification
- Date of claim closure (with or without payment)
- Amount of damages agreed (i.e. general and special combined)
- Amount of costs paid (i.e. the sum of base costs, disbursements, success fees, ATE premiums)

However, simply having a large sample would not be sufficient to have confidence that an analysis of the data would provide robust results (i.e. that the sample of claims settled before and after the RTA process was introduced were representative and sufficiently comparable). The second stage of the negotiations therefore involved securing agreement from industry representatives for the study design – namely the sampling methodology used in order to obtain matched samples before and after the RTA process was introduced in May 2010. For a fair comparison between pre- and post-Portal periods, it was proposed that matched data would be required for two distinct periods:

Pre-Portal: This includes all RTA injury claims made with accident dates between May 1st 2009 and April 30th 2010, including those which were not closed, and those which were closed without payment. All these claims (including those which were litigated) would be followed up to 30th April 2010, not beyond – therefore ensuring that the same one-year observation period in terms of damages and costs applied to both samples. Consequently, if a claim settled with payment in May 2010, it would be coded as being open without payment at the end of the observation period.

Post-Portal: This includes all RTA injury claims made with accident dates between May 1st 2010 and April 30th 2011, including those which were not closed, and those which were closed without payment. All these claims (including those which were litigated and those which exited the RTA Portal process – a significant proportion of the total) would be followed up to 30th April 2011, not beyond, and damages and costs recorded along with settlement date, where relevant.

For each sample, mean damages paid, costs recovered, and time to settlement would then be estimated using pooled datasets obtained from both claimant and defendant data providers. The samples would be pooled from several companies such that any one contributor could not be identified.

Both the pre-Portal and post-Portal data samples were therefore 'matched' in the sense that they both covered a 12-month period, included all possible case outcomes, and were provided by the same claimant and defendant sources. Outcomes in the post-Portal samples, as explained above, consisted of claims which had settled within the RTA process as well as those which entered the process but subsequently exited and settled under existing Civil Procedure Rules (CPR). Evidence presented later in this report shows that the dropout rate may have been quite high (as much as 50%) and this will be anticipated to have an effect on the overall impact of the process on average outcomes.

Based on the pre- and post-Portal samples, appropriate statistical tests are then applied to determine whether mean damages paid, costs recovered, and time to settlement differed significantly between the pre- and post-Portal samples. The inference to be drawn from these comparisons is that any significant changes were causally attributable to the effect of the RTA process. There may have been other developments occurring during the two year observation period which affected costs, delay and damages, but the most far-reaching

change to the way in which low value RTA claims were handled by the data providers during this period was the introduction of the new process.[5]

2.2 Data description

Once agreement had been reached with both defendant and claimant representatives on the data template and the study design, individual datasets were provided for pooling and analysis. These datasets varied to an extent in relation to their suitability for analysis. For this reason a checklist was developed of inclusion/exclusion criteria for the pooling of datasets:

- All accident dates present
- All notification dates present
- Closure dates present for all claims other than those still outstanding at 1 May 2011
- Costs and damages recorded consistently for all closed claims
- Closed claims with damages over £10,000 excluded
- If possible, outstanding claims with estimated case value over £10,000 excluded

Several datasets were rejected for pooling on the above criteria, after a period of consultation with the providers. The datasets that were included in the pooled samples were therefore assessed as reliable, and that the resulting sample sizes were adequate. It should be emphasised that, by utilising samples of claims from large organisations on both sides of the industry, claims from many different insurers and many different solicitor firms are represented in the analysis.

[5] It is possible to speculate that some changes to the rules (e.g. the Jackson reforms) were anticipated during this period, and this anticipation may have affected behaviour. There is no easy way to test for these alternatives, and therefore a degree of caution is needed when interpreting the findings based on an attribution of impact to the RTA process.

The pre- and post-Portal matched samples obtained from claimant organisations yield results which are considered generalisable to the population of claims made by these organisations, a population which will include all major insurers as defendants. The pre- and post-Portal matched samples obtained from defendant organisations yield results which are considered generalisable to the population of claims received by these organisations, a population which will include a very large number of PI law firms as claimant representatives. It is in this sense that the samples can be said to be representative of the whole industry.[6] A wider set of data sources would clearly have been preferable, but in the absence of that possibility, the approach taken here, while not ideal, is arguably the only feasible one.

Ideally, a randomised controlled trial would have been adopted to construct representative samples. Given the nature of the data constraints this has not been possible in this setting, and samples have instead been constructed based on matching criteria as set out above.[7]

Tables 2.1 and 2.2 show the sample sizes obtained from each provider, both before ("pre") and after ("post") the RTA process was introduced. Over the relevant post-Portal period, a total of around 630,000 cases entered the RTA Portal, meaning the samples collected represent around 8% of the total population of relevant claims. Results in this paper are presented on the basis that the matched samples are indeed representative of the population of claims as a whole. However, due to the sampling issues discussed, it is not certain that this is the case.

Table 2.1: Claimant dataset sample sizes

	Opened claims		Settled claims	
Firm	**Pre-Portal**	**Post-Portal**	**Pre-Portal**	**Post-Portal**
B	10,387	15,041	1,577	2,318
E	1,337	1,211	214	229
G	9,881	8,192	1,821	1,721
Total	21,605	24,444	3,612	4,268

[6] It is noted that a possible consequence of the methods employed is that a case could enter both the claimant and defendant samples, if it were recorded by both claimant and defendant organisations.

[7] Other alternatives that might be suggested include the use of a "difference-in-difference" analysis, which would be feasible if two distinct groups of claims were available (those eligible for the process and those not) and observed both before and after the process was implemented. In fact, all low value RTA claims are eligible for the process. What determines whether they remain in the process is the willingness of the defendant to admit liability, which is unobservable in our datasets. A multivariate analysis of outcomes before and after the RTA process is another possible approach, but the outcomes of claims brought after the process was introduced are necessarily truncated in duration by comparison with outcomes of claims brought before the process was introduced, and this raises problems in relation to assumptions of linearity in the estimated relationships.

Table 2.2: Defendant dataset sample sizes

	Opened claims		Settled claims	
Firm	**Pre-Portal**	**Post-Portal**	**Pre-Portal**	**Post-Portal**
X	13,111	14,224	2,524	3,087
Y	8,986	8,981	1,280	1,229
Total	22,097	23,205	3,804	4,316

The claims data shown in tables 2.1 and 2.2 respectively were aggregated together to form two separate pooled datasets of similar sizes – one for claimants and one for defendants. Claimants and defendants record their data in different ways so it was considered inappropriate to combine the claimant and defendant data samples. For example, defendants typically do not have distinct information about the division of costs into base costs, additional liabilities and disbursements, and consequently record only a global sum, whereas the identification of base costs is the norm in claimants' management information data.

Similarly, defendants typically record a combined figure for both general and special damages, whereas claimants record general damages separately and report this. The most important requirement in respect of the study design was that, for each data provider, the recording of costs and damages was done in the same way before and after the RTA process was introduced, and they were asked to confirm this in each case.

While the aggregate pre-Portal and post-Portal samples consist of over 90,000 opened claims, mean damages, costs and settlement times are calculated from a smaller subset of closed claims – those claims that reached settlement within the observation period. These are indicated in columns 4 and 5 within tables 2.1 and 2.2. In the post-Portal sample this will include claims that settled within the RTA process and those that entered the process but subsequently exited and settled under existing CPR rules.

To illustrate the consistent flow of claims across the whole period of observation (pre- and post-Portal), figures 2.1 and 2.2 show the monthly frequency of newly notified claims for each of the pooled samples.

Figure 2.1: Pooled claimant dataset: monthly new claim frequencies

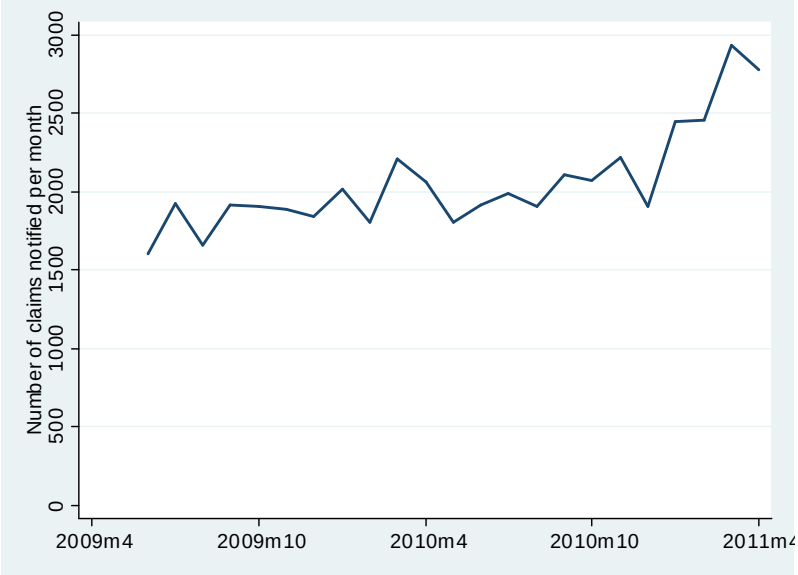
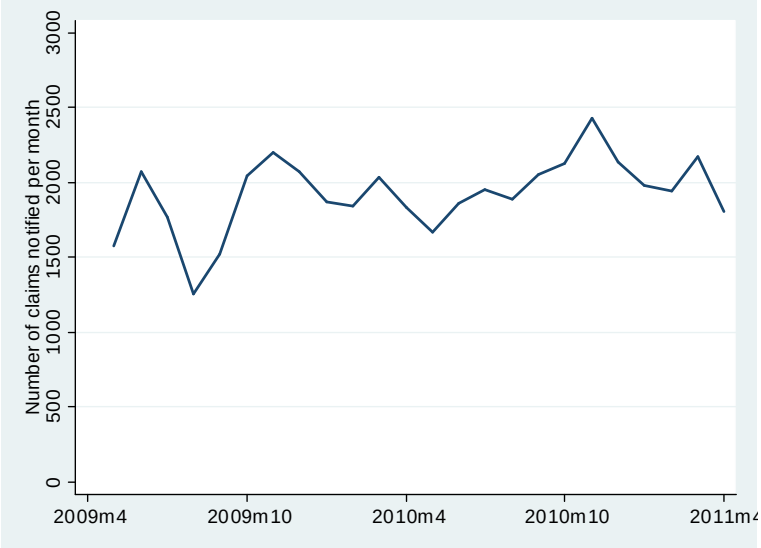


Figure 2.2: Pooled defendant dataset: monthly new claim frequencies



As explained above, the study design allowed for a maximum follow-up period of 12 months in both pre- and post-Portal samples. For this reason, the monthly flow of closed claims gradually builds up within each of these periods of follow-up. Figures 2.3 to 2.6 show that this build up of closed claims follows a similar pattern in both claimant and defendant datasets, and the differences in the rate at which claims are closed does not appear to be substantially different when comparing pre- and post-Portal experience.

Figure 2.3: Pooled claimant dataset: monthly closed claim frequencies (pre-Portal)

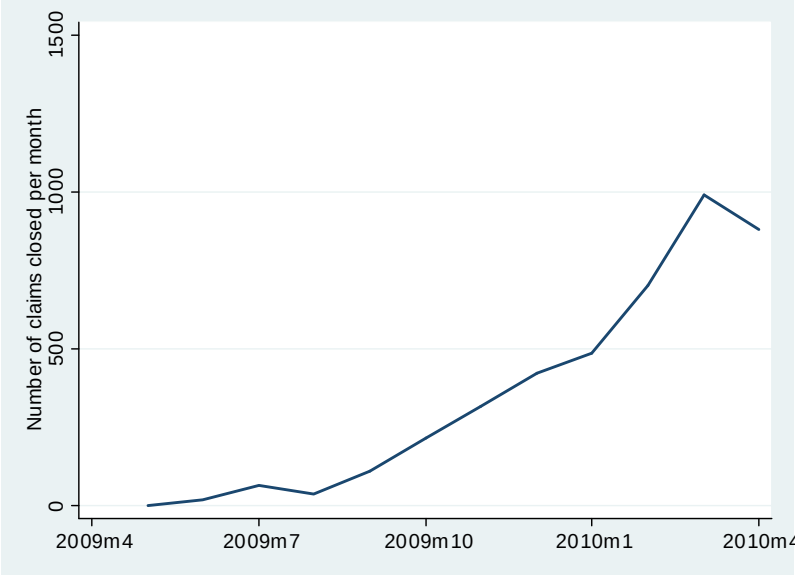


Figure 2.4: Pooled claimant dataset: monthly closed claim frequencies (post-Portal)

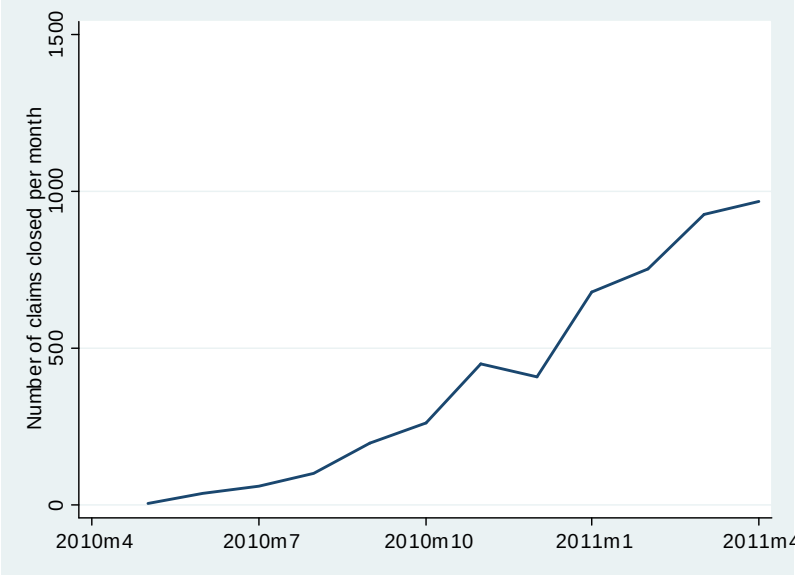


Figure 2.5: Pooled defendant dataset: monthly closed claim frequencies (pre-Portal)

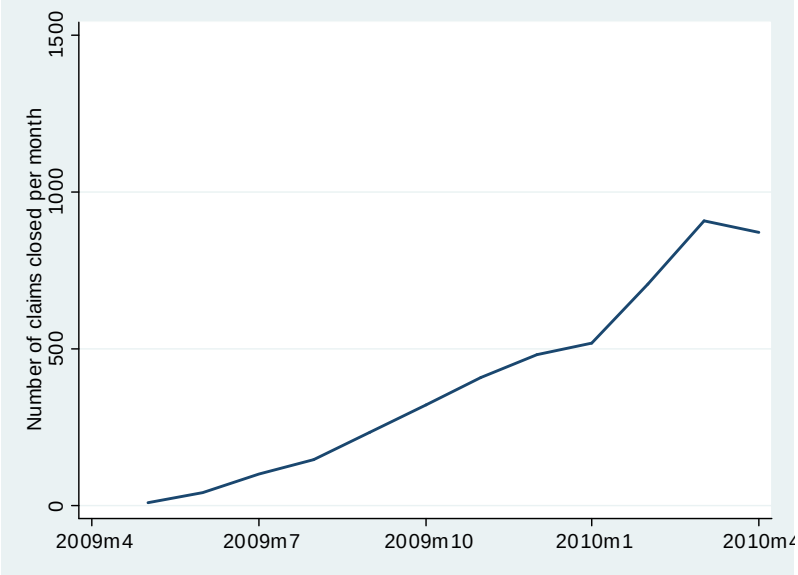
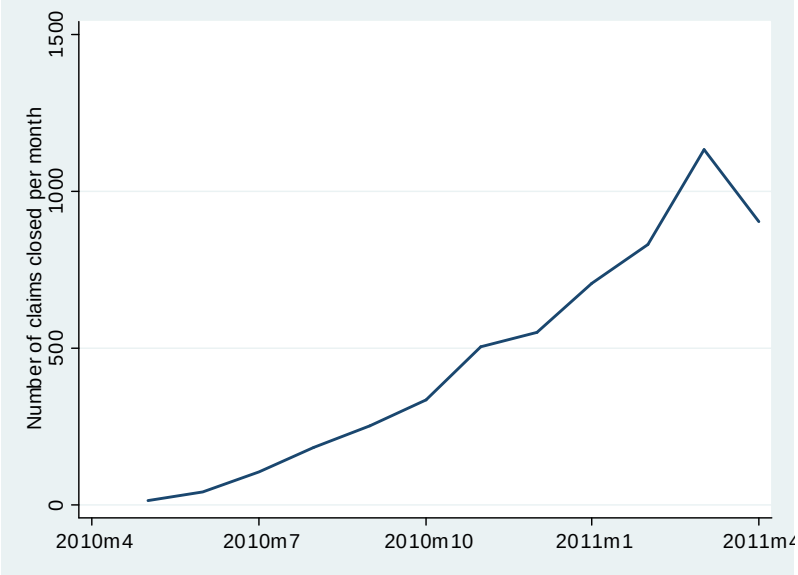


Figure 2.6: Pooled defendant dataset: monthly closed claim frequencies (post-Portal)

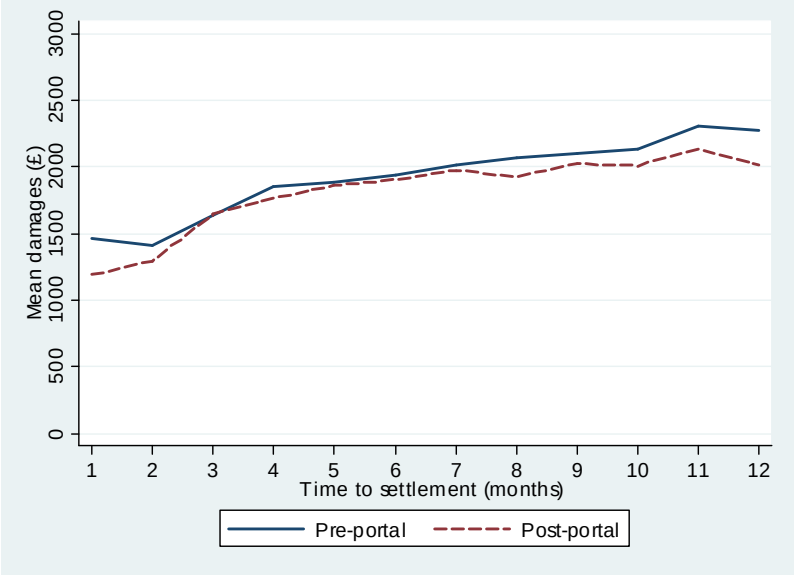


3. Results

3.1 Damages

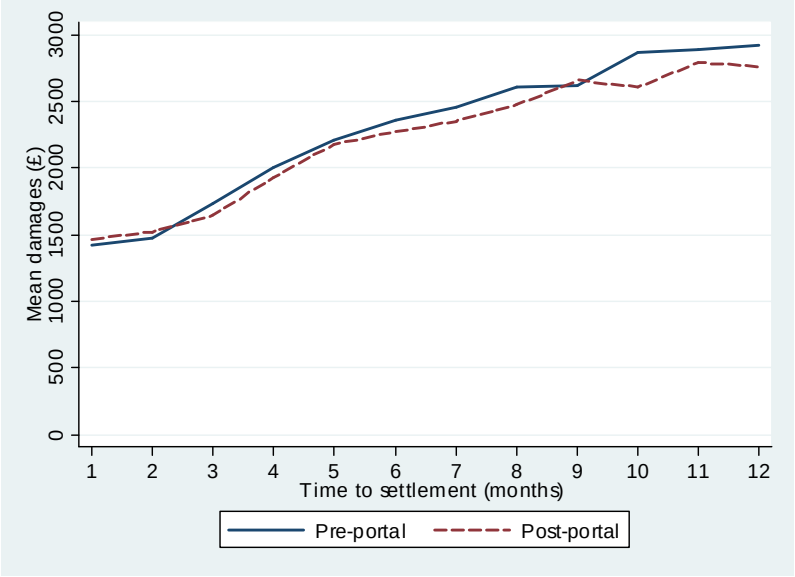
As stated above, both pre- and post-Portal samples of closed claims, where damages were agreed, include a range of claims settled between one month and 12 months after notification. It would be expected that claims settled sooner were less complex and therefore the mean damages agreed would be relatively low. This pattern is evident in figures 3.1 and 3.2 below which plot the mean damages agreed against time to settlement for both pre- and post-Portal samples. For both claimant and defendant pooled datasets the pattern is similar, although mean damages overall appear to be higher in the defendant dataset. It seems likely that this is due to defendants recording a combined figure for both general and special damages, whereas claimants record and report general damages separately.[8]

Figure 3.1: Pooled claimant dataset: mean damages by settlement times



[8] See the explanation following table 2.2.

Figure 3.2: Pooled defendant dataset: mean damages by settlement times



Both graphs indicate that mean damages for most claim durations are lower in the post-Portal period. To investigate this rigorously a standard t-test comparison of means was carried out to determine whether the overall mean damages agreed was different across the matched pre- and post-Portal samples (i.e. the null hypothesis was that the means were equal across the two samples). The tests undertaken here (and the equivalent tests elsewhere in this report) take into account the fact that the variances across the pre- and post-Portal samples could differ.

As referred to in table 2.1 and 2.2, the sample sizes used to compare mean pre- and post-Portal outcomes are substantially lower than the total number of claims supplied by data providers because they reflect only those claims which have reached completion within the observation periods.

The results are shown for each pooled dataset in tables 3.1 and 3.2. Figures 3.3 and 3.4 are the associated histograms which show the distributions of damages across samples.

Table 3.1: Pooled claimant dataset: mean damages by observation period

	Obs	Mean (£)	Std. Err.	t	[95% Conf.	Interval]
Pre-Portal	3,612	1,916.66	17.49		1,882.37	1,950.95
Post-Portal	4,268	1,792.48	12.31		1,768.36	1,816.61
Difference		124.17	21.39	5.81*	82.25	166.09

**Null hypothesis of equal means can be rejected with >99% confidence*

Table 3.2: Pooled defendant dataset: mean damages by observation period

	Obs	Mean (£)	Std. Err.	t	[95% Conf.Interval]	
Pre-Portal	3,804	2,226.77	21.60		2,184.42	2,269.11
Post-Portal	4,316	2,099.80	18.40		2,063.73	2,135.86
Difference		126.97	28.37	4.48*	71.36	182.59

**Null hypothesis of equal means can be rejected with >99% confidence*

Figure 3.3: Pooled claimant dataset: distribution of damages by observation period

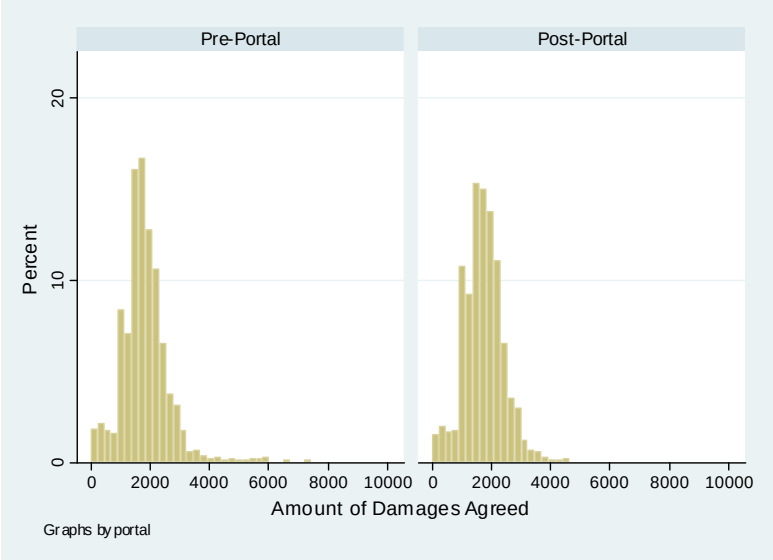
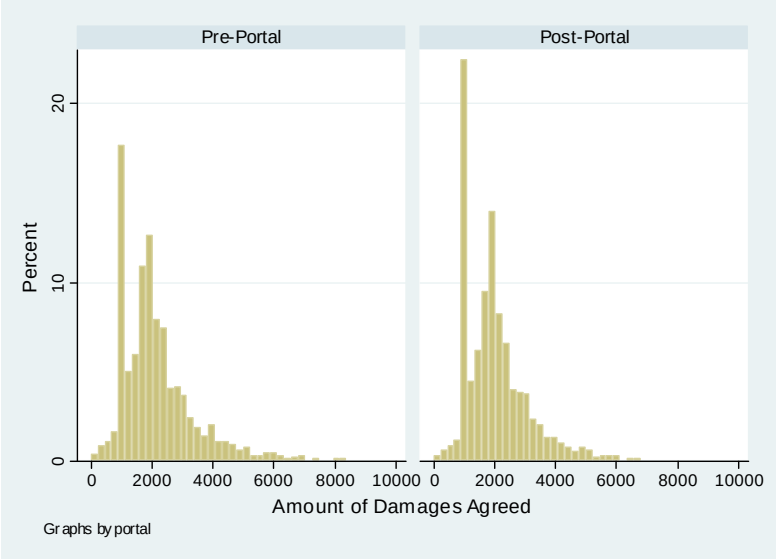


Figure 3.4: Pooled defendant dataset: distribution of damages by observation period



The results from tables 3.1 and 3.2 show that the mean level of damages agreed on low value RTA claims is lower in the post-Portal sample. Both claimant and defendant datasets showed evidence of around 6% reduction in mean damages, and these reductions were

statistically significant at the 99% confidence level. Closer inspection of the distributions in figures 3.3 and 3.4 reveal differences between the claimant and defendant reported damages – the latter have a much wider spread as well as a higher mean, both pre- and post-Portal. This is consistent with the view expressed above that claimant organisations report general damages only, while defendant organisations report the combined total of general and special damages.[9]

There is also some indication, particularly in the claimant sample, that there are more high value claims pre-Portal; this could be a reflection of the fact that very few Portal cases seem to have settled at stage 3 of the process by the time the data were collected. However, this is an issue that will need to be pursued in any future review of the process.

3.2 Costs

As before, both pre- and post-Portal samples of closed claims, where costs were agreed, include a range of claims settled between one month and 12 months after notification. It would be expected that claims settled sooner were less complex and therefore the mean costs agreed would be relatively low. This pattern is evident in figures 3.5 and 3.6 which plot the mean costs agreed against time to settlement for both pre- and post-Portal samples. For both claimant and defendant pooled datasets, the pattern is similar, although mean costs overall appear to be higher in the defendant dataset. It seems likely that this is due to defendants recording a combined figure for costs to include base costs, success fees, ATE premiums and disbursements, whereas claimants record and report base costs separately.

[9] The defendant distributions show a noticeable spike at £1000. It is not clear what caused this, but it may relate to the small claims track limit (PI claims below £1,000 are not eligible for the RTA protocol and are issued in the small claims track).

Figure 3.5: Pooled claimant dataset: mean costs by settlement times

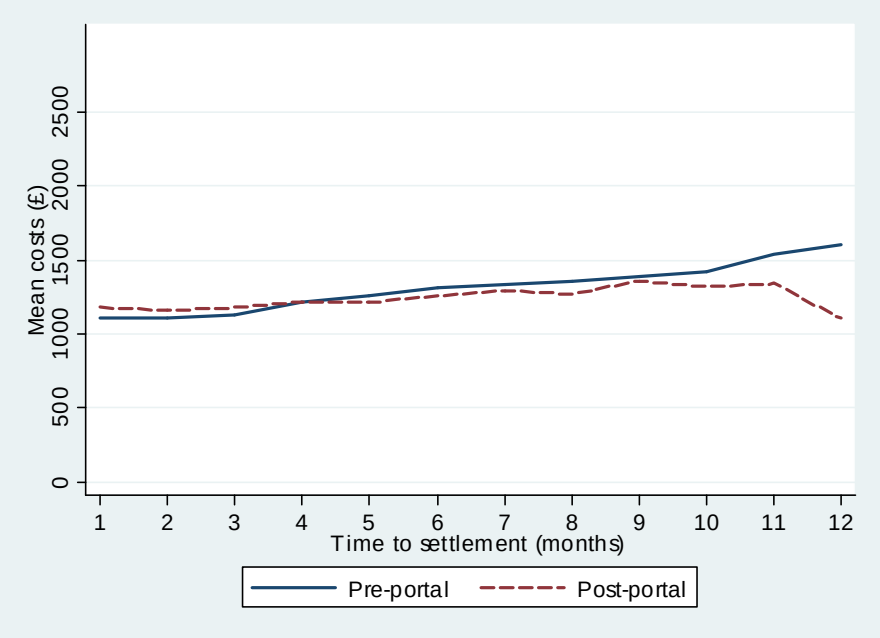
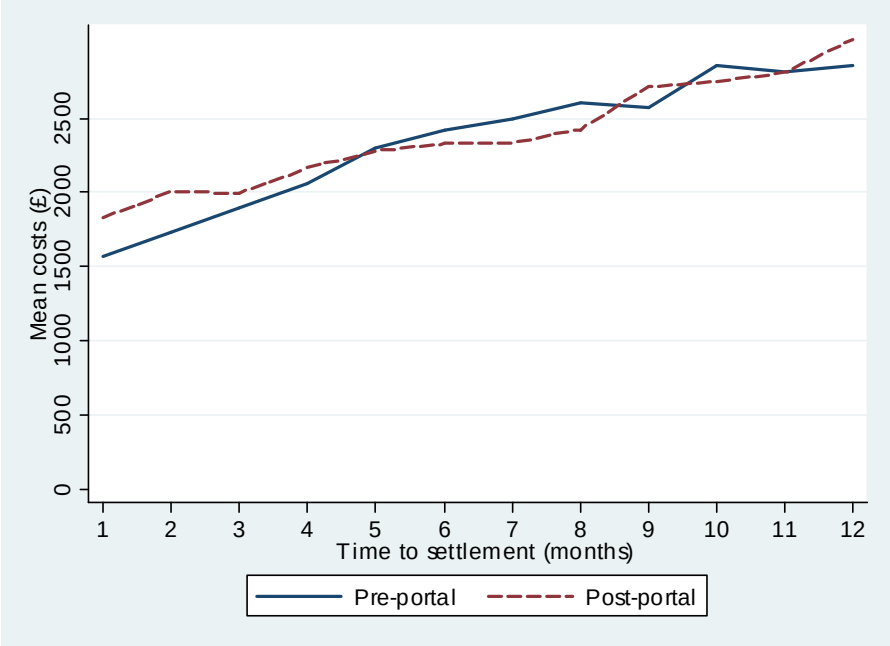


Figure 3.6: Pooled defendant dataset: mean costs by settlement times



Figures 3.5 and 3.6 indicate that mean costs for some claim durations are lower in the post-Portal period, but some are higher. To investigate whether the overall mean cost has fallen or risen, a standard t-test comparison of means was carried out to determine whether the overall mean costs agreed were different across the matched pre- and post-Portal samples (i.e. the null hypothesis was that the means were equal across the two samples). The results are shown for each pooled dataset in tables 3.3 and 3.4:

Table 3.3: Pooled claimant dataset: mean costs by observation period

	Obs	Mean (£)	Std. Err.	t	[95% Conf.Interval]	
Pre-Portal	3,519	1,282.09	6.95		1,268.46	1,295.73
Post-Portal	3,880	1,228.85	7.04		1,215.06	1,242.65
Difference		53.24	9.89	5.38*	33.85	72.63

**Null hypothesis of equal means can be rejected with >99% confidence*

Table 3.4: Pooled defendant dataset: mean costs by observation period

	Obs	Mean (£)	Std. Err.	t	[95% Conf.Interval]	
Pre-Portal	3,394	2,267.52	23.29		2,221.85	2,313.19
Post-Portal	4,039	2,191.37	18.67		2,154.77	2,227.98
Difference		76.14	29.85	2.55*	17.62	134.66

**Null hypothesis of equal means can be rejected with >97.5% confidence*

Figure 3.7: Pooled claimant dataset: distribution of costs by observation period

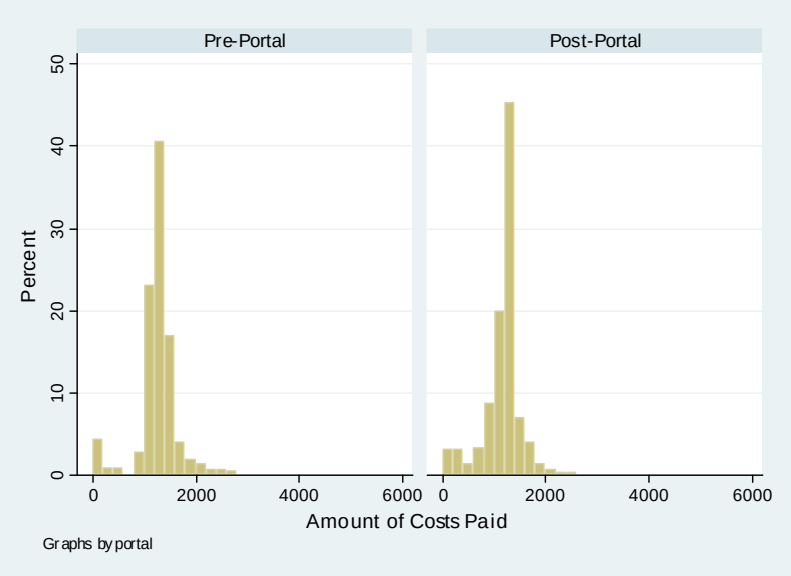
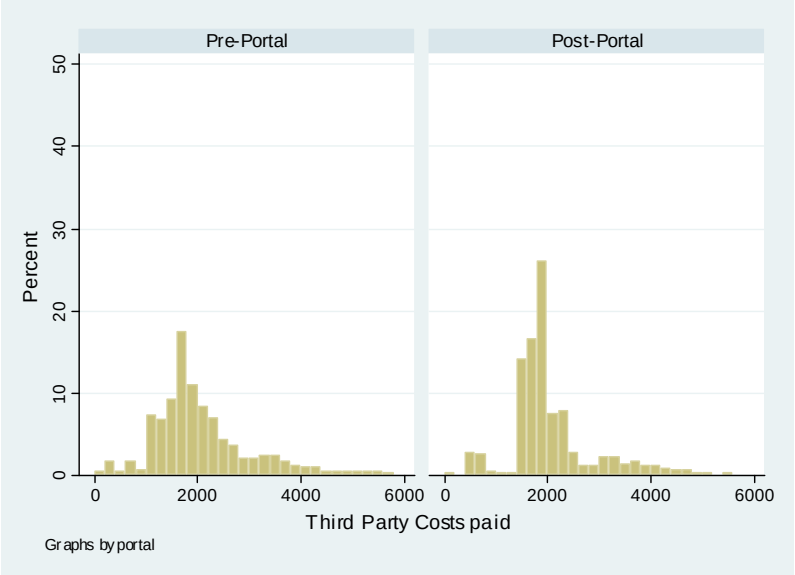


Figure 3.8: Pooled defendant dataset: distribution of costs by observation period



The results in tables 3.3 and 3.4 show that the mean level of costs agreed on low value RTA claims is lower in the post-Portal sample. Both claimant and defendant datasets showed evidence of mean reductions between 3% and 4% in costs, and these reductions were statistically significant at the 99% and 97.5% confidence levels, respectively. Closer inspection of the distributions in Figures 3.7 and 3.8 reveal differences between the claimant and defendant-reported costs – the latter have a much wider spread as well as a higher mean, both pre- and post-Portal. This is consistent with the view expressed above that claimant organisations report base costs only, while defendant organisations report the combined total of base costs, success fees, ATE premiums and disbursements.

3.3 Speed of settlement

As with damages and costs, it is possible to compare the sample means of time to settlement across pre- and post-Portal samples. The most straightforward way to do this is to compare the mean values of time to settlement for those claims settled within the observation period, excluding those which were still outstanding. A standard t-test comparison of means was carried out to determine whether the overall mean time to settlement for these cases was different across the matched pre- and post-Portal samples. The results are shown for each pooled dataset in tables 3.5 and 3.6:

Table 3.5: Pooled claimant dataset: mean time to settlement by observation period

	Obs	Mean (days)	Std. Err.	t	[95% Conf.Interval]	
Pre-Portal	4,233	162.61	1.12		160.41	164.82
Post-Portal	4,842	154.10	1.05		152.05	156.15
Difference		8.51	1.53	5.55*	5.51	11.52

**Null hypothesis of equal means can be rejected with >99% confidence*

Table 3.6: Pooled defendant dataset: mean time to settlement by observation period

	Obs	Mean (days)	Std. Err.	t	[95% Conf.Interval]	
Pre-Portal	4,706	150.44	1.21		148.07	152.82
Post-Portal	5,464	140.26	1.08		138.15	142.38
Difference		10.18	1.62	6.28*	7.00	13.36

**Null hypothesis of equal means can be rejected with >99% confidence*

Figure 3.9 Pooled claimant dataset: distribution of duration by observation period

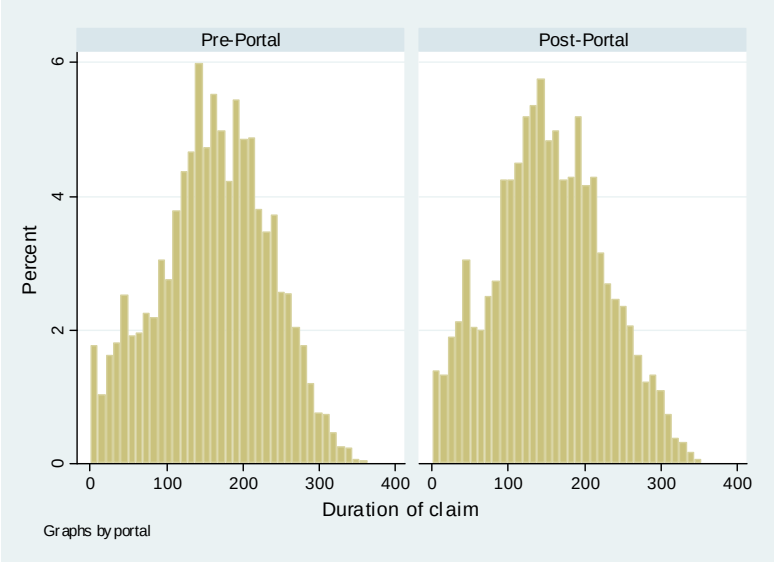
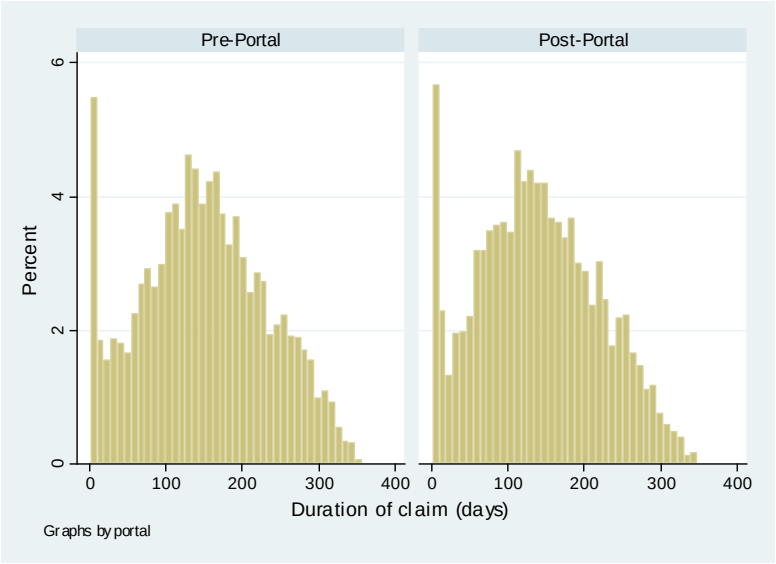


Figure 3.10: Pooled defendant dataset: distribution of duration by observation period



The results in tables 3.5 and 3.6 show that the mean time to settlement for claims settled within the 12 month observation periods is lower in the post-Portal sample. Both claimant and defendant datasets showed evidence of mean reductions in time to settlement (approximately 5% for the claimant data and approximately 7% for the defendant data), and these reductions were statistically significant at the 99% confidence level.

While these results are relevant, it is important to recognise that drawing conclusions about mean settlement times from data only on those claims settled within a 12 month period is potentially biased. This is because it is not known how long the claims which remained open at the end of the observation periods would take to settle, and if the number of these open claims varied between samples it could produce a misleading comparison of mean settlement times between pre- and post-Portal samples. The usual way of dealing with this type of potential bias is to focus on the rate at which the pool of open claims are settled. Figures 3.11 and 3.12 show this approach by means of “Kaplan-Meier survival curves”. These show the proportion of claims in each sample which remain unsettled at each month of follow-up from the date of notification.

Figure 3.11: Pooled claimant dataset: survival to settlement (days)

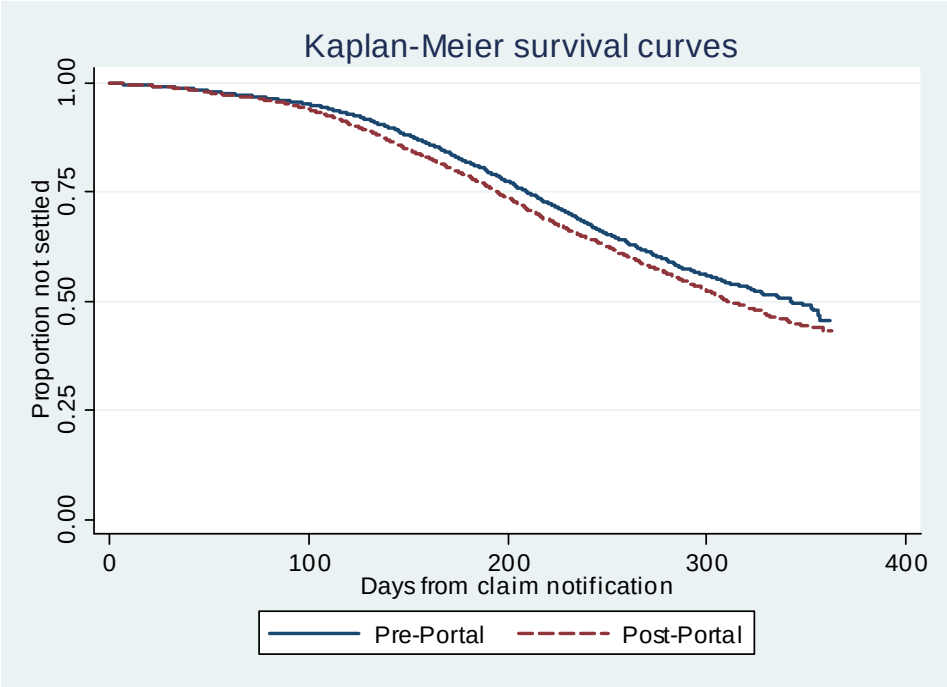
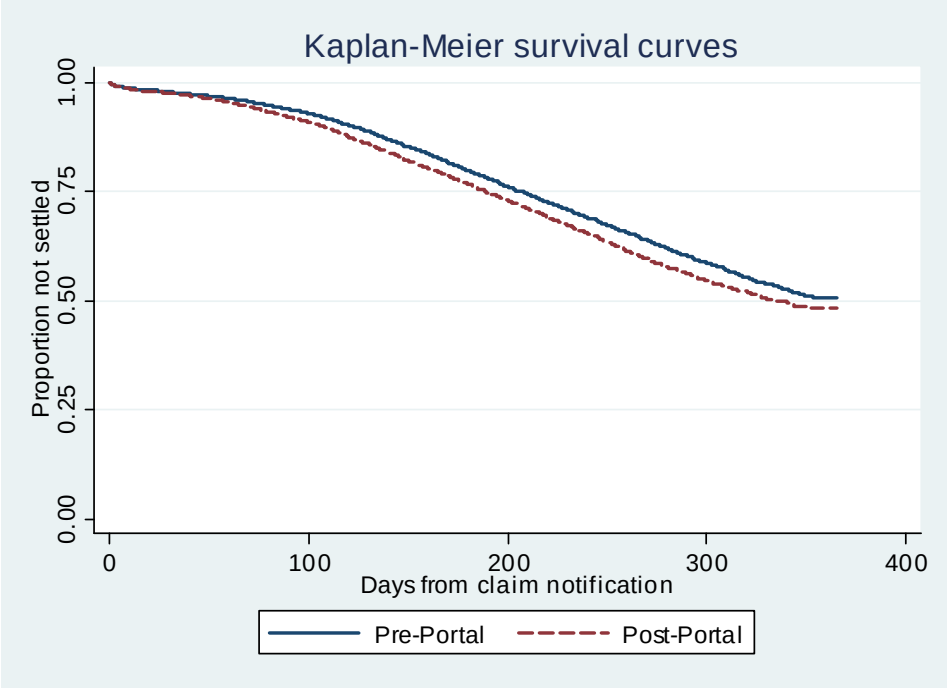


Figure 3.12: Pooled defendant dataset: survival to settlement (days)



The key features to note from inspection of these figures is that the survival curves for the post-Portal period are in both cases below the survival curves for the pre-Portal period. This is a good indication that mean settlement times are likely to have been shorter in the post-Portal period than before, even after allowing for the incidence of non-settled claims during these observation periods.

To demonstrate this rigorously, tables 3.7 and 3.8 show the revised estimates of mean settlement times within the observation periods derived from these survival curves, using the "product limit method" to calculate the means.

Table 3.7: Pooled claimant dataset: mean time to settlement by observation period, using the product limit method

	Obs	Mean (days)	Std. Err.	[95% Conf.Interval]	
Pre-Portal	21,600	283.36	0.97	281.46	285.26
Post-Portal	24,440	274.73	0.99	272.78	276.68
Difference		8.63			

Table 3.8: Pooled defendant dataset: mean time to settlement by observation period, using the product limit method

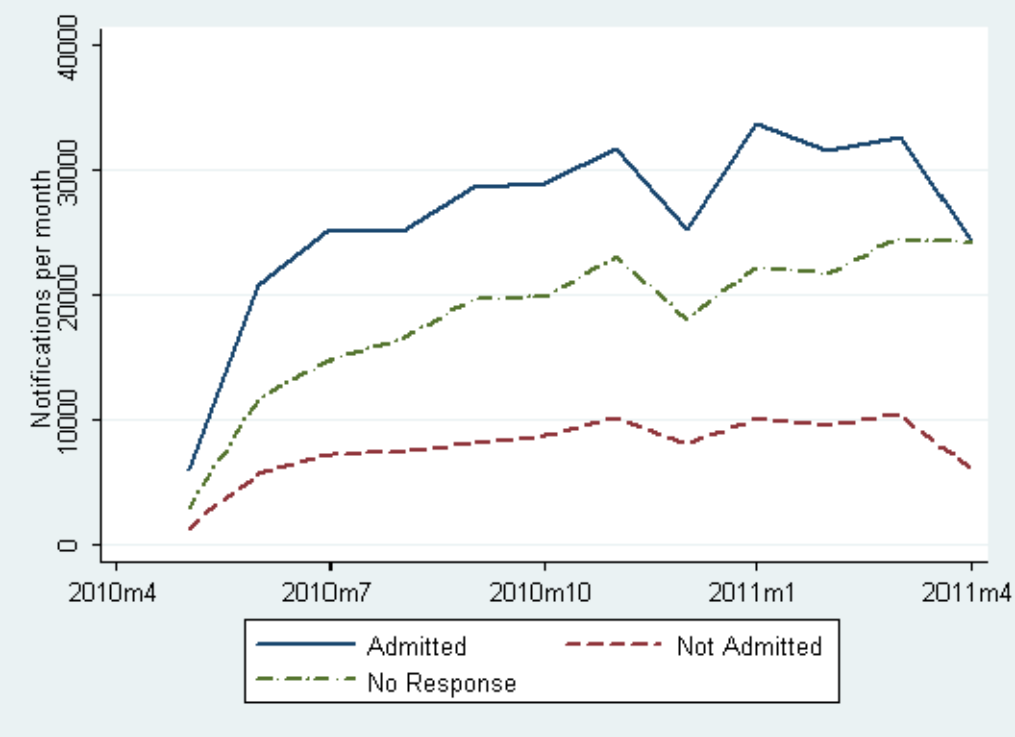
	Obs	Mean (days)	Std. Err.	[95% Conf.Interval]	
Pre-Portal	22,058	284.27	0.95	282.41	286.13
Post-Portal	23,121	274.66	0.97	272.77	276.56
Difference		9.61			

It can be seen that the differences in the "product limit method" means between pre- and post-Portal samples are very similar to those calculated earlier – that is, between 8 and 10 days. As the confidence intervals are non-overlapping, it appears that these differences are statistically significant, confirming the provisional assessment that settlement times in the post-Portal period are slightly lower than in the pre-Portal period.

3.4 Analysis of Portal Co data

The findings from the study presented in the previous three sections have demonstrated relatively small but significant changes in the outcomes (damages, costs, time to settlement) for low value RTA personal injury claims. Clearly, one factor determining the size of the impact of the process on overall mean outcomes would be the extent to which claims have remained within the process rather than exit to be dealt with under FRCS or normal fee rates. Evidence on the defendants' responses to claims notified through the Portal was obtained from the Portal Co. Figure 3.13 summarises this evidence by showing the incidence of new notifications per month, by type of defendant response, for each month since the Portal was established.

Figure 3.13: Portal Co dataset: monthly notifications by type of response

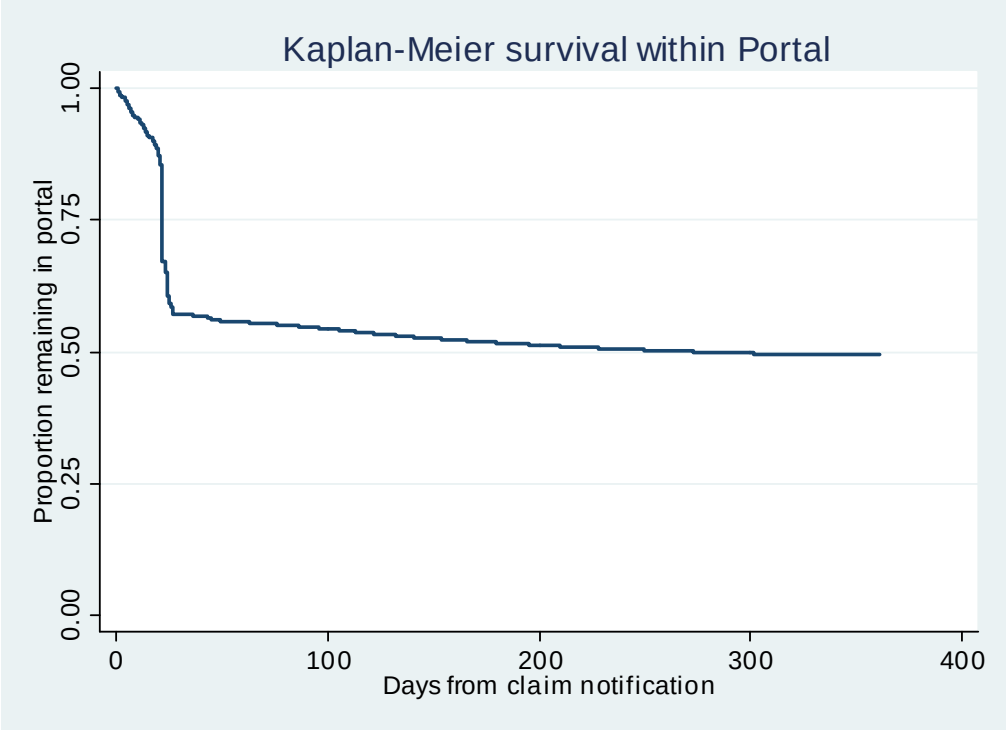


The figure shows a steady rise in the number of claim notifications as the Portal operations were familiarised;[10] by the end of the first year of operation a reasonably steady picture emerges in which around half of all notifications are exiting the process due to denial of liability or non-response, with the remaining half staying in the process due to an admission of liability.

When do the exits take place? To see this, a survival curve can be plotted showing the proportions of all notified claims which exit at differing times from notification (see figure 3.14):

[10] It looks as though there may have been a seasonal dip in the number of overall notifications corresponding to the Christmas/New Year period.

Figure 3.14: Portal Co dataset: survival to exit (days)



This figure shows that around 15% of notifications exit within Stage 1, a further 30% (approx) exit at or just after the end of Stage 1, and an additional 5% (approx) exit during stage 2. The remaining 50% (approx) of notifications are negotiated to settlement within the process, with most of these negotiations being completed within a year of notification.

4. Conclusion

This report has presented evidence aimed at evaluating whether the Low Value RTA Process has achieved its objectives in reducing cost and increasing efficiency in processing claims, and to identify any unintended consequences. The task was not straightforward, given that the process was just one year old at the time the study was commissioned, and there was no immediately obvious comparator from the previous regime against which to evaluate the process.

As stated in the introduction, the process is designed to streamline those low value RTA cases where a rapid admission of liability can be made, and therefore increase the speed of settlement and reduce costs. The difficulty in identifying a directly comparable set of claims from before the process was introduced is evident. There is no easy way of discovering retrospectively which claims settled before 30 April 2010 could have had an early admission of liability, at least not for samples which are big enough, and sufficiently representative, to generate statistically reliable comparisons with those claims which have settled to date within the Portal. Consequently, the only feasible approach was to compare the pre- and post-Portal outcomes of samples of claims that included claims settled within the RTA process as well as those which entered the process but exited and settled under existing CPR rules. As such, the impact of the RTA process on mean settlement speeds, damages and costs may have been diffused because of the large proportion of claims that dropped out of the RTA process.

In the absence of other developments, any statistically significant changes to mean costs, damages and speed of settlement observed in this comparison are assumed to be attributable to the RTA process. However, other unknown factors impacting on claimant and/or defendant behaviour may also have affected the results.

It was necessary to ensure that comparisons of claim outcomes before and after the process were like-for-like, and this required a matched one-year observation period in both cases. It also required that the data was provided fully and consistently by representative organisations from both claimant and defendant organisations, restricting the number of organisations providing suitable data.

Based on a comparison of the mean outcomes of low value RTA claims that settled before and after the RTA, it can be concluded that:

Damages: There is some evidence that the overall mean level of damages agreed on low value RTA claims has reduced slightly in the period after the RTA process was introduced**.** Both claimant and defendant datasets showed evidence of around 6% reduction in mean damages, and these reductions were statistically significant at the 99% confidence level.[11]

Costs: There is some evidence that the overall mean level of costs recovered on low value RTA claims has reduced in the period after the RTA process was introduced; the evidence suggests that any such reduction is not large, representing a fall of between 3% and 4% in costs. These reductions were statistically significant at the 97.5% and 99% confidence level.[12]

Speed of settlement: There is some evidence that the overall mean time to settlement on low value RTA claims has reduced in the period after the RTA process was introduced. Both claimant and defendant datasets showed evidence of around 5% to 7% reduction in mean time to settlement, and these reductions were statistically significant at the 99% confidence level.[13]

Given that these findings relate to the implied effect of the process on the overall means of costs, damages and delay for all low value RTA claims, it is necessary to address the question of how many of these claims in the post-Portal period were actually settled within the process. Based on an analysis in section 10 above of all low value RTA claims notified to the Portal Co during the first year of operation, approximately half were settled within the process. The remaining half exited the process, most of which did so during Stage 1 or immediately afterwards. It is likely therefore that the overall effects estimated above are driven by only half of the claims, and that any increase or decrease in the proportion of claims settled within the process will have influenced the impact of the process.

There are, moreover, some caveats which need to be borne in mind when drawing inferences from the findings summarised above:

Sampling issues: The data used in the analyses was derived from only three claimant solicitor firms and two defendant insurers with the post-Portal sample representing approximately 8% of all eligible RTA claims for the discrete pre- and post-Portal periods. Collecting data from both solicitor firms and defendant insurers ensures that the sample

[11] These results are based on 7,416 claims settled pre-Portal and 8,584 settled post-Portal.
[12] These results are based on 6,913 claims settled pre-Portal and 7,919 settled post-Portal.
[13] These results are based on 8,939 claims settled pre-Portal and 10,306 settled post-Portal.

includes claims from all major insurers and a very large number of Personal Injury firms. However, due to the small number of data providers, the sample may not be representative of the entire population of RTA claims which would have an impact on the reliability of the reported results.

Study design: The study design is based on an assumption that changes observed between pre- and post-Portal periods are attributable to the RTA process. It is possible that other changes may have been in place due to longer trends; however, most of these trends point to higher costs and damages and increased delays to settlement.

Length of observation period: The period of follow-up from the introduction of the RTA process to the collection of data for this study is only one year. It could be argued that this is too short a time period to make firm conclusions about the impact of the process, particularly those more complex, higher value claims that are settled within stage 3 of the process. Any claims that do settle at that late stage will have to be monitored over the next year to confirm whether they have an effect on outcomes relative to the pre-Portal experience in respect of these types of claims.

5. Implications and recommendations

The findings of this study have some clear implications for policy, particularly in the light of the Government's declared intention to extend the Low Value RTA Process to higher value claims and to other types of claim.

A high proportion of claims exit the process

The evidence from the Portal Co's database indicates that around 50% of all claims which enter the RTA process subsequently exit. The fact that this degree of leakage occurs for a class of personal injury claim where liability is often clear-cut, and where a very high proportion of claims are successful in terms of winning damages, is a little surprising. One possible explanation for the high numbers of exits is that the fixed costs payable by defendants under the RTA process are actually *higher* than fixed costs payable under the Fixed Recoverable Costs Scheme for RTA claims worth less than £2,000.[14] This is an anomaly due to a lack of integration with the FRCS which needs urgent consideration.

The high exit rate observed from the Portal indicates that any extension of the process to other types of claim, such as clinical negligence and public liability, where proof of liability is often an issue, could result in only a minority of these claims settling within the process.

The identified costs savings are conditional

The cost savings estimated in this study (3–4%) are conditional on the use of a one-year observation period. As pointed out above, these estimates could change if a longer period of follow-up was used or if data were drawn from a greater number of firms. The cost savings observed in this study are also conditional on the current fixed costs associated with settlement within the process.

Any extension needs to account for claimant solicitors' incentives

The reduction in damages found in this study (around 6%) was not part of the intended consequences of the RTA process, and may be due to the effect of the fixed costs under the process being independent of the settlement outcome (unlike in the FRCS). Any extension of the RTA process to higher value claims would need to take into account the extent to which

[14] RTA process costs for claims settled at stage 2 are £1,200; FRCS costs for claims settled at £2,000 are £800 + 20% of £2,000 = £1,200. FRCS costs for claims lower than £2,000 in value are therefore lower than £1,200. For typical low value "whiplash" claims, it therefore pays the defendant to exit the RTA process, irrespective of a willingness to concede liability.

incentives for solicitors to act in the client's interests are diluted with flat rate fixed costs, particularly in relation to claims where the calculation of quantum is more complex.

The electronic Portal may have produced administrative benefits

The reductions in time to settlement found in this study (5–7%) were statistically significant and may reflect in part the administrative benefits of an electronic system by which the parties can communicate with each other.

The RTA process and FRCS should be jointly reviewed

A common thread running through the above set of implications is the issue of the interdependence of the fixed costs applied under the FRCS with the fixed costs applied under the RTA process, and its effect on the selection of cases for retention within the process. I therefore recommend that the current RTA process and the FRCS are jointly reviewed once a further year's experience with the former has elapsed and more management information data made available, in particular in relation to the characteristics of claims withdrawn from the Portal.

The terms of reference for this review should include consideration of what is reasonable and efficient in respect of work done on both liability and quantum issues, and should acknowledge that the answer to this question can change over time, and should therefore be monitored at regular intervals by an independent body. Once an integrated system of fixed costs is in place for all low value, non-litigated RTA claims, it could in principle be extended to other types and values of claim. This review would be linked to the wider implementation of Jackson LJ's recommendations in respect of fixed costs for all fast track claims. Indeed, one variant of Jackson LJ's fixed cost matrix (Table B, Appendix 5 of Jackson's final report) was explicitly designed to take into account the cost savings estimated to result from the early admission of liability.

Improving Portal management information systems would aid future reviews

The electronic Portal (as distinct from the RTA process) has been met with approval from both sides of the industry in relation to its contribution to the improved flow of information between parties. However, the management information data collected through the Portal has not been as useful as it could have been. This stems partly from the speed with which it was introduced, with insufficient development time allowed for management information purposes, but it also stems from the view that it should only be concerned with claims which are settled through the RTA process, and that a denial of liability is sufficient to remove the

claim from the system. If my recommendation for an integrated system of fixed costs for low value, non-litigated claims is pursued, it would clearly require the Portal to keep records of outcomes for all such claims, and this would in turn allow the system to be monitored and evaluated more effectively in future. Indeed, there is no obvious reason why its benefits could not ultimately be extended to litigated claims in the fast track, particularly if Jackson LJ's recommendations for fixed costs throughout the fast track are implemented.

Ministry of Justice Research Series 13/12

Evaluating the low value Road Traffic Accident process

This report compares the management information data of a small number of personal injury claimant solicitor firms and defendant insurers, before and after the implementation of the new low value Road Traffic Accident (RTA) claims process.

The findings suggest that the new RTA process may have led to an approximately 6% reduction in the level of damages claims settle for, a 3–4% fall in the average costs awarded to claimant's solicitors, and a 5–7% rise in the speed of settlement. Also, around 50% of cases exited the RTA process, primarily at an early stage of the process.

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