



Department
of Health

Introducing Fixed Recoverable Costs in Lower Value Clinical Negligence Claims: A Consultation

Annex E: Data Pack

January 2017

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Fixed Recoverable Costs in Lower Value Clinical Negligence Claims: A Consultation

Annex E: Additional Data

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Executive summary

This annex provides additional data to help consultation respondents consider their response.

The majority of data is provided from the NHS Litigation Authority and therefore relates to clinical negligence claims against the NHS or NHS funded care. It is for England only. Some of the data has already been published either in the NHS LA's Annual Review 2014/15 or on its website. Data has been broken down into damages tranches where possible to be more informative.

A description of the data sources used in this Annex is provided in Chapter 1.

The number and cost of clinical negligence claims is in Chapter 2.

Chapter 3 is about proportionality and how the cost of clinical negligence claims is shared between damages, claimant legal costs and defence legal costs.

Chapter 4 shows the data used to support setting the FRC rates (Chapter 5 of the consultation document) with data on the profit costs of claims and a time analysis of how claims would operate under the FRC regime.

Chapter 5 looks at how claims have been funded through Conditional Fee Agreements (CFAs) before and after the implementation of LASPO.

Chapter 6 should be read in conjunction with the equalities assessment (Annex F of the main consultation document and includes data on the age and gender of claimants and claims relating to maternity.

1. Data Sources

The Data in this publication comes from 3 sources.

The majority of this data is from the NHS Litigation Authority (NHS LA) and therefore relates to:

- Claims made against the NHS or NHS funded services;
- England only

These claims are made against all categories of clinical negligence that NHS LA handle (Clinical Negligence Scheme for Trusts (CNST), Existing Liabilities Scheme (ELS), DH Clinical Liabilities and ex-RHAs scheme). The data source is the NHS LA's claims management system which records how claims are progressed. Some of this data has already been published and is available from the NHS LA's Annual Reports or Fact Sheets on the NHS LA's website.ⁱ

It is not possible to breakdown claims above £1,000 and up to £5,000 according to which track they were allocated to. Anecdotal evidence from NHS Litigation Authority is that the vast majority of these claims are allocated to the multi-track.

The other data is from

- The Office of National Statistics on the age and gender of the UK populationⁱⁱ;
- The Compensation Recovery Unit in the Department of Work and Pensions on the age and gender of Clinical Negligence Claims registered by CRU and Clinical Negligence Settlements Recorded by CRU between 01/04/14 and 31/03/15.ⁱⁱⁱ
- The Office of Disability Issues in the Department of Work and Pensions.
- The Legal Aid Agency on the number of legal aid certificates granted for clinical negligence in England and Wales.^{iv}

Tables are numbered so that Table 2A would be would be the first table in Chapter 2.

Some Definitions

CNST = Clinical Negligence Scheme for Trusts

DH-CL= Department of Health Clinical Liabilities

ELS - Existing Liabilities Scheme

EX-RHA - liabilities transferred to NHS LA following the closure of the Regional Health Authorities

2. Numbers and Cost of Clinical Negligence Claims

This chapter sets out the number of claims reported and the costs.

Table 2A: Expenditure on Clinical Claims

	£m			
Year	CNST	ELS/EX-RHA	DH-CL	TOTAL
2011/12	1,095	182		1,277
2012/13	1,118	141		1,259
2013/14	1,051	35	106	1,192
2014/15	1,044	28	98	1,170
2015/16	1,378	28	83	1,488

Figures are rounded.

With effect from 01/04/13 the Secretary of State acquired certain liabilities from the SHAs and PCTs (dealt with under the heading DH-CL).

Table 2B: Numbers of Clinical Negligence Claims Reported

Year	Number of Claims
2011/12	9,143
2012/13	10,129
2013/14	11,945
2014/15	11,497
2015/16	10,965

Table 2B shows that the number of clinical negligence claims has risen by 26% between 2011/12 and 2014/15. The slight decrease in new claim numbers in 2014/15 over 2013/14 is accounted for by the fact that claimant solicitors signed up a number of new Conditional Fee Agreements (CFAs) in the weeks leading up to implementation of the LASPO reforms on 01/04/13, to take advantage of the old-style fee arrangements, and many of these cases were reported to NHS LA in 2013/14. Consequently, it was a record year for NHS LA in terms of new claim numbers. The so-called “LASPO effect” started to diminish in 2014/15. However, the number of claims is still overall higher than 2011/12.

Table 2C: Clinical Negligence Claims Settled 2015/16

Damages Tranche £	No. of claims	% of total claims	% of claims settled for damages
Nil	4,983	46.2%	n/a
£1 - £1,000	184	1.7%	3.2%
£1,001 - £5,000 (note 1)	1,203	11.2%	20.8%
£5,001 - £25,000	2,272	21.1%	39.2%
£25,001 - £50,000	866	8.0%	14.9%
Sub-total: £1,001 - £25,000	3,475	32.2%	60.0%
£50,001 - £100,000	556	5.2%	9.6%
£100,001 - £150,000	202	1.9%	3.5%
£150,001 - £200,000	129	1.2%	2.2%
£200,001 - £250,000	67	0.6%	1.2%
£250,000 +	316	2.9%	5.5%
Total	10,778		

Source: NHS Litigation Authority.

Note 1: It is not possible to breakdown claims above £1,000 and up to £5,000 according to which track they were allocated to. Anecdotal evidence from NHS Litigation Authority is that the vast majority of these claims are allocated to the multi-track.

Table 2C shows the total number of clinical negligence claims against the NHS in England that were settled in 2015/16. 46% of claims were settled for nil damages and 32% were for damages above £1,000 and up to £25,000, which is 60% of claims settled for damages.

3. Proportionality

This chapter shows expenditure on clinical negligence split between damages, claimant costs and defence costs.

Table 3A: Breakdown of clinical negligence costs for the NHS for 2015/16

	Amount £000s	Percentage of Total Cost
Claimant Costs	417,915	28%
Defence Costs	120,144	8%
Damages Paid to Claimants	950,396	64%
Total Clinical Negligence Expenditure	1,488,455	100%

Table 3A shows how the expenditure for 2015/16 was split in total between damages, claimant costs and defence costs. The defence costs exclude the cost of NHSLA administering clinical claims in 2015/16, which was £9.4m, and the administration costs of NHS Trusts, which are not held centrally. However, when the Letter of Claim is served, it comes direct to NHS LA who either manage the case in-house or transfer the case to a member of the defence panel (whose costs are shown in the table above).

Table 3B: Number of Clinical Negligence Claims Closed in year 2011/12 to 2015/16 with damages payments as at end of each respective financial year (excluding ex RHA)

	No. of Claims	Damages Paid £000s	Defence Costs Paid £000s	Defence Costs Paid as a % of damages paid	Claimant Costs Paid £000s	Claimant Costs Paid as a % of damages paid	Total £000s
2011/12	5,484	418,842	48,181	12%	182,735	44%	649,758
2012/13	5,489	463,990	49,371	11%	205,319	44%	718,679
2013/14	5,575	455,207	51,308	11%	233,636	51%	740,150
2014/15	5,775	430,018	50,443	12%	249,447	58%	729,909
2015/16	5,795	384,857	54,197	14%	278,847	72%	717,901

Note: this table excludes claims which were settled for nil damages.

Table 3B shows the defence and claimant costs as a proportion of damages paid between 2011/12 and 2015/16.

Table 3C: Numbers and payments for clinical negligence claims closed with damages negotiated or awarded in 2015/16 as at 31/03/2016 (note 1)

Damages Tranche	Number of Claims	Damages Paid £000s	Defence Costs Paid £000s	% Defence Costs of Damages 15/16	Claimant Costs Paid £000s	% Claimant Costs of Damages 15/16
£1 - £25,000 (note2)	3,659	36,522	12,997	36%	80,360	220%
£25,001 - £50,000	866	32,307	7,298	23%	43,537	135%
£50,001 - £100,000	556	41,054	7,648	19%	40,495	99%
£100,001 - £250,000	398	63,969	9,721	15%	45,814	72%
£250,000+	316	211,005	16,532	8%	68,642	33%
Total	5,795	384,857	54,197	14%	278,847	72%

Note 1: These figures relate to claims closed in 2015/16 – the payments were not necessarily made in that financial year

Note 2: this is all claims within the damages tranche including those allocated to the small claims track.

Table 3C shows how the expenditure for 2015/16 was split in total between damages, claimant costs and defence costs by damages tranche.

Table 3D: Clinical Negligence Expenditure 2014/15 and 2015/16

	2014/15		2015/16		Change	
	Amount £000s	% of Total Cost	Amount £000s	% of Total Cost	Amount £000s	% of Total Cost
Claimant Costs	£291,910	25%	£417,915	28%	£126,005	3%
Defence Costs	£103,233	9%	£120,144	8%	£16,911	-1%
Damages Paid to Claimants	£774,444	66%	£950,396	64%	£175,952	-2%
Total Expenditure	£1,169,587	100%	£1,488,455	100%	£318,868	n/a

Table 3D shows the amounts paid out by the NHS LA relating to clinical negligence claims brought against the NHS in England in 2014/15 and 2015/16. This highlights that clinical negligence costs continue to rise for the NHS from £1.2 billion to £1.5 billion and claimant recoverable costs have risen from 25% to 28% of a higher total cost.

Table 3E: Recovered Claimant Legal Costs

Proportionality

Damages awarded between	Claimant Legal Fees Recovered as % of Damages Awarded		
	2013/14	2014/15	2015/16
£1,001 and £10,000; (note 1)	273%	299%	324%
£10,001 and £25,000	153%	164%	176%
£25,001 and £50,000	107%	112%	135%
£50,001 and £100,000	74%	83%	99%
£100,001 and £250,000	54%	57%	72%
£250,001 - £500,000	37%	41%	48%
£500,001 - £1,000,000	24%	27%	38%
£1,000,001 +	15%	17%	18%

Note 1: this is all claims within the damages tranche including those allocated to the small claims track.

Table 3E shows that legal costs recovered by claimants have increased as a percentage of damages between 2013/14 and 2015/16 and that the greatest disproportionality between claimant recoverable costs and damages is in the lower value claims.

4. Setting FRC Rates

This chapter provides the information which the Department used to calculate the FRC rates in Chapter 5 of the consultation document. To generate the rates under Options 1, 2 and 3, the amount of time required at each stage was estimated based on the available data and adjusted for the new streamlined processes. This amount of time was costed using the Guideline Hourly Rates (GHRs). This produced the results set out in Table 6 of the consultation document.

Part A: Current Costs

Tables 4A and 4B show the profit costs for claims above £1,000 and up to £25,000 in 2012/13 and 2013/14.

Table 4A: Litigated Claims 2012/13 and 2013/14

	Number of Claims	Total Profit Costs Settled Net	Average of Profit Costs Settled Net
All claims where Part 7 was not issued	2,874	£18,788,427.69	£6,537.38
All Part 7 litigated claims	732	£10,156,328.78	£13,874.77
All Claims	3,606	£28,944,756.47	£8,026.83

Table 4B: Profit cost of litigated claims by stage 2012/13 and 2013/14

Stage	Number of Claims	Total Profit Costs Settled Net	Average of Profit Costs Settled Net
Pre-issue	2,874	£18,788,427.69	£6,537.38
Post Issue/Pre- Allocation	609	£7,531,593.01	£12,367.15
Post- Allocation/Pre listing	83	£1,717,788.55	£20,696.25
Post listing	40	£906,947.22	£22,673.68
Total	3,606	£28,944,756.47	£8,026.83

Notes:

- Data is from Acumension who are costs lawyers for NHS LA.
- These figures only include costs lawyers on behalf of NHS LA and that claims where costs were negotiated by the NHS LA defence panel solicitors or directly by NHS LA are excluded.
- The data only includes claims where claimant legal costs have been settled and paid in order to be able to show the profit costs.
- “Profit Costs” refers to the fee paid to a solicitor for everything other than disbursements. It is the sum paid for the professional work of the solicitor, some

(but not all) of which will constitute profit. "Profit costs" are net of VAT and any additional liabilities.

- Part 7 claims constitute any claim where a Part 7 claim form has been issued with the court. All other claims are considered (for this purpose) unlitigated.
- Liability only claims (split trials) have been excluded, as the total costs of the claim in many instances will not have been concluded.
- Reasonable estimates have been made in cases where the file of papers does not evidence an event (e.g. no evidence of claim form but evidence of allocation of claim on file, thereby evidencing the claim must have been issued).

Part B: Time Analysis for Non-fatal claims with damages above £1,000 and up to £25,000

This analysis was undertaken by a group of three solicitors, all with both claimant and defendant clinical negligence experience. It was led by Adrian Jaggard. It was both bottom up, i.e. an assessment of what work was reasonable and proportionate for each step, and top-down (using the data from cost lawyers who deal with many claims against NHS LA referred to in relation to Tables 4A and 4B). The work took place in between late 2014 and early 2015.

Please note that trial costs are not included in this time analysis because the proposal on Page 28 of the consultation document is that trial costs should be paid in accordance with the provision in CPR 45.38.

Table 4C: Type of Worker

Code	Type of Work	Comments
AC	Administrative Clerk	Administrative support staff, not legally trained/qualified
Sys	System generated	Computer based case management system
GA	Grade A	Fee-Earner Grade adopted from GHRs
GB	Grade B	Fee-Earner Grade adopted from GHRs
GC	Grade C	Fee-Earner Grade adopted from GHRs
GD	Grade D	Fee-Earner Grade adopted from GHRs

Table 4D: Preliminary investigations

Work Item	Time Spent
Initial telephone call by first response team (FRT): Pre-qualification	30 mins (GC)
Review of claim by senior solicitor/partner May require additional call for information	10 mins (GC)
Allocated to Solicitor and call to client Discuss claim with client	30 mins (GC)

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Dictate attendance note	
Upload key fields to CMS from attendance note Generate client care letter with brief summary of claim	15 mins (AC)
Generate client documents Authority for records CRU information CFA/DBA Funding questionnaire – BTE/Union	0 mins (Sys)
Obtain out block rated ATE policy	0 mins (Sys)
Receive a call to discuss funding/CFA/client care documents	30 mins (GC)
Review returned client care documents	3 mins (GC)
Total time spent	AC: 15 mins GC: 103 mins

Table 4E: Formal complaint to trust (60% of claims)

Work Item	Time Spent
Draft formal complaint letter to the trust on behalf of the client (where not completed already) Single letter sent by complainant but drafted by solicitor	20 mins (GC)
Review response to formal complaint received by client (3xA4)	15 mins (GC)
Draft advice letter to claimant with observations	10 mins (GC)
Total time spent	GC: 45 mins

Table 4F: Liability investigations

Work Item	Time Spent
Draft request for medical records Request to hospital Request to GP	15 mins (GC)
Draft chaser letter for records	0 mins (Sys)
Review medical records	60 mins (GD)

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Sort records into order Tab-up important records	
Review medical records	30 mins (GC)
Approach medical experts	20 mins (GC)
Instruct medical expert (2-3 pages) Draft summary of facts Draft questions to expert to address breaches & causation	30 mins (GC)
General ad-hoc client communications	10 mins (GC)
Receive call from expert/make call to chase the report	5 mins (GC)
Review expert report (10 pages)	20 mins (GC)
Draft advice to client on expert report, enclosing same	20 mins (GC)
Draft questions to expert (50%)	15 mins (GC)
Review experts written response to questions	5 mins (GC)
Phone call from client concerning expert report and advice	5 mins (GC)
Referral of claim to supervisor	10 mins (GA) 10 mins (GC)
Draft letter of claim (6 pages) Summary of case Plead breach & causation allegations Draft funding notice (Sys)	40 mins (GC)
Send letter of claim to Claimant for approval	5 mins (GC)
Send letter of claim to Defendant	5 mins (GC)
Review letter of response from Defendant (3 pages) Review admission/denial of liability Review medical records Review Defendant comments	10 mins (GC)
Total time spent	GA: 10 mins GC: 245 mins GD: 60 mins

Table 4G: Liability negotiations (in event of denial)

Work Item	Time Spent
Draft letter to Claimant advising on Defendant position (1 page) Explain denial of liability Explain next steps	6 mins (GC)
Draft letter to expert addressing Defendant observations (1 page) (75%)	12 mins (GC)
Review response from expert to Defendant observations (1 page)	5 mins (GC)
Draft advice/update letter to Claimant (1 page)	6 mins (GC)
Draft additional letter to Defendant detailing expert's view (1 page) advise of intention proceed	5 mins (GC)
Review response from Defendant after having further consulted their expert	5 mins (GC)
Call client to take witness statement on liability issues	45 mins (GC)
Draft Claimant witness statement on liability issues	30 mins (GC)
Draft letter to claimant enclosing statement for approval (1 page) request supporting evidence documents	4 mins (GC)
Receive call from client with concerns/additional comments (70%)	6 mins (GC)
Draft amendments to Claimant witness statement to reflect call	12 mins (GC)
Send out revised statement to Claimant	4 mins (GC)
Review returned signed Claimant witness statement Review supporting documents for losses	5 mins (GC)
Total time spent	GC: 145 mins

Table 4H: Quantum investigations

Work Item	Time Spent
Call Claimant to take witness statement on quantum	40 mins (GC)
Draft Claimant witness statement on quantum	35 mins (GC)
Draft letter to claimant enclosing statement for approval (1 page) request supporting evidence documents	4 mins (GC)

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Receive call from client with concerns/additional comments (70%)	10 mins (GC)
Draft amendments to Claimant witness statement to reflect call	15 mins (GC)
Send out revised statement to Claimant	4 mins (GC)
Review returned signed Claimant witness statement Review supporting documents for losses	5 mins (GC)
Quantify damages Review medical evidence Review JC guidelines/Kemp & Kemp Review relevant case law	30 mins (GC)
Referral of claim to supervisor	10 mins (GA) 10 mins (GC)
Letter to Claimant advising on quantum (2 pages) Obtain written authority for a damages bracket Explain quantum Explain the effect of CPR P36	15 mins (GC)
Receive damages authority form back from client	0 mins
Telephone call from client to discuss quantum	15 mins (GC)
Calculate CRU liability	10 mins (GC)
Letter to Defendant enclosing damages proposals (2 pages)	6 mins (GC)
Various letters / calls negotiating quantum	30 mins (GC)
Total time spent	GA: 10 mins GC: 229 mins

Table 4I: Issue of proceedings

Work Item	Time Spent
Letter to ATE provider advising progression	5 mins (GC)
Request 'condition and prognosis' report (usually same expert) Draft letter of instruction (3 pages)	30 mins (GC)
Receive C & P report (7 pages) Review advice	12 mins (GC)

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Referral of claim to supervisor	10 mins (GA) 10 mins (GC)
Prepare pleadings Draft Claim Form Draft Particulars of Claim Draft Notice of Funding Draft Schedule of Losses (2 pages)	120 mins (GC)
Report to client on pleadings Draft letter of advice Enclose approval request to proceed Enclose Statement of Case (2 pages)	30 mins (GC)
Call from client to discuss pleadings and next steps	10 mins (GC)
Receive signed documents back from client Quick check and collation of documents	5 mins (GC)
Serve proceedings on Defendant	5 mins (GC)
File proceedings in Court	5 mins (GC)
Obtain cheque for issue fee	5 mins (AC)
Review Defence filed (4 pages)	15 mins (GC)
Draft advice letter to Claimant on Defence (2 pages) Enclose Defence	12 mins (GC)
Draft letter enclosing Defence to experts for review (1 page) Seek expert comments on Defence	5 mins (GC)
Consider response on Defence from expert (1 page)	5 mins (GC)
Total time spent	AC: 5 mins GA: 10 mins GC: 269 mins

Table 4J: Litigation tasks

Work Item	Time Spent
Draft Directions Questionnaire	12 mins (GC)

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Call Defendant to agree Directions	12 mins (GC)
Draft Directions	12 mins (GC)
Draft letter to Court enclosing Directions	5 mins (GC)
Letter to Defendant enclosing Directions	5 mins (GC)
Receive directions back from Court Review Directions Diarise on CMS Send Directions to expert	15 mins (GC)
Prepare List of Documents (3 pages)	10 mins (GC)
Send List of Documents to client for approval	3 mins (GC)
Receive signed copy of List of Documents back from client	3 mins (GC)
Send List of Documents onto Defendant	3 mins (GC)
Consider Defendants List of Documents	5 mins (GC)
Draft letter requesting Defendants documents from List of Documents	3 mins (GC)
Receive request from Defendant for disclosure of documents from List of Documents	3 mins (GC)
Draft letter to Defendant enclosing documents	3 mins (GC)
Collate and attach documents	10 mins (AC)
Consideration of received documents from Defendant	10 mins (GC)
File trial availability with Court liaise with expert, Counsel Defendant and Claimant	15 mins (GC)
Serve witness evidence (1 page)	5 mins (GC)
Consideration of opposition evidence (70%) (3 pages)	15 mins (GC)
Send opposition evidence to client and expert	12 mins (GC)
Receive response on opposition evidence from expert (1 page)	5 mins (GC)
Exchange of liability evidence Serve Claimant evidence Consider opponents evidence	35 mins (GC)

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Send opponents evidence to client and expert	
Consider response from expert on opponents evidence	
Referral of claim to supervisor	10 mins (GA) 10 mins (GC)
Arrange telephone conference with Counsel and experts	
Draft instructions to counsel	
Notify experts	
Coordinate availability	60 mins (GC)
Conference with counsel and experts	
Perusal of file prior to conference	
Telephone conference	
Draft attendance note of conference	106 mins (GC)
Joint liability discussion	
Draft agenda (2 pages)	
Agree and send agenda	
Instruct expert with agenda	46 mins (GC)
Review joint expert report (2 pages)	12 mins (GC)
Draft letter of advice to Claimant	
Enclose joint expert report	4 mins (GC)
File review	10 mins (GC)
Referral of claim to supervisor	10 mins (GA) 10 mins (GC)
Update Schedule of Loss	6 mins (GC)
Draft letter to serve Schedule of Loss on Defendant	3 mins (GC)
Draft letter to Claimant enclosing Schedule of Loss	3 mins (GC)
Review Defendants Counter-Schedule of Loss (2 pages)	10 mins (GC)
Send Counter-Schedule of Loss to Claimant for consideration	6 mins (GC)
Ad-hoc liability and quantum discussions with Defendant	25 mins (GC)
Ad hoc discussions with client	10 mins (GC)
Total time spent	GA: 20 mins

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	GC: 512 mins AC: 10 mins
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Table 4L: Claim finalisation tasks

Work Item	Time Spent
Letter to client confirming settlement	3 mins (GC)
Receive payment	3 mins (GC)
Send payment to client	3 mins (GC)
Costs presentation (fixed)	5 mins (GC)
Letter to ATE	5 mins (GC)
Total time spent	GC: 19 mins

Table 4M: Total time spent on claim

Total time spent on claim	AC: 30 mins GA: 50 mins GC: 1547 mins GD: 60 mins
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Table 4N: Contingency- Additional Expert Required

Work Item	Time Spent
Approach expert	15 mins (GC)
Instruct medical expert (2-3 pages) Draft Summary of facts Draft questions to experts to address breach and causation and / or quantum	30 mins (GC)
Receive call from expert / make call to chase the report	5 mins (GC)
Review expert report (10 pages)	20 mins (GC)
Draft advice to client on expert report, enclosing the same	20 mins (GC)
Draft questions to expert (50%)	15 mins (GC)
Send report to other expert(s)	6 mins (GC)

Review experts written response to questions	5 mins (GC)
Phone call from client concerning expert report and advice	5 mins (GC)
Ad hoc time for liaising with expert Trial availability Participating in conference Joint report Distribute trial date	80 mins (GC)
Total time spent	GC: 181 mins

Table 40: Summary of Time Analysis: minutes required

				Grade of Lawyer				
STAGE		SYSTEM	ADMIN CLERK	GA	GB	GC	GD	TOTAL
Hourly Rates (note 1)		n/a	£7.20	£217	£192	£161	£118	n/a
Pre issue	Table 4D: preliminary investigations	0	15	0	0	103	0	118
	Table 4E: formal complaint to trusts	0	0	0	0	45	0	45
	Table 4F: liability investigations	0	0	10	0	245	60	315
	Table 4G liability negotiations	0	0	0	0	145	0	145
	Table 4H: quantum investigations	0	10	0	0	229	0	239
	Sub-total minutes	0	25	10	0	767	60	862
	Sub-total £	£0	£3	£36	0	£2,058	£118	£2,215
Post Issue/pre-allocation	Table 4I: issue of proceedings	0	5	10	0	269	0	284
	Sub-total £	£0	£1	£36	0	£721	0	£758

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Post Allocation/ pre-listing	Table 4J: litigation tasks	0	10	20	0	512	0	542
	Subtotal £	£0	£1	£72	0	£1,373	£0	£1,745
Post listing	Table 4L: claim finalisation tasks	0	0	0	0	19	0	19
	Sub-total £	£0	£0	£0	£0	£51	£0	£51
Total	Table 4M:	0	30	40	0	1,567	60	1,707
	£	£0	£4	£144	£0	£4,203	£118	£4,470
Table 4N: additional expert		0	0	0	0	201	0	201
		£0	£0	£0	£0	£539	£0	£539
Note: (1) Hourly rates shown are GHRs for lawyers and the national minimum wage for the admin clerk. (2) Table numbers refer to tables with Annex E. (3) Figures are rounded.								

5. Claimant Funding

Table 5A: Pre-LASPO CFAs above £1 and up to £25,000

		£000s			
Year	Number of Claims	Damages Paid	Defence Costs Paid	Claimant Costs Paid	Total Paid
2011/12	1,890	19,444	4,842	31,203	55,489
2012/13	1,943	19,261	5,665	37,554	62,479
2013/14	2,250	22,393	6,891	47,261	76,545
2014/15	2,344	23,868	7,936	55,240	87,044
2015/16	1,969	21,708	9,076	61,277	92,060

Date source: NHS LA

This table shows data for claims that were funded through CFAs before the introduction of LASPO for clinical negligence claims for damages above £1 and up to £25,000. The data relates to claims closed within the financial years in question. The payments were not necessarily made during those years.

Table 5B: Post LASPO CFAs 2013/14 above £1 and up to £25,000

		£000s			
Year	Number of Claims	Damages Paid	Defence Costs Paid	Claimant Costs Paid	Total Paid
2013/14	8	78	1	33	112
2014/15	227	1,419	307	1,492	3,218
2015/16	845	6,839	1,451	8,642	16,932

Data Source: NHS LA

This table shows data for claims that were funded through CFAs after the introduction of LASPO. Data is split into damages tranches. The data relates to claims closed within the financial years in question. The payments were not necessarily made during those years

Table 5C: Legal Aid and CFAs

	2011/12	2012/13	2013/14	2014/15	2015/16
Legal Aid Certificates granted for clinical negligence	2,638	2,399	1,031	447	Data not available
CFAs	2,953	3,086	3,634	4,245	4,517

Data Sources: Legal Aid data from the Legal Aid Agency^v, CFAs from NHS LA

Table 5D: Legal Aid as a Proportion of Clinical Negligence Claims reported to NHS LA

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Total number of Claims reported to NHS LA	8,655	9,143	10,129	11,945	11,497	10,965
Number of Clinical Claims received by NHSLA where the claimant funding was 'Legal Services Commission'	1,378	1,126	891	738	452	271
%	16%	12%	9%	6%	4%	2%

Data Source: NHS LA

Information on how all clinical negligence claims against the NHS are funded is not known because in many cases the method of funding is not disclosed by the claimant's representatives. NHS LA advise that for 2015/16, claims not recorded as funded by Legal Aid or CFA fall into one of the following categories:

- Before the Event (BTE) insurance,
- Self-funded (mostly claimants without legal representation) - NHS LA received 550 unrepresented claimants in 2015/16.
- Group claim with funding protocol in place, and
- Funding unknown.

Data from the Legal Aid Agency shows that the number of Legal Aid Certificates granted for clinical negligence has reduced from 3,461 in 2009/10 to 448 in 2014/15. Since 2011/12 the number of CFAs for clinical negligence claims against the NHS in England has risen from 2,954 to 4,274 in 2014/15.

This is consistent with the anticipated impact of legal aid reform in LASPO, which removed most clinical negligence claims from the scope of the civil legal aid scheme. However: Legal Aid continues to fund a small number of high value clinical negligence cases (for brain damaged children); and legal aid may also be available through the Exceptional Case Funding Scheme (subject to means and merits) where failure to provide funding would or would be likely to result in a breach of individual's rights under the European Convention of Human Rights or European Law.

6. Equalities

This chapter should be read in conjunction with the assessment of equalities, health inequalities and families in Chapter 9. The Ministry of Justice does not collect comprehensive information about court users generally, and specifically those involved in clinical negligence cases, in relation to the protected characteristics. NHS LA does not hold data on the full range of protected characteristics. Data is available on the clinical negligence claims by the age and gender of the claimant. Data is also available from the Compensation Recovery Unit, Office of Disability Issues and Office of National Statistics.

Table 6A: Comparison of gender data 2015/16

	NHS LA 2015/16	ONS 2013	CRU 2014/15
Male	44%	49%	42%
Female	56%	51%	58%

There are differences between the gender data by NHS LA, ONS and CRU. NHS LA data is for claims that are made against all categories of clinical negligence that NHS LA handle. NHS LA code claims on behalf of babies by the gender of the baby. ONS data is for population as a whole and not claimants. CRU clinical negligence data includes claims from the medical defence organisations and insurers as well as NHS LA. There is not a direct correlation between the clinical negligence gender split and the population split – one reason is the number of gynaecology claims and obstetric cases where the mother is injured.

Table 6B: Gender of Claimant by Damages Tranche 2015/16

Initial Damages Reserve	Number			%	
	Female	Male	total	Female	Male
£0 - £1,000	747	697	1,444	52%	48%
£1,001 - £25,000	2,019	1,632	3,651	55%	45%
£25,001 - £50,000	1,616	1,073	2,689	60%	40%
£50,001 - £100,000	664	489	1,153	58%	42%
£100,001 - £250,000	510	439	949	54%	46%
£250,001+	550	529	1,079	51%	49%
Total	6,106	4,859	10,965	56%	44%

Table 6C Comparison of Age Data

	NHS LA 2015/16	ONS 2013	CRU 2014/15
0 - 18	12%	19%	6%
19 - 67	70%	64%	72%
68+	18%	18%	22%

There are differences between NHS LA, ONS and CRU data on age of claimant and there is not a direct correlation between the age of clinical negligence claimants and the population as a whole. NHS LA data is for claims that are made against all categories of clinical negligence that NHS LA handle. ONS data is for population as a whole and not claimants. CRU clinical negligence data includes claims indemnified by the medical defence organisations and insurers as well as NHS LA. NHSLA and ONS age data is in the same age bands: up to 18, 19 to 67 and 68 plus whereas CRU age data is in different age bands: up to 15, 16 to 67 and 65 plus.

NHS LA data shows that between 2011/12 and 2015/16 claimants aged 29 to 48 generate on average approximately 31% of claims and claimants aged 68 or over generate approximately 16% of all claims. This is broadly consistent with ONS data and CRU data with CRU being an outlier.

Table 6D: Age of Claimant by Damages Tranche 2015/16

Initial Damages Reserve	Number				%		
	up to 18	19 - 67	68+	Total	up to 18	19 - 67	68+
£0 - £1,000	117	1,019	238	1,374	9%	74%	17%
£1,001 - £25,000	366	2,352	815	3,533	10%	67%	23%
£25,001 - £50,000	261	1,872	478	2,611	10%	72%	18%
£50,001 - £100,000	91	871	166	1,128	8%	77%	15%
£100,001 - £250,000	69	734	119	922	7%	80%	13%
£250,001+	337	655	64	1,056	32%	62%	6%
Total	1,241	7,503	1,880	10,624	12%	71%	18%

Data source = NHS LA. Table excludes the 341 claims where the age of claimant is not known

Tables 6E to 6H: Age and Gender Data from the Compensation Recovery Unit

The data below reflects the volume of claims registered and volume of settlements recorded under the Clinical Negligence liability type for the period 01 April 2014 to 31 March 15. The data has been broken down further by country, gender and age group. The data provided within the settlement dataset cannot be directly compared to the claims data requested. This is due to the time delay from the receipt of a notification to a claim for compensation and the settlement being received. Each claim can have several settlements and for the purpose of this report we have selected the last settlement on each claim as the most up to date status on that claim. CRU has identified the country using the postcode prefix for the customer based on the details provided by the compensator when registering the claim. The data is correct at the time it is supplied (February 2016), but some elements are subject to change - e.g. the CRU can be notified of changes to liability types, injured persons address details, settlements can be voided etc.

Table 6E: Clinical Negligence Settlements Recorded by CRU between 01/04/14 and 31/03/15 in England

Gender	Age			Total
	0-16	17-64	65+	
Male	488	4,055	1,627	6,170
Female	370	6,393	1,877	8,640
Total	858	10,449	3,504	14,810

Note: excludes Unknown

Table 9F Clinical Negligence Claims Registered by CRU between 01/04/14 and 31/03/15 in England

Gender	Age			Total
	0-16	17-64	65+	
Male	487	4,518	1,622	6,627
Female	403	7,180	1,940	9,524
Total	890	11,698	3,562	16,151

Note excludes unknown

Table 6G: Clinical Negligence Settlements Recorded by CRU between 01/04/14 and 31/03/15 in Wales

Gender	Age			Total
	0-16	17-64	65+	
Male	23	249	110	382
Female	15	366	130	511
Total	38	615	240	893

Note: excludes Unknown

Table 6H Clinical Negligence Claims Registered by CRU between 01/04/14 and 31/03/15 in Wales

Gender	Age			Total
	0-16	17-64	65+	
Male	17	290	147	454
Female	16	375	135	526
Total	33	665	282	980

Note excludes unknown

The Compensation Recovery Unit (CRU) is part of the Department of Work and Pensions and works with insurance companies, solicitors and DWP customers, to recover: amounts of social security benefits paid as a result of an accident, injury or disease, if a compensation payment has been made (the Compensation Recovery Scheme) and costs incurred by NHS hospitals and Ambulance Trusts for treatment from injuries from road traffic accidents and personal injury claims (Recovery of NHS Charges), including clinical negligence claims.

Tables 6I to 6L: Clinical Negligence Claims relating to Maternity.

NHS LA undertook a study into maternity claims for incidents between April 2000 and March 2010.^{vi} Maternity claims with an incident date between April 2000 and March 2010 numbered 5,087 with a total value of £3.1 billion. During a similar time period from 2000 to 2009 inclusive, there were 5.5 million births in England. Less than 0.1% of these births had become the subject of a claim, indicating that the vast majority of births do not result in a clinical negligence claim. The report set out a number of areas where improvements could be made.

The data in the following tables is from NHS LA.

Table 6I: Number of Obstetrics and Gynaecology claims received 2011/12 to 2015/16

Specialty	2011/12	2012/13	2013/14	2014/15	2015/16
Obstetrics (O)	1,057	1,178	1,292	1,193	1,114
Gynaecology (G)	474	503	684	671	615
Sub-total: O&G	1,531	1,681	1,976	1,864	1,729
Total clinical claims	9,143	10,129	11,945	11,497	10,965
O&G as a % of total claims	16.7%	16.6%	16.5%	16.2%	15.8%

Table 6J: Number of Obstetrics and Gynaecology received 2015/16 by total damages tranches

Specialty	0	1 - 25,000	25,001 - 50,000	50,001 - 100,000	100,001 - 250,000	250,001+	Total
Obstetrics (O)	118	283	303	89	55	266	1,114
Gynaecology (G)	85	168	196	88	61	17	615
Sub-total: O&G	203	451	499	177	116	283	1729
Total clinical claims	460	1,346	802	356	344	346	3,654
O&G as a % of total claims	44%	34%	62%	50%	34%	82%	47%

Table 6K: Total claim value (at respective year ends) for Obstetrics and Gynaecology claims received 2011/12 to 2015/16

	£000s				
Specialty	2011/12	2012/13	2013/14	2014/15	2015/16
Obstetrics (O)	787,009	988,804	888,890	1,149,282	1,204,800
Gynaecology (G)	53,744	51,823	60,843	65,510	76,460
Sub-total: O&G	840,753	1,040,627	949,733	1,214,793	1,281,260
Total	2,081,572	2,381,052	2,511,691	2,784,594	2,896,368
O&G as a % of the total value of claims	40.4%	43.7%	37.8%	43.6%	44.2%

Table 6L: Total claim value of clinical negligence claims received 2015/16 by total damages tranches and top 10 specialties

	£000s						
Specialty	0	1 - 25,000	25,001 - 50,000	50,001 - 100,000	100,001 - 250,000	250,001+	Total
Obstetrics	£164	£10,310	£22,142	£11,411	£14,146	£1,146,628	£1,204,800
Gynaecology	£158	£6,127	£15,241	£11,175	£14,879	£28,881	£76,460
Sub-total: Obstetrics & Gynaecology	£322	£16,437	£37,383	£22,586	£29,025	£1,175,509	£1,281,260
Total clinical claims	£2,068	£127,471	£197,065	£146,037	£240,763	£2,182,964	£2,896,368
O&G as a % of total claims	16%	13%	19%	15%	12%	54%	44%

Tables 6M and 6I: disability data from the Office of Disability Issues^{vii}

There is no data available on (1) people who become disabled as a result of an adverse incident or (2) disabled people who were the subject of an adverse incident. However, data on the prevalence of disability within the population is available from the Office of Disability Issues as set out below:

Table 6M: Disability Prevalence 2011/12

Country	Disability Prevalence (million)
England	10.0
Wales	0.6

Table 6N: Disability Age in Great Britain

Age	Number
Children	0.8 million
Working Age	5.7 million
Over State Pension Age	5.1 million
Total	11.6 million

References

ⁱ NHS LA Annual Reports: 2014/15 and 2015/16

ⁱⁱ ONS: <http://www.ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/mid-2014/sty---overview-of-the-uk-population.html>

ⁱⁱⁱ CRU data: www.dwp.gov.uk

^{iv} Legal Aid Agency data: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

^v Legal Aid Agency data: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

^{vi} NHS Litigation Authority
<http://www.nhs.uk/AboutNHS/Documents/Ten%20Years%20of%20Maternity%20Claims%20-%20An%20Analysis%20of%20the%20NHS%20LA%20Data%20-%20October%202012.pdf>

^{vii} Data from Office of Disability Issues, Department of work and Pensions.
<https://www.gov.uk/government/statistics?departments%5B%5D=office-for-disability-issue>