

Clinical Negligence & Other Risks Indemnity Scheme (CNORIS)

Annual Report 2017-2018

National Services Scotland's Values



Scheme Director: David Knowles

NHS National Services Scotland

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Introduction

Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) is a risk transfer and financing scheme for Health and Social Care across Scotland and was first introduced in April 2000 by the Scottish Government Health Directorates in partnership with Willis Limited. The primary objective is to provide cost-effective risk pooling and claims management arrangements for members of the Scheme who include: NHS Health Boards, Special Health Boards and Health & Social Care Integration Joint Boards from across Scotland¹.

With effect from the 1st September 2013 NHS National Services Scotland (NSS) took over responsibility for managing the Scheme from Willis Limited, with the NHS Central Legal Office continuing to provide legal advice and guidance to members in relation to negligence claims.

This year's annual report provides summary details of the number and value of claims made during the financial year 2017-2018, and gives an insight into arrangements for payment of clinical negligence claims and the impact on the NHS in Scotland².

The CNORIS scheme covers both clinical and non clinical claims³. In 2017-2018 there were 300 claim payments made; a 29% decrease on the number of payments made in 2016-2017 (424). In addition to a decrease in the numbers of payments there was also a 16.5% decrease in the value of payments in 2017-2018, £33.6 million compared with £40.3 million paid in 2016-2017. The division of 2017-2018 payments between clinical and non-clinical claims was 259 payments totalling £32.0 million for clinical claims and 41 payments totalling £1.6 million for non-clinical claims. The highest settlement payments related to claims for obstetric care and, as illustrated in Graph 2 below, these types of claims can, due to a number of factors, take many years to conclude.

It should be noted that although a claim may have been received in 2017-2018 it often related to an incident that occurred many years previously. This is highlighted by the fact that of the claims received in 2017-2018 there were only 9 of the 300 where the incident date was between 2015-2016 and 2017-2018; value of payments totalled £1.2 million. This is analysed in greater detail in [graph 1](#) below.

Outturn for 2017-2018

The value of claims paid in 2017-2018 was £33.6 million.

The breakdown of the number and value of claim payments made during 2017-2018 is detailed in Table 1 below.

Table 1: Value of 2017-2018 Payments

<u>NHS Board</u>	<u>Value of Claims £k</u>
NHS Grampian	3,081
NHS Ayrshire and Arran	2,766
NHS Greater Glasgow & Clyde	5,231
NHS Tayside	3,014
NHS Lanarkshire	5,678
NHS Highland	2,245
NHS Lothian	5,042
NHS Fife	3,524
NHS Forth Valley	1,480
NHS Dumfries and Galloway	281
NHS Orkney	<1
NHS Western Isles	444
NHS Borders	309
Scottish Ambulance Service	171
NHS Shetland	<1
NHS24	23
National Waiting Times Centre	260
The State Hospital	65
SNBTS	<1

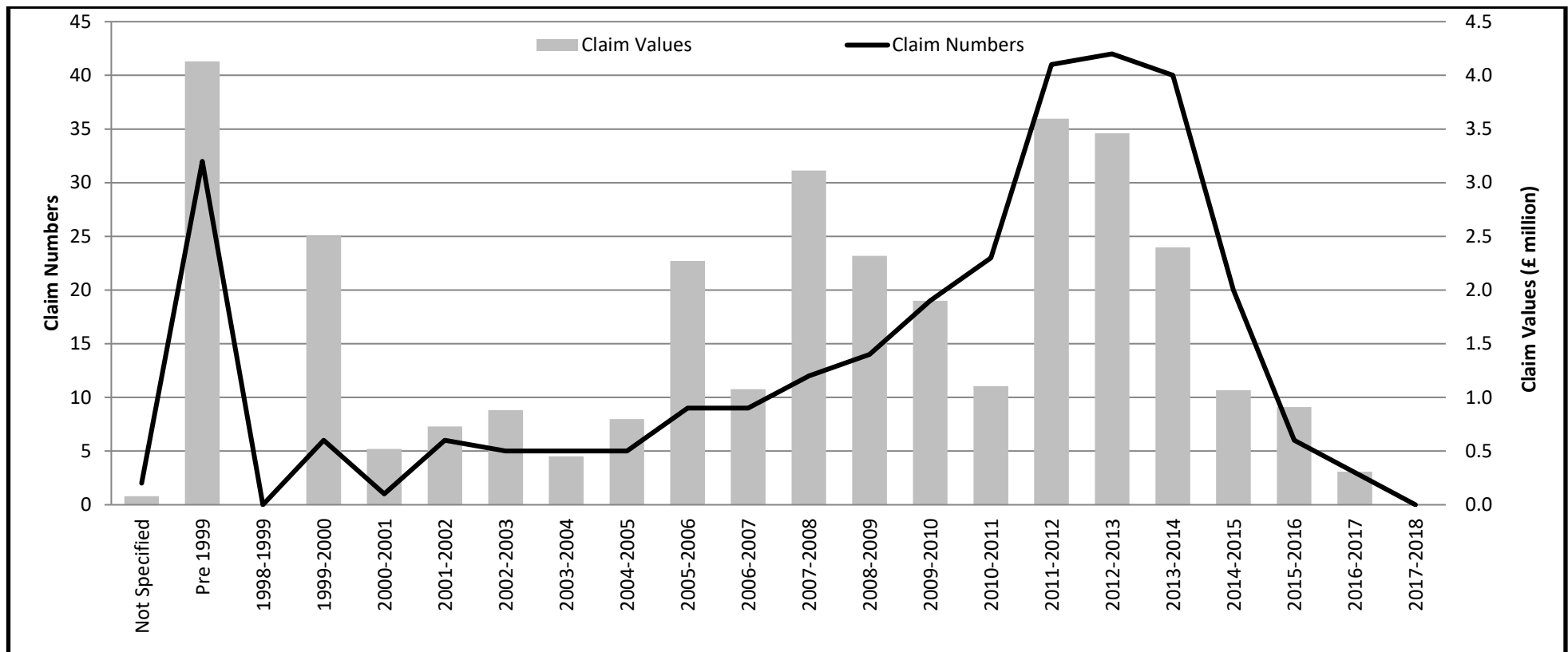
Table 1.2: Number of 2017-2018 Payments

<u>NHS Board</u>	<u>Number of Payments</u>
NHS Grampian	27
NHS Ayrshire and Arran	21
NHS Greater Glasgow & Clyde	58
NHS Tayside	31
NHS Lanarkshire	43
NHS Highland	11
NHS Lothian	50
NHS Fife	19
NHS Forth Valley	17
NHS Dumfries and Galloway	6
NHS Orkney	<5
NHS Western Isles	<5
NHS Borders	<5
Scottish Ambulance Service	5
NHS Shetland	<5
NHS24	<5
National Waiting Times Centre	<5
The State Hospital	<5
SNBTS	<5

Incident Timeline

Graph 1 below provides a breakdown of all claims paid in 2017-2018 by the value and number of payments attributed by the financial year of the incident. The majority of payments related to claims settled more than 5 years after the incident occurred, with some settlements taking considerably longer.

Graph 1: Claims Paid 2017-2018 by Year of Incident



Trends in Payments

Table 2 below shows the change in the number and value of CNORIS payments over the last 10 years. It highlights the variation in values and how increasing payment numbers has not necessarily correlated to an increased value in payments. What can be seen however is the general trend of increasing claim numbers, which is in part due to the increase number of interim payments being reclaimed by health boards.

Table 2: Payments made since 2008-2009*

Table 2.1 Value of clinical payments since 2008-2009

Financial Year	Value of clinical payments (£m)
2008-2009	27.09
2009-2010	30.80
2010-2011	57.38
2011-2012	27.15
2012-2013	33.13
2013-2014	34.87
2014-2015	36.96
2015-2016	49.70
2016-2017	38.29
2017-2018	31.98
Total	367.34

Table 2.2 Value of non-clinical payments since 2008-2009

Financial Year	Value of non - clinical payments (£m)
2008-2009	1.34
2009-2010	0.32
2010-2011	0.87
2011-2012	2.05
2012-2013	1.85
2013-2014	3.53
2014-2015	1.62
2015-2016	3.10
2016-2017	1.97
2017-2018	1.63
Total	18.27

Table 2.3. Total value of clinical and non-clinical payments since 2008 – 2009

Financial Year	Total values of clinical and non - clinical payments (£m)
2008-2009	28.42
2009-2010	31.12
2010-2011	58.24
2011-2012	29.19
2012-2013	34.98
2013-2014	38.40
2014-2015	38.57
2015-2016	52.81
2016-2017	40.25
2017-2018	33.61
Total	385.61

* Values relate to reimbursements made from CNORIS and not payments to claimants and their legal representatives.

Table 3.1 Number of clinical payments since 2008-2009

Financial Year	Number of clinical payments (£m)
2008-2009	66
2009-2010	89
2010-2011	123
2011-2012	126
2012-2013	168
2013-2014	160
2014-2015	193
2015-2016	235
2016-2017	342
2017-2018	259
Total	1,761

Table 3.2. Number of non-clinical payments since 2008 - 2009

Financial Year	Number of non - clinical payments (£m)
2008-2009	21
2009-2010	14
2010-2011	24
2011-2012	36
2012-2013	49
2013-2014	41
2014-2015	61
2015-2016	56
2016-2017	82
2017-2018	41
Total	425

Table 3.3. Total number of clinical and non-clinical payments since 2008-2009

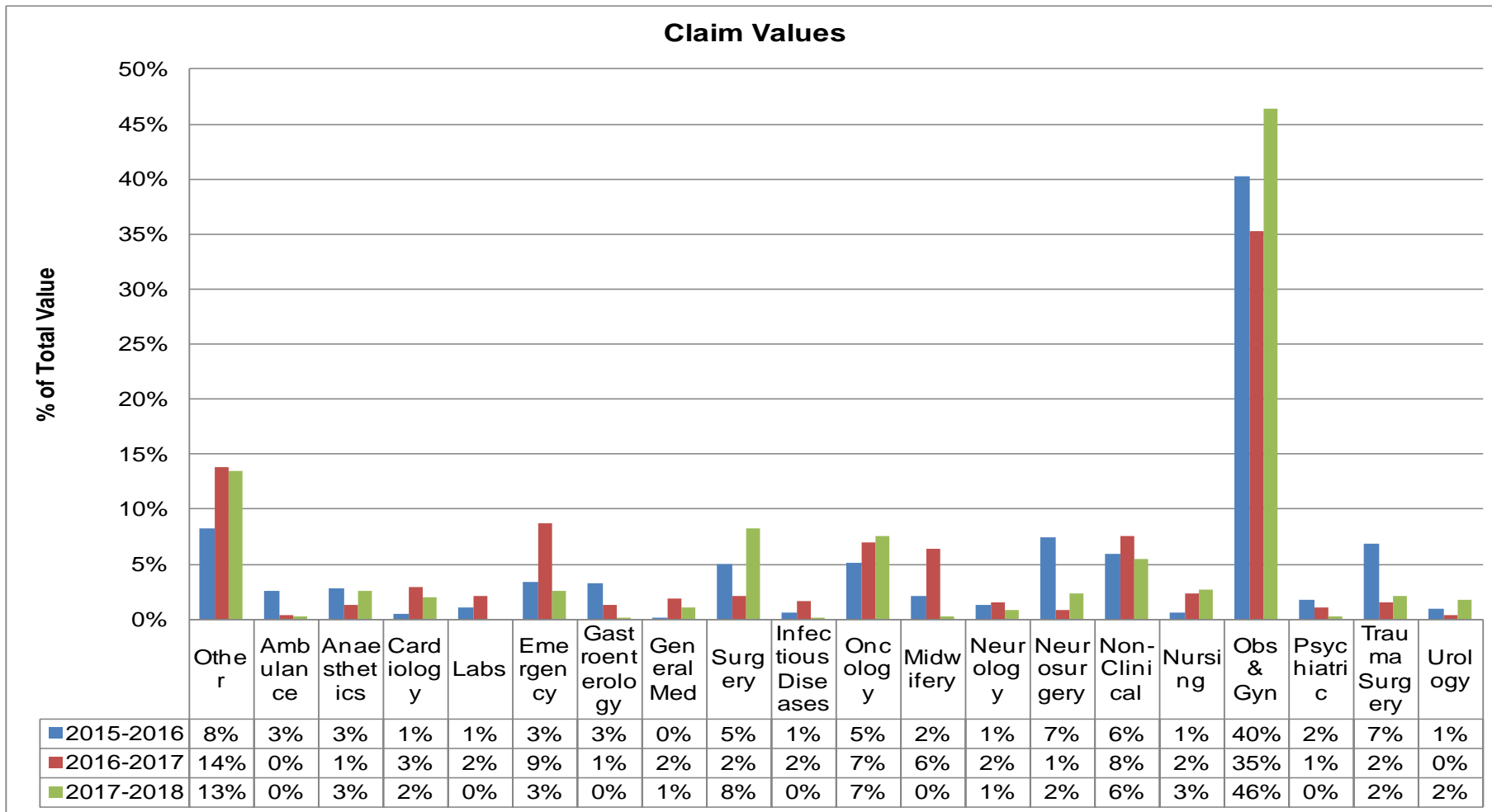
Financial Year	Total number of clinical and non - clinical payments (£m)
2008-2009	21
2009-2010	14
2010-2011	24
2011-2012	36
2012-2013	49
2013-2014	41
2014-2015	61
2015-2016	56
2016-2017	82
2017-2018	41
Total	425

Of the 300 payments made in 2017-2018, there were 2 in excess of £1 million and 19 related to 13 claims where the total value of the claim was in excess of £1 million.

The breakdown, by percentage, of the number and value of claims over the last 3 financial years (2015-2016, 2016-2017 and 2017-2018), by speciality, is provided in graphs 2 and 3 below. The graphs highlight that although obstetrics claims account on average for only 15.8% of the number of claims they account on average for 39.3% of the total value of claims over these years.

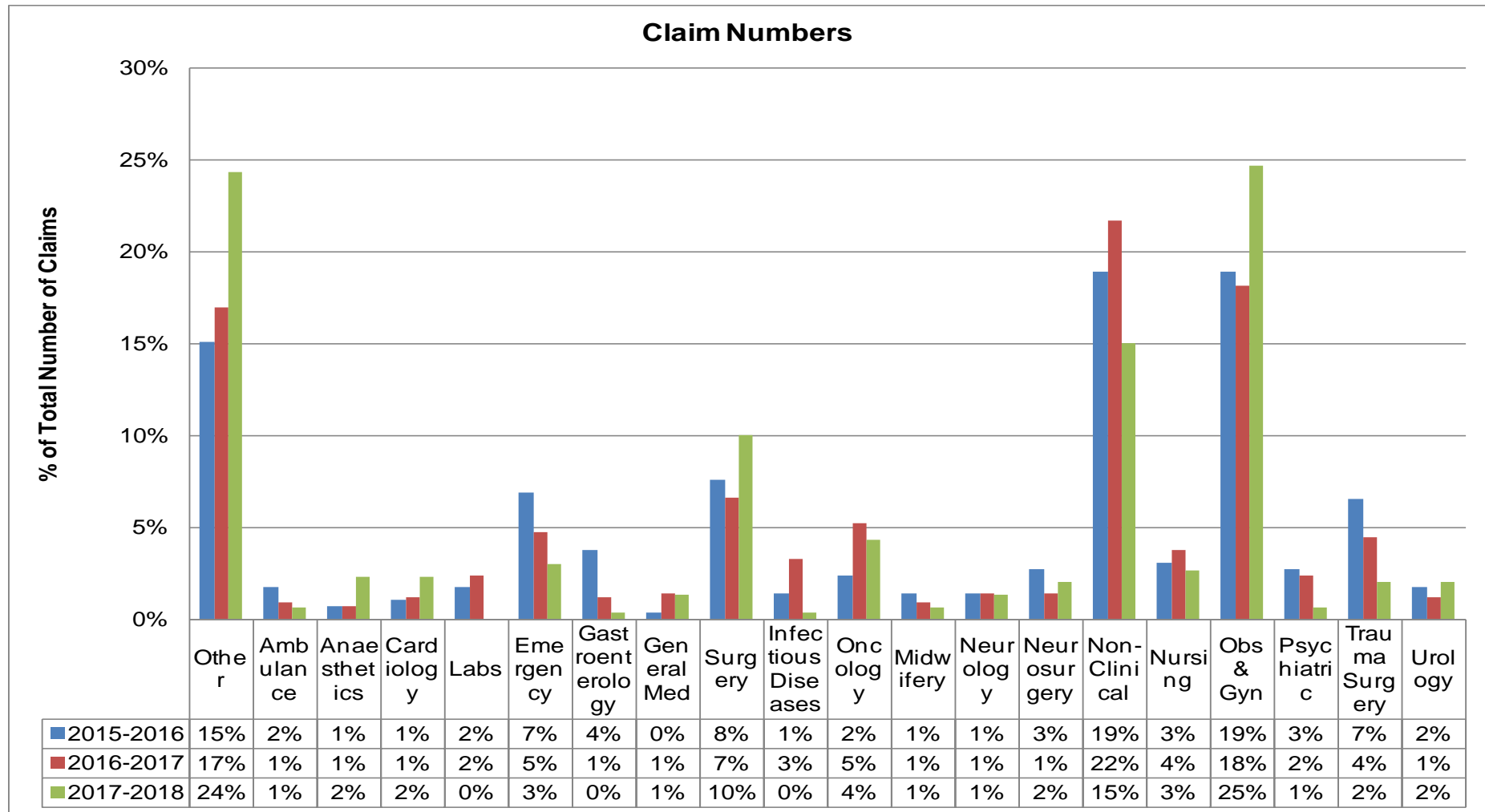
Graph 2: Value of Claims Paid during 2015-2016, 2016-2017 & 2017-2018 by Speciality*





* How claims are categorised is currently being reviewed and once completed will result in less being reported as being “Other”.

Graph 3: Number of Claim Payments made during 2015-2016, 2016-2017 & 2017-2018 by Speciality*



* How claims are categorised is currently being reviewed and once completed will result in less being reported as being “unclassified”.

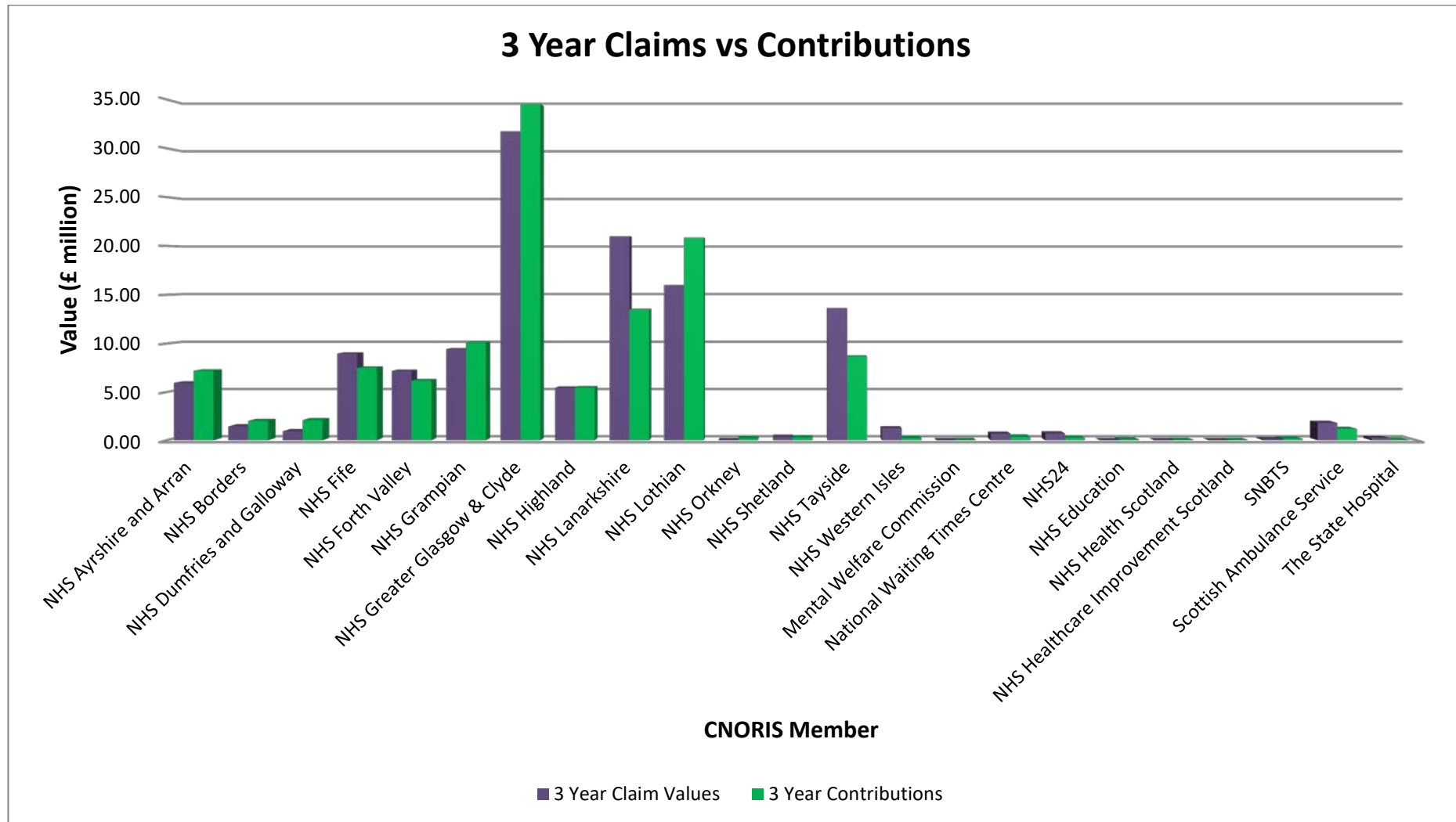
Periodic Payment Orders (PPOs) and Structured Settlements⁴ 2017-2018

PPO payments are paid to claimants periodically and, for most settlements, paid annually in December, with reimbursement to NHS Boards generally made within the following few months. During 2017-2018 there were 15 PPOs and 4 older structured settlements paid across 7 NHS Boards; one paid quarterly and the others annually. There was also a payment of care costs that although not classified as a PPO will be subject to annual payments and so is included within this total. The values reclaimed by NHS Boards from CNORIS during 2017-2018 totalled £3.58 million. The increasing number of PPOs will continue to affect the future profile of payments by CNORIS, with future years' payments also being subject to inflationary increases.

Contributions and Claims Paid

Contributions and claims paid in the last 3 years are illustrated in Graph 4 below. Contributions are set based upon a formula that includes: claim history; more recent claims; and an assessment of the risks of incidents occurring. Contributions do not therefore necessarily equal payments in any particular year, although over time the total contributions paid by health boards should match payments reclaimed by them from CNORIS.

Graph 4: Contributions & Claims Paid – 3 Year Total

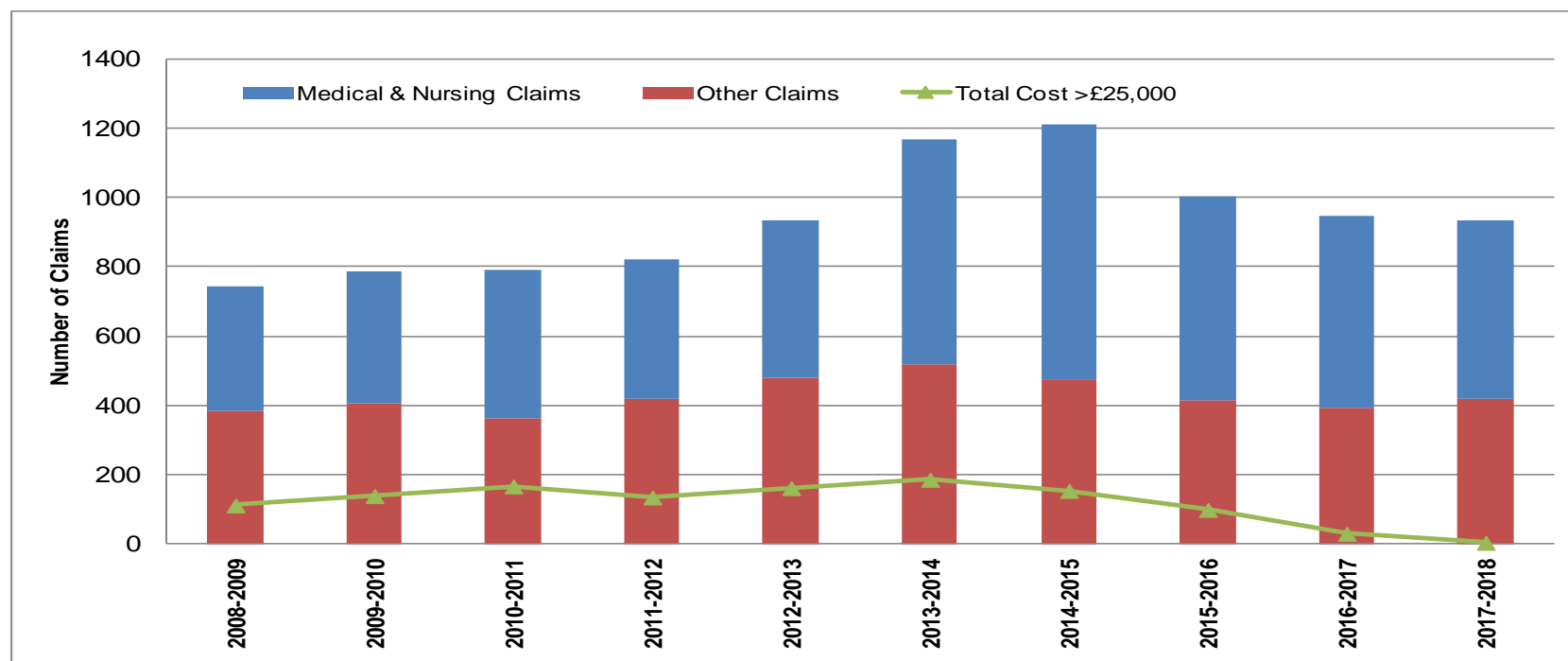


Analysis of Claims by Year of Incident and Year

Graph 5 below provides a breakdown of the total number of medical and nursing (clinical) claims for compensation together with all other compensation claims, received by NSS CLO in each financial year since 1 April 2008. The graph also details the number of those claims where the total costs, as at 31 Mar 2018, exceeded the CNORIS deductibles threshold of £25,000, irrespective of whether these costs have been reclaimed from CNORIS.

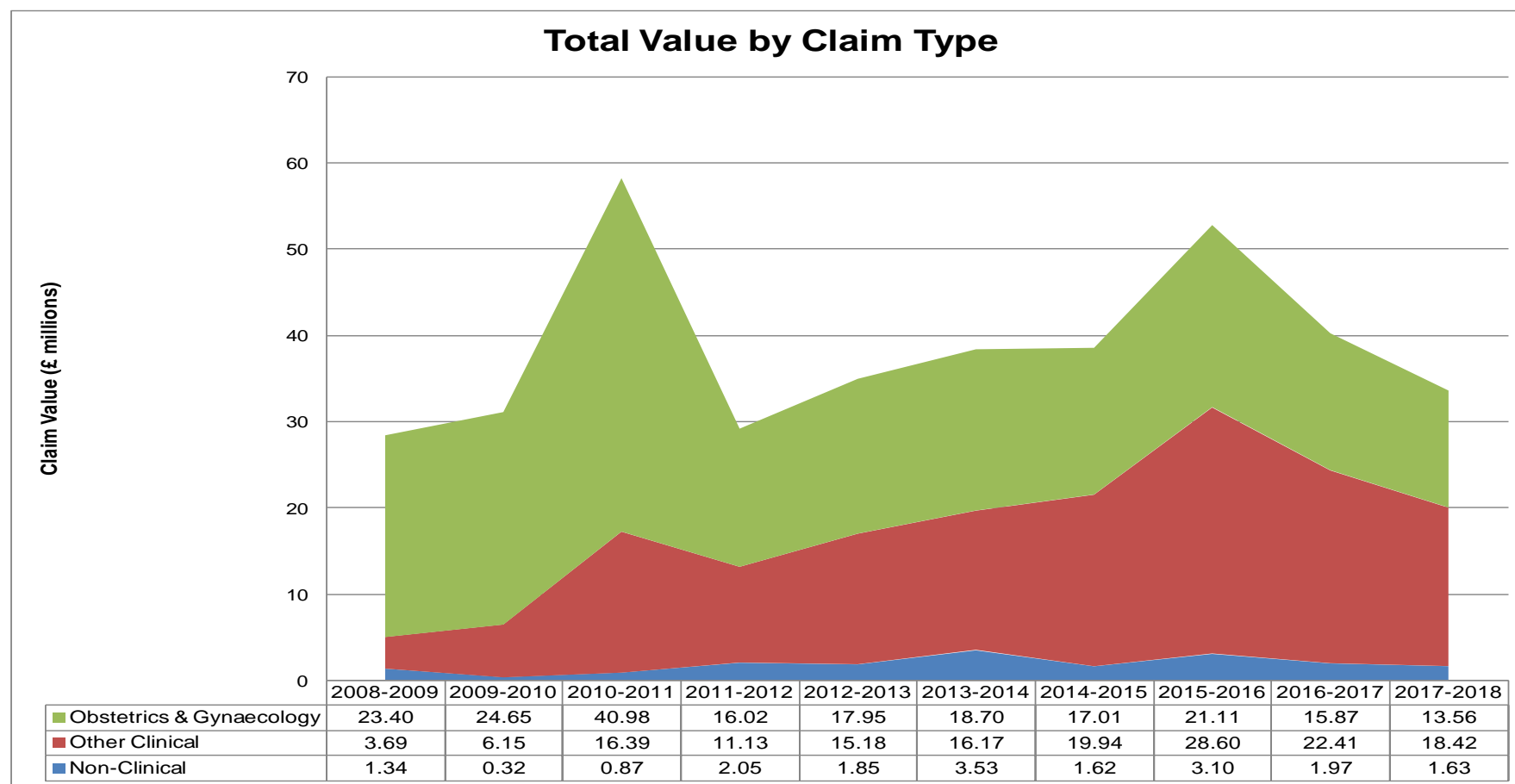
It is important to bear in mind that, although there has been a small decrease in the number of claims being received, this graph relates to the number of claims received each year regardless of value and merit, and does not indicate the number of claims that may eventually be a call upon the CNORIS scheme, generally those where total costs (award plus legal expenses for both parties) exceed £25,000..

Graph 5 - Breakdown of No. of All Claims Received by NSS CLO

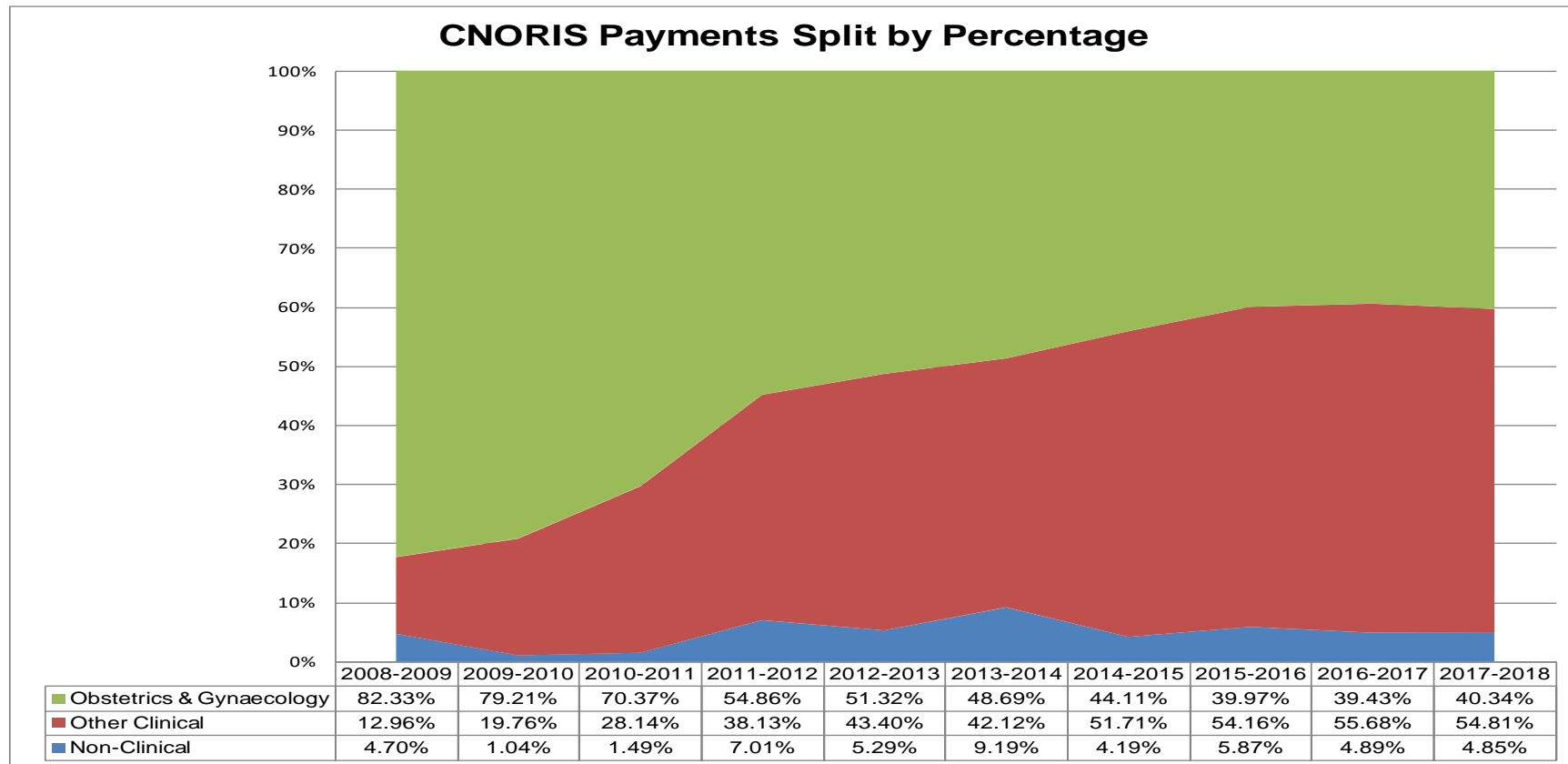


Graphs 6 and 7 below provides a breakdown of payments made by the CNORIS scheme between 2008-2009 and 2017-2018 (total value of net payments made was £385.61 million), in relation to whether the claim related to an obstetrics & gynaecology incident, another type of clinical incident or a non-clinical incident. Graph 6 is in monetary terms and graph 7 in percentage terms.

Graph 6 – Breakdown of CNORIS Payments (£385.61 million, net of deductibles), made between 2008-2009 and 2017-2018

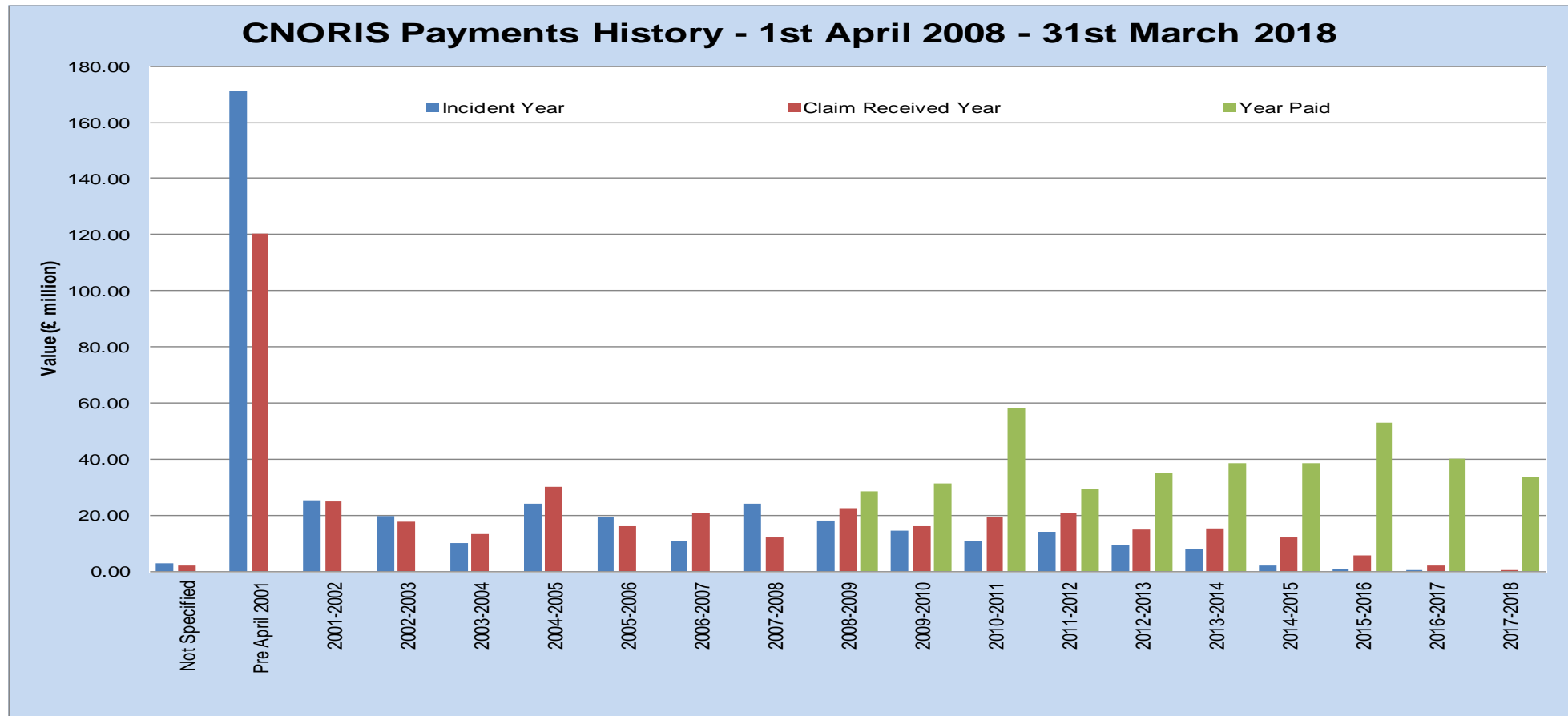


Graph 7 –CNORIS Payments (£385.61 million, net of deductibles), made between 2008-2009 and 2017-2018, In Percentage Terms



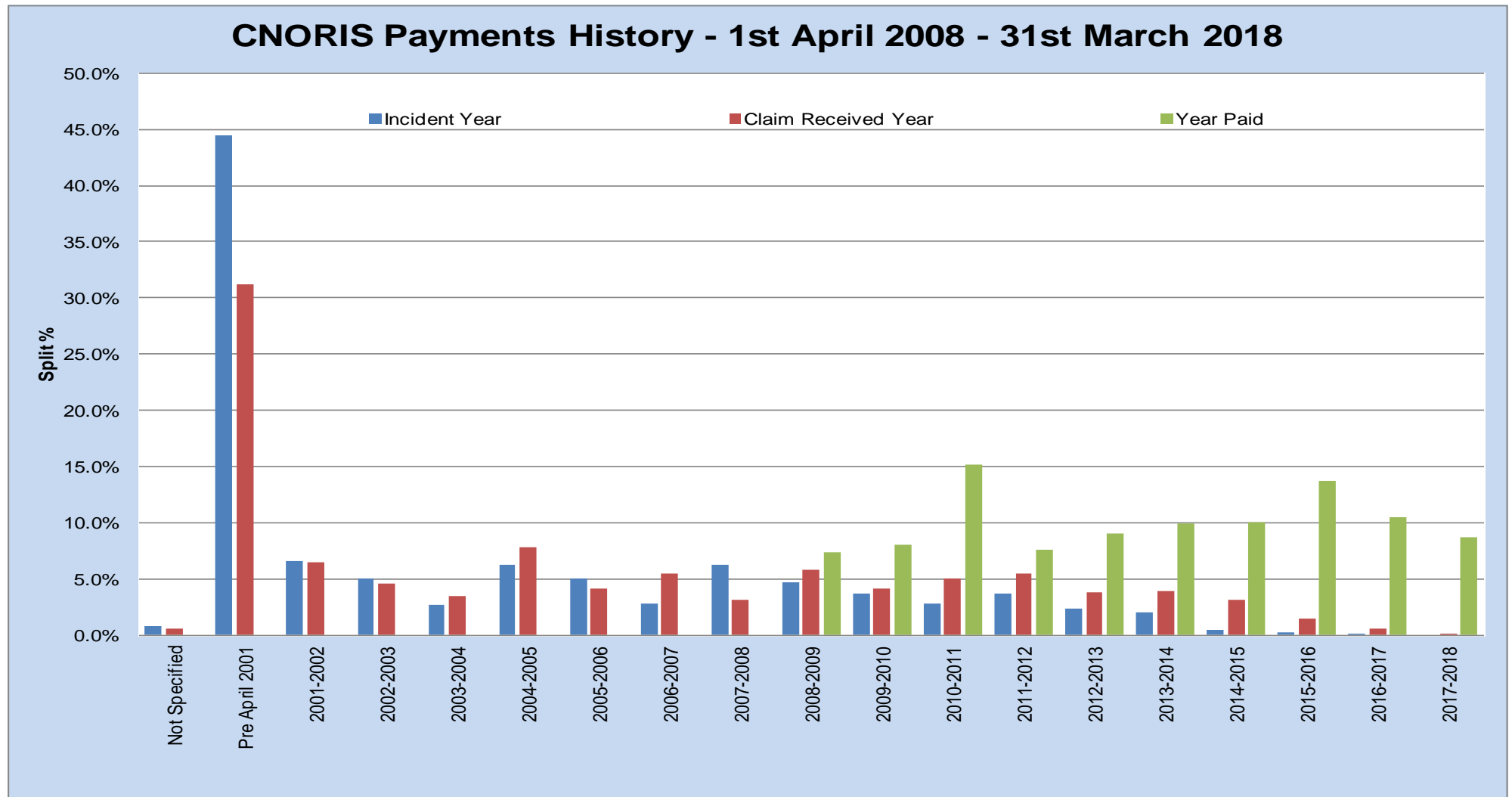
Graph 8a profiles the same time period but analyses them by the years in which incidents that led to each claim occurred and also by the years in which these claims were received by CLO; highlighting how some claims can take many years to conclude. For claims paid in 2017-2018, where dates are provided, the average period between the incident date and the date the claim was received by CLO was 3.39 years, with an average of 5.07 years between CLO receiving the claim to payments being reclaimed by health boards. The median period between the incident date and the date CLO received the claim was 2.28 years with 3.72 years between CLO receiving the claim and the health board being reimbursed through CNORIS

Graph 8a: CNORIS Payments Between 1 April 2008 and 31 March 2018, Analysed by Year of Incident and Year Received by CLO



Graph 8b analyses this same data, but as a percentage of the total payments made during the period 1 April 2008 to 31 March 2018. For example, 44.4% of the total value of payments reimbursed by CNORIS during this period related to claims where the incident took place prior to 1 April 2001, with 31.2% relating to claims received by health boards prior to 1 April 2001.

Graph 8b: CNORIS Payments Between 1 April 2008 and 31 March 2018, Analysed by Year of Incident and Year Received by CLO (by percentage)



Pipeline Analysis⁵

A pipeline analysis of the estimated values of all open (unsettled) claims as at year ends for the last 5 financial years (2013-2014 to 2017-2018), broken down by obstetrics & gynaecology claims, other clinical claims and non-clinical claims, is provided in Graph 9a below. The graph profiles the years in which the open (unsettled) claims “@ Year End 2018” were estimated to be settled, with almost 60% with an estimated settlement value above the CNORIS £25,000 deductibles threshold.

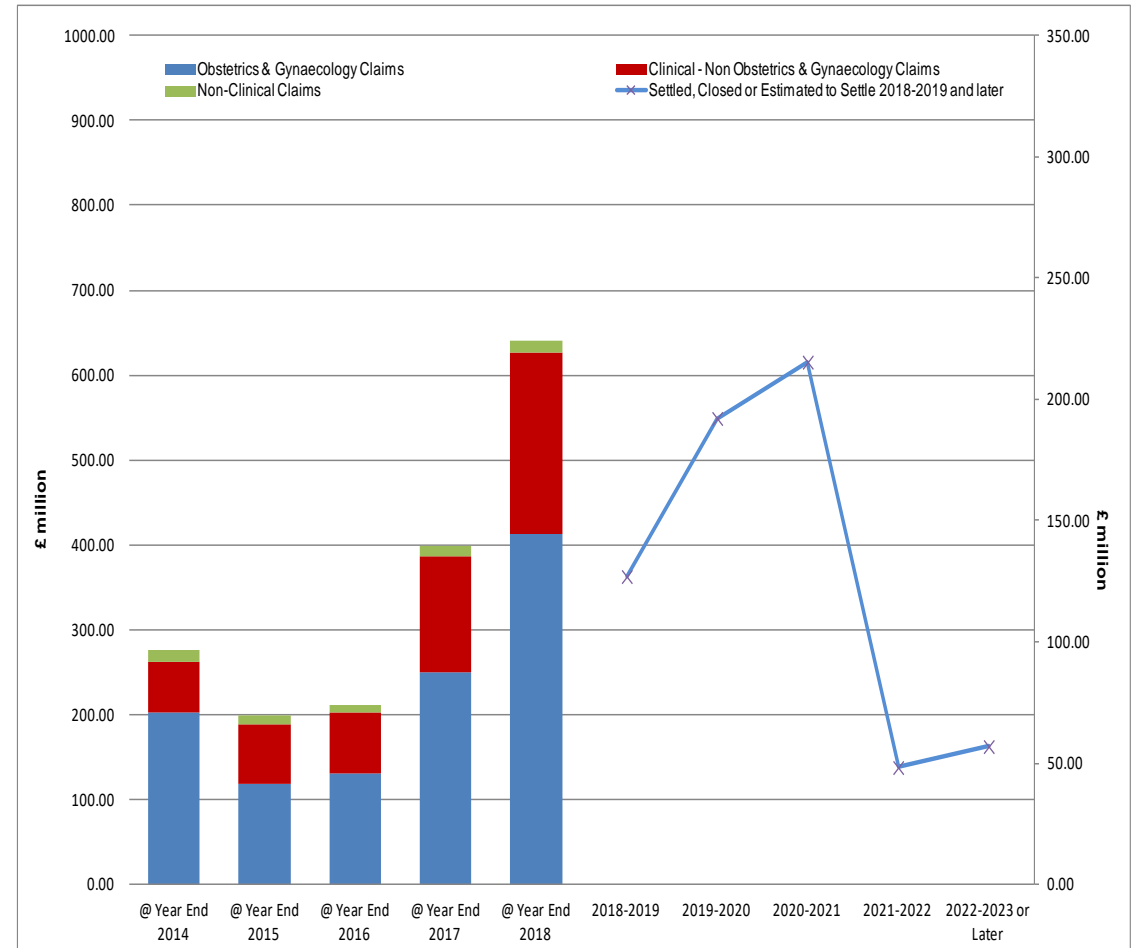
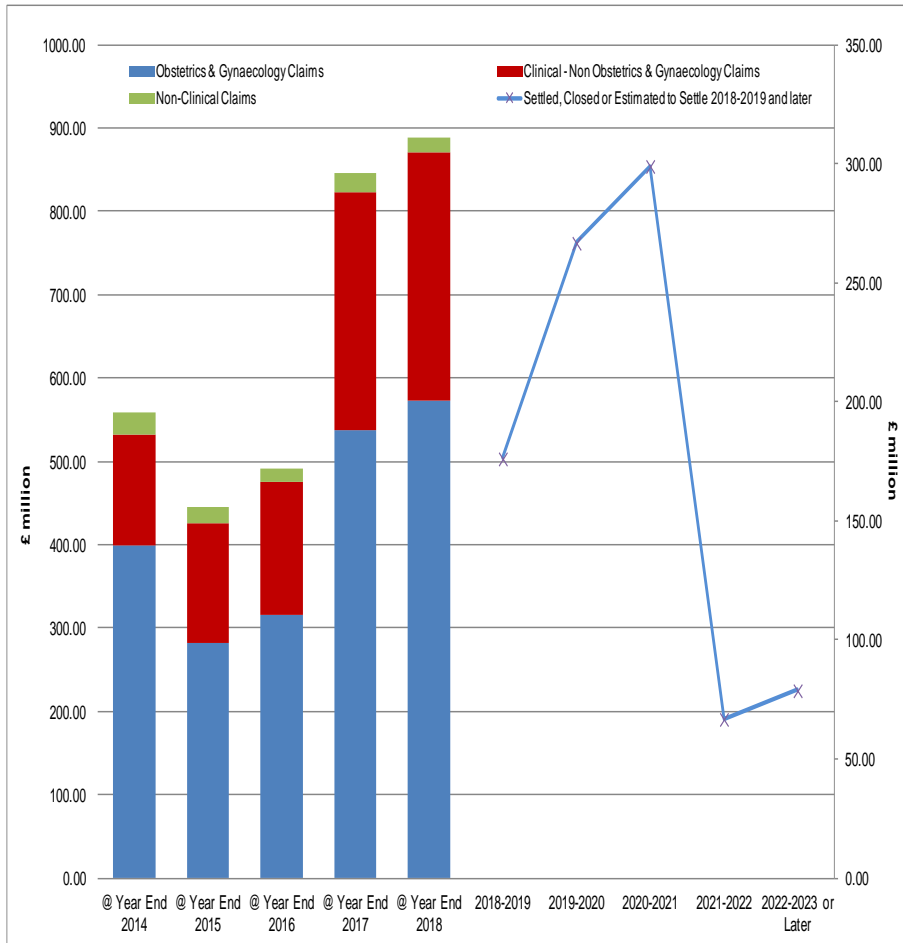
However, Graph 9a does not take into account the relevant risk profiles⁶ evaluating how many of these claims were anticipated to be settled in favour of the claimant. Graph 9b illustrates the significant reduction in estimated values when risk profiles were taken into account. Both risk profiles and estimated settlement values will continue to be revised as claims advance through the legal process and therefore these values do not necessarily reflect future CNORIS payments.

Graph 9a – Total Estimated Value of Open Claims (not adjusted for risk)

The Bar Charts represent the year end estimated settlement values of open claims as they were at the specified year end.

The Line Graphs represent the current estimated settlement values of those claims open @ Year End 2018, by the financial year in which they are currently estimated to settle.

Graph 9b – Total Estimated Value of Open Claims (adjusted for risk)



Appendix 1: Background, Definitions, and Key Delivery Partners

Background to the CNORIS Scheme:

The scheme was established under the Clinical Negligence and Other Risk Indemnity Scheme (CNORIS) Scotland Regulations 2000 as amended⁷, with effect from 1 April 2000. Participation in the scheme is mandatory for all NHS Boards in Scotland with responsibility for delivering patient care. Private contractors including General Dental Practices and General Medical Practitioners (GPs) are outwith the scheme (they have their own indemnity scheme arrangements). GPs may be covered in instances where they have been directly employed by Health Boards (e.g. out of hours scheme).

With the introduction of the Public Bodies (Joint Working) (Scotland) Act⁸ from April 2015, the Scheme was broadened to enable Integration Joint Boards and Local Authorities to become Members.

Definitions of the CNORIS Scheme:

The Scheme - Clinical Negligence and Other Risks Indemnity Scheme (CNORIS)

- Scheme Contractor – NHS National Services Scotland (NSS) manage the scheme on behalf of Scottish Government.
- Scottish Government Scheme Manager – the lead individual within Scottish Government Health & Social Care Directorates with responsibility for the policy and operation of the CNORIS scheme
- NHSScotland – the publicly funded healthcare system for people in Scotland.
- NHS Boards – the individual territorial and Special Health Boards with direct responsibility for patient care in Scotland and who comprise the scheme membership.
- Integration Joint Boards – bodies established to take responsibility for functions delegated by Local Authorities and Health Boards in regard to Health and Social Care Services.

CNORIS Key Aims & Objectives:

- To encourage a rigorous and logical approach to risk management in both the clinical and non-clinical sectors of Health and Social Care services in Scotland;
- To provide advice on clinical and non-clinical scheme coverage to all parts of Health and Social Care services in Scotland;
- To support scheme members in an advisory capacity in order to reduce their risks;
- To indemnify scheme members against losses which qualify for scheme cover;
- To allocate equitable contributions amongst Members to fund their qualifying losses;
- To provide Members with scheme financial updates throughout the year to help with planning and forecasting; and
- To help manage risk by providing Members with clinical and non-clinical loss analysis throughout the year.

Appendix 2: Organisations covered by the CNORIS are as follows*:

NHS 24	NHS Highland
NHS Ayrshire and Arran	Argyll and Bute Integration Joint Board
East Ayrshire Integration Joint Board	NHS Lanarkshire
North Ayrshire Integration Joint Board	North Lanarkshire Integration Joint Board
South Ayrshire Integration Joint Board	South Lanarkshire Integration Joint Board
NHS Borders	NHS Lothian
NHS Dumfries and Galloway	Edinburgh Integration Joint Board
Dumfries and Galloway Integration Joint Board	East Lothian Health and Social Care Partnership Integration Joint Board
NHS Education for Scotland	Midlothian Integration Joint Board
NHS Fife	West Lothian Integration Joint Board
Fife Integration Joint Board	Mental Welfare Commission for Scotland
NHS Forth Valley	The Common Services Agency (National Services Scotland)
Clackmannanshire and Stirling Integration Joint Board	National Waiting Times Centre
Falkirk Integration Joint Board	NHS Orkney
NHS Grampian	Orkney Health and Care Board
Aberdeen City Health and Social Care Partnership Integration Joint Board	Healthcare Improvement Scotland
Aberdeenshire Integration Joint Board	Scottish Ambulance Service
Moray Integration Joint Board	NHS Shetland
NHS Greater Glasgow and Clyde	Shetland Islands Integration Joint Board
East Dunbartonshire Integration Joint Board	The State Hospital
East Renfrewshire Integration Joint Board	NHS Tayside
Glasgow City Integration Joint Board	Angus Integration Joint Board
Inverclyde Integration Joint Board	Dundee City Integration Joint Board
Renfrewshire Integration Joint Board	Perth and Kinross Integration Joint Board
West Dunbartonshire Integration Joint Board	NHS Western Isles
NHS Health Scotland	* As at 31 March 2018

NOTES

1

Membership of CNORIS is mandatory for all NHS Health and National Boards in Scotland and the Mental Welfare Commission for Scotland. The Scheme was also broadened with effect from 1 April 2015 to allow Integration Joint Boards (IJBs) and Local Authorities (LA) to become members of the Scheme at the discretion of the individual organisation. Refer to [Appendix 2](#) for a list of all CNORIS members as at 31 March 2018

2

Through the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS) members contribute annually to the CNORIS fund for meeting the award costs and legal expenses in regard to any claims for negligence pursued by patients, employees, third parties and members of the public.

Members are reimbursed for the costs incurred, less the relevant deductible value per individual claim, in regard to award payments made to claimants, the claimants' legal costs and the members' own legal expenses in any given year. The deductible value for claims raised since 2001 is £25,000 per claim.

The CNORIS Annual Report provides details in regard to the historical reimbursements paid to members of the Scheme from CNORIS in the relevant financial year (1 April to 31 March) together with comparatives and aggregates for prior years. The figures quoted include interim awards where claimants have received payments in advance of settlement and PPO payments, but do not include any costs not reimbursed to members.

3

The CNORIS Annual Report does not provide information in regard to the total number and value of all claims settled by members. However, the Pipeline Analysis does provide details of all current claims still to be settled.

4

The non-clinical areas covered by CNORIS include: employers liability, public liability, product liability and non-clinical professional risks. Refer to the [CNORIS website](#) for further details.

5

Periodic Payment Orders (PPOs) and Structured Settlements are where instead of receiving a single lump sum award payment, claimants receive usually a smaller lump sum together with periodic payments (normally annually) for a defined number of years, or life, depending upon what is agreed. PPOs are primarily agreed where there are ongoing costs associated with the care and wellbeing of the claimant and/or their family/guardians, such as the costs associated with the ongoing care of a severely disabled child into adulthood.

6

A Pipeline Analysis is being used in this instance as a method of comparing, on a like for like basis, the number and value of claims over time.

7

All claims are evaluated and allocated a risk rating based upon the probability of the outcome resulting in a settlement being made to a claimant. Risk ratings are re-assessed as claims are progressed and new information reduces the uncertainty of outcomes.

8

For further information refer to the [Scottish Government website pages for CNORIS](#).

For further information refer to the [Government website on legislation](#)