

Clinical Negligence & Other Risks Indemnity Scheme (CNORIS)

Annual Report 2018-2019

National Services Scotland's Values



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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 2018-2019 there were 300 claim payments made; this was the same number as received during 2017-18. In terms of claim value, this rose to £39.6 million during 2018-19. This represented a 17.8% rise from the £33.6 million in 2017-18. The division of 2018-2019 payments between clinical and non-clinical claims was 265 payments totalling £37.5 million for clinical claims and 35 payments totalling £2.1 million for non-clinical claims. The highest settlement payments cut across various specialities however Obstetrics and Gynaecology, Medical Oncology and Neurology feature most heavily, occupying 13 out of the top 20 highest value claims.

It should be noted that although a claim may have been received in 2018-2019 it often related to an incident that occurred many years previously. This is highlighted by the fact that of the claims received in 2018-2019 there were 0 with an incident date in 2017-18 and 2018-19. This is analysed in greater detail in [graph 1](#) below.

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Outturn for 2018-2019

The value of claims paid in 2018-2019 was £39.6 million.

The breakdown of the number and value of claim payments made during 2018-2019 is detailed in Table 1 below.

Table 1: Number & Value of 2018-2019 Payments

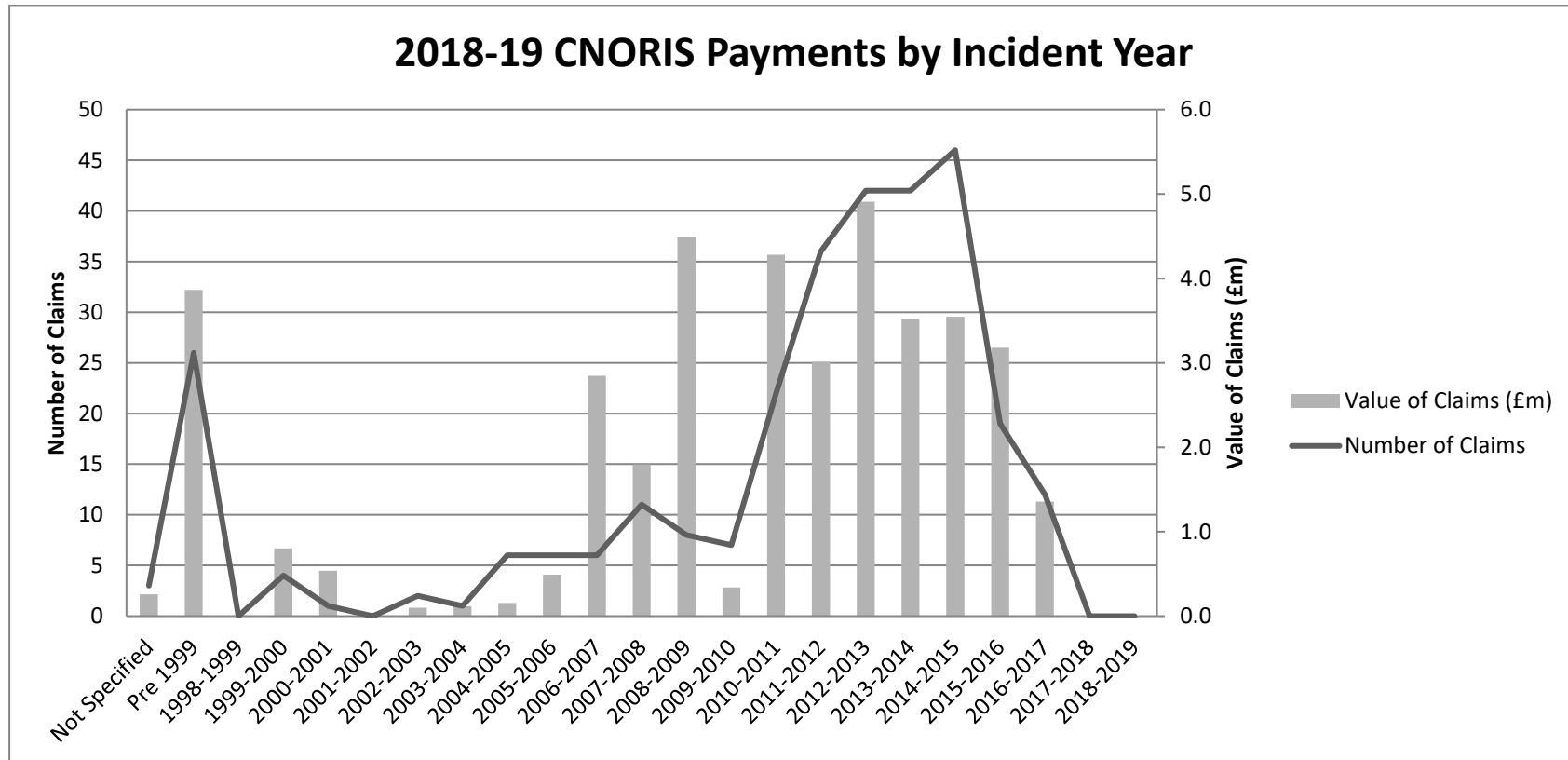
<u>NHS Board</u>	<u>Value of Claims</u>	<u>Number of Claims</u>
NHS Grampian	2,892,656	29
NHS Ayrshire and Arran	6,372,437	33
NHS Greater Glasgow & Clyde	7,344,517	53
NHS Tayside	4,856,151	19
NHS Lanarkshire	4,167,574	44
NHS Highland	2,814,989	15
NHS Lothian	4,832,005	51
NHS Fife	1,547,600	16
NHS Forth Valley	2,158,116	15
NHS Dumfries and Galloway	1,001,770	7
NHS Orkney	0	<5
NHS Western Isles	224,206	<5
NHS Borders	505,219	5
Scottish Ambulance Service	91,653	<5
NHS Shetland	18,171	<5
NHS24	652,165	<5
National Waiting Times Centre	2,537	<5
The State Hospital	66,084	<5
NHS Education for Scotland	63,403	<5
Total	39,611,253	300

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Incident Timeline

Graph 1 below provides a breakdown of all claims paid in 2018-2019 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 2018-2019 by Year of Incident



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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, with the exception of 2016-17 is the levelling off of claims around the 250 – 300 mark.

Table 2: Payments made since 2009-2010*

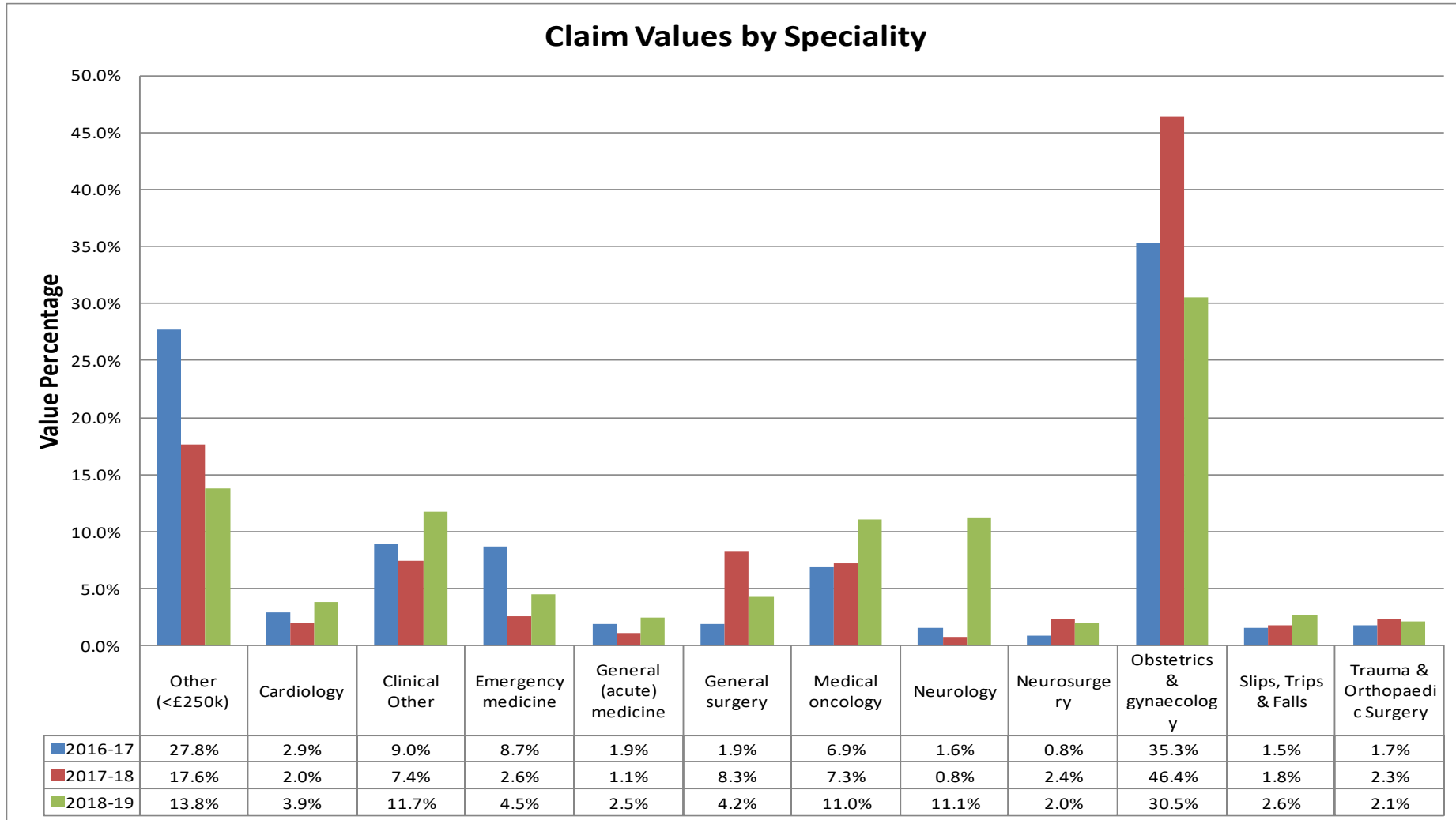
Financial Year	Value of Payment			Number of Payments		
	Clinical (£m)	Non-Clinical (£m)	Total (£m)	Clinical	Non-Clinical	Total
2009-2010	30.80	0.32	31.12	89	14	103
2010-2011	57.36	0.88	58.24	122	25	147
2011-2012	27.15	2.05	29.19	126	36	162
2012-2013	33.13	1.85	34.98	168	49	217
2013-2014	34.87	3.53	38.40	160	41	201
2014-2015	36.96	1.62	38.57	193	61	254
2015-2016	49.70	3.10	52.81	235	56	291
2016-2017	38.29	1.97	40.25	342	82	424
2017-2018	32.00	1.62	33.61	260	40	300
2018-2019	37.54	2.07	39.61	265	35	300
Total	377.79	19.00	396.79	1,960	439	2,399

Of the 300 payments made in 2018-2019, there were 6 of £1 million+ and 21 related to 16 claims where the total value of the claim value was in excess of £1 million.

The breakdown, by percentage, of the number and value of claims over the last 3 financial years (2016-2017, 2017-2018 and 2018-2019), by speciality, is provided in graphs 2 and 3 below. The graphs highlight that although obstetrics claims account on average for only 21.7% of the number of claims they account on average for 37.4% of the total value of claims over these years. The category 'other <£250k' covers all specialities where there was less than £250k of claims in each of the last 3 years. There was a total 342 claims valued at £22.56 million that fell into this category and it covered 48 specialities.

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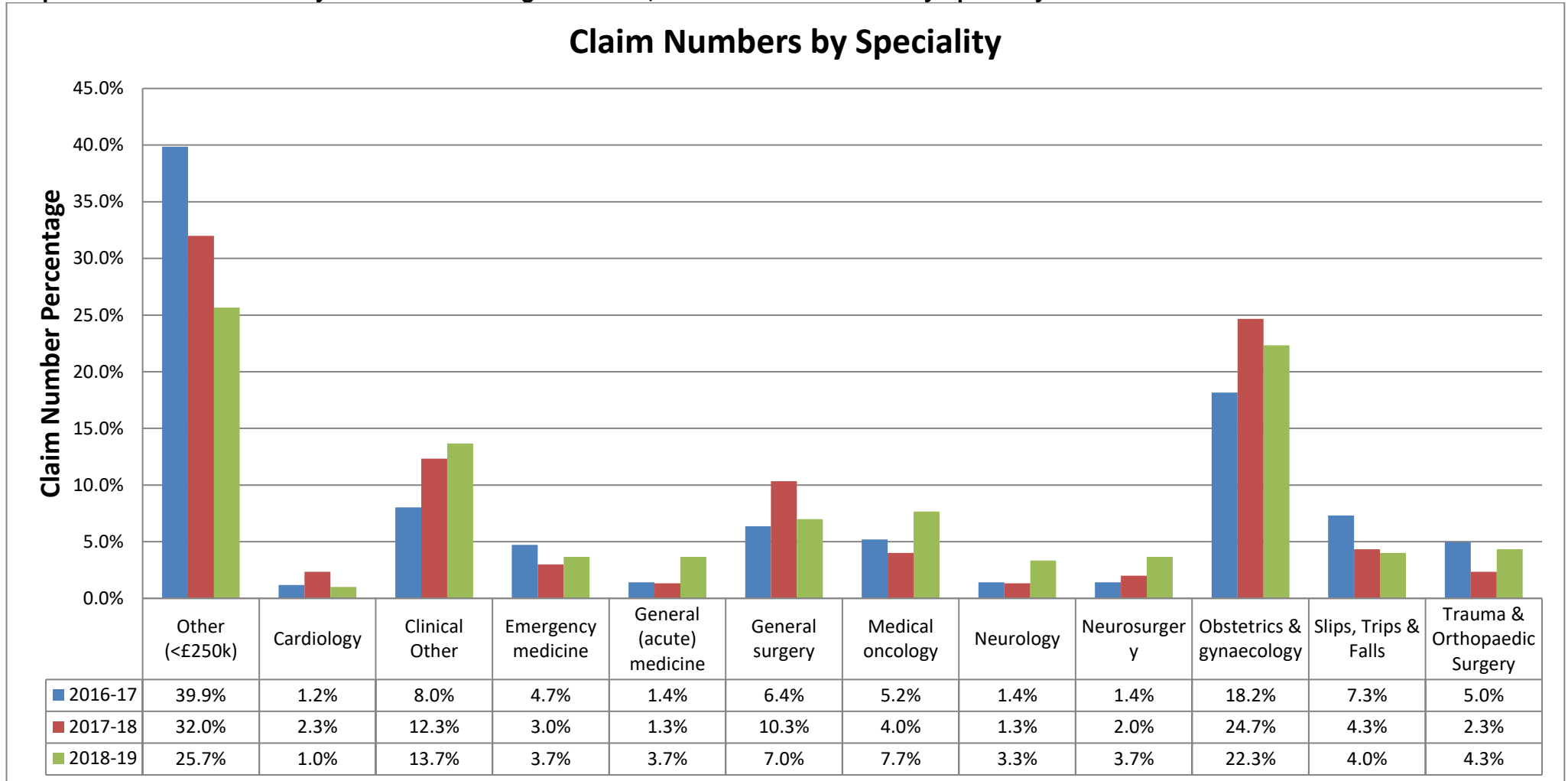
Graph 2: Value of Claims Paid during 2016-2017, 2017-2018 & 2018-2019 by Speciality*



*Clinical Other relates to claims where there was insufficient information to attribute the claim to a particular speciality.

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Graph 3: Number of Claim Payments made during 2016-2017, 2017-2018 & 2018-2019 by Speciality*



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Periodic Payment Orders (PPOs) and Structured Settlements⁴ 2018-2019

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 2018-2019 there were 17 PPOs and 4 older structured settlements paid across 7 NHS Boards; one paid quarterly and the others annually. There was also a refund due on a claim that had previously been due subject to care costs. The values reclaimed by NHS Boards from CNORIS during 2018-2019 totalled £3.62 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.

Contribution Rates

CNORIS contributions are calculated by assessing both clinical and non clinical risks, and based upon a 91% (clinical) and 9% (non-clinical) division of the total contribution.

Clinical risks are evaluated based upon an average percentage of: the risks associated with each clinical speciality (e.g. Neurology), and its relevant WTE: the birth rate percentages for each; and an analysis of the current and historical clinical claim history.

Non-clinical risks are evaluated based upon an average percentage of : the Revenue Resource Limit (%); overall staffing WTE(%); and an analysis of current and historical non-clinical claims.

The overall breakdown is also adjusted to take into account the fixed rate contributions made by Integration Joint Boards.

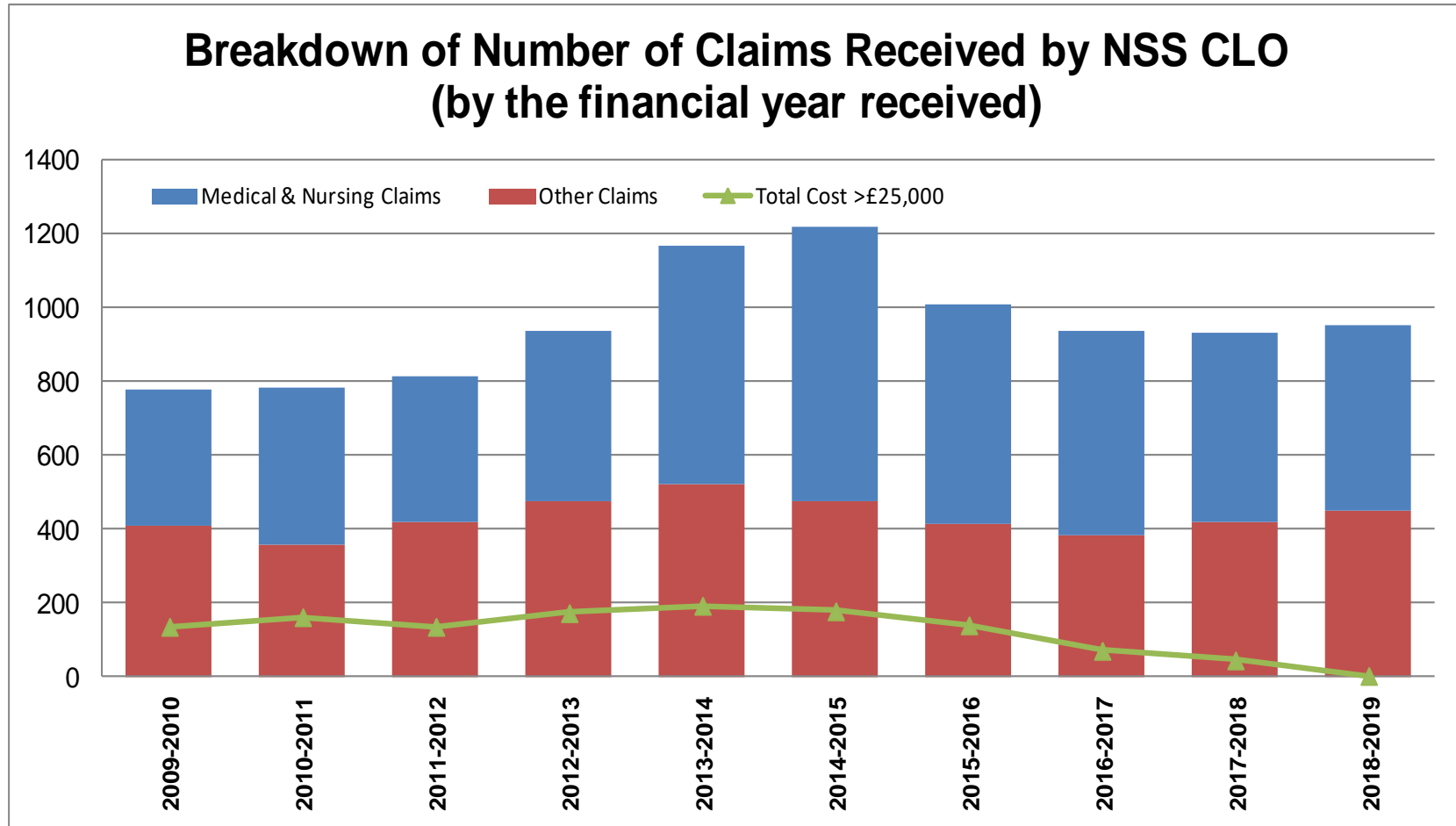
Analysis of Claims by Year of Incident and Year

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 2009. The graph also details the number of those claims where the total costs, as at 31 Mar 2019, 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 increase 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.

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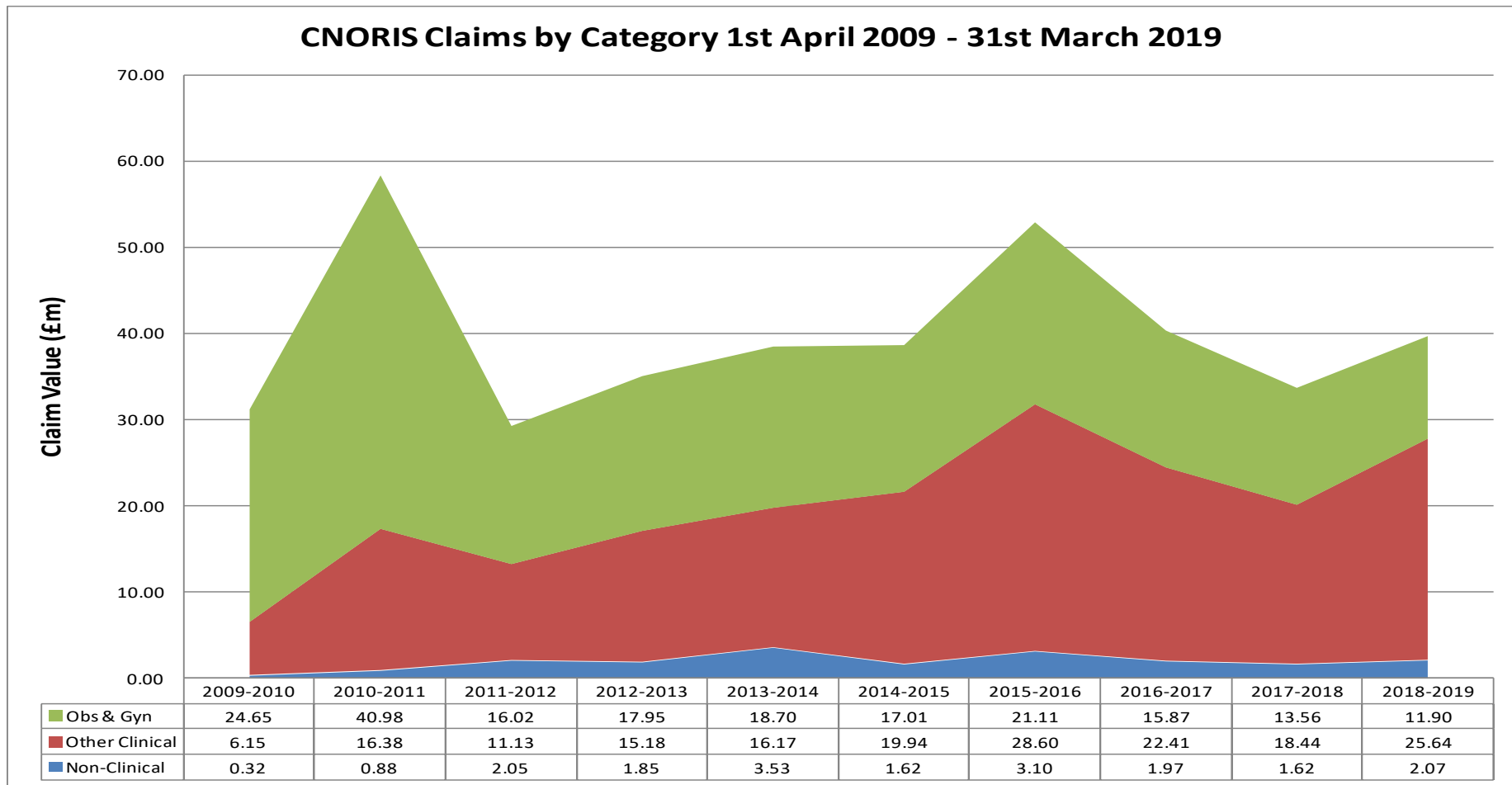
Graph 5 - Breakdown of No. of All Claims Received by NSS CLO



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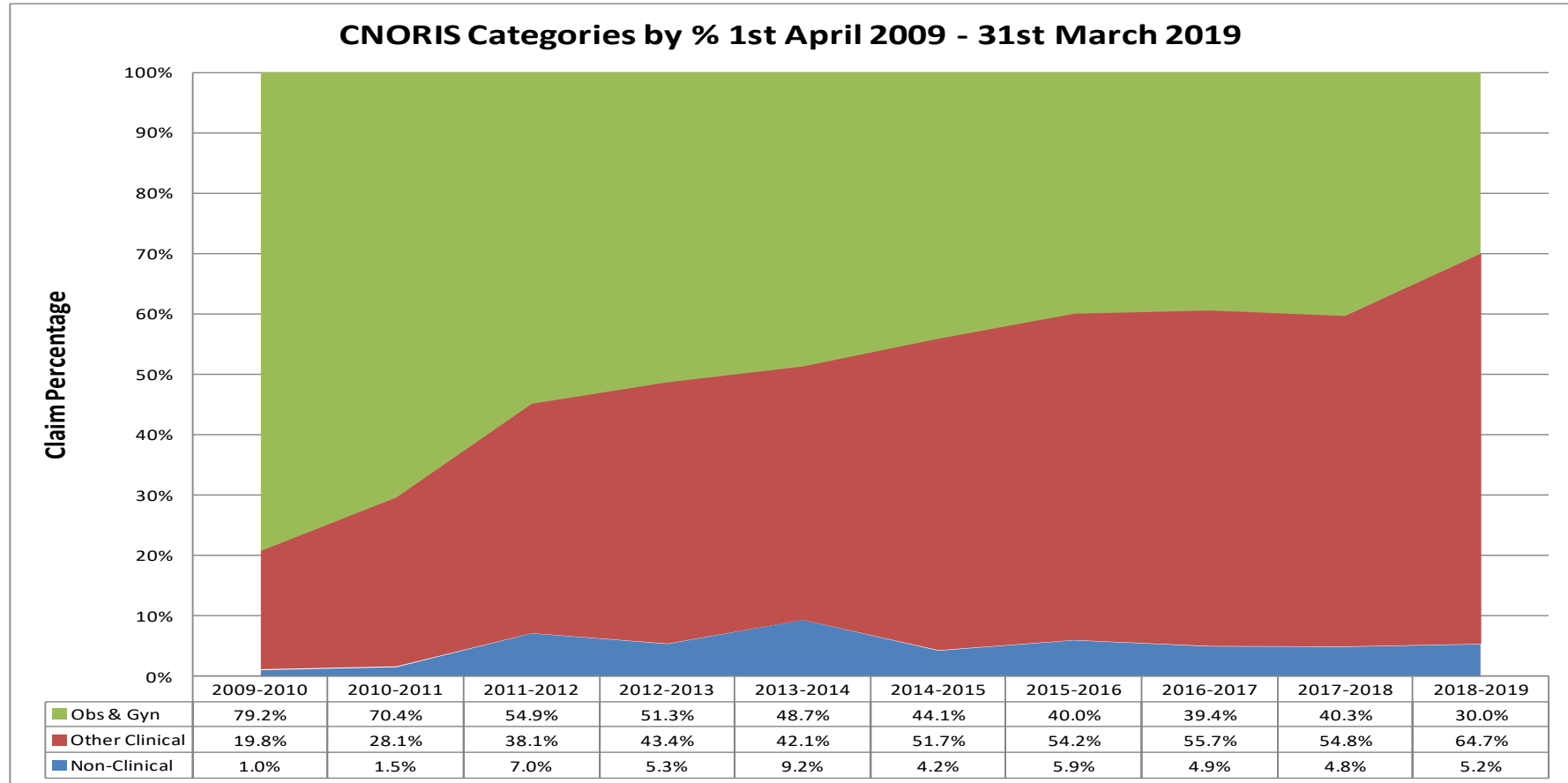
Graphs 6 and 7 below provides a breakdown of payments made by the CNORIS scheme between 2009-2010 and 2018-2019 (total value of net payments made was £396.79 million), in relation to whether the claim related to an obstetrics & gynaecology incident, another type of clinical incident or a non-clinical incident. Graph 6 is in monetary terms and graph 7 in percentage terms.

Graph 6 – Breakdown of CNORIS Payments (£396.79 million, net of deductibles), made between 2008-2009 and 2018-2019



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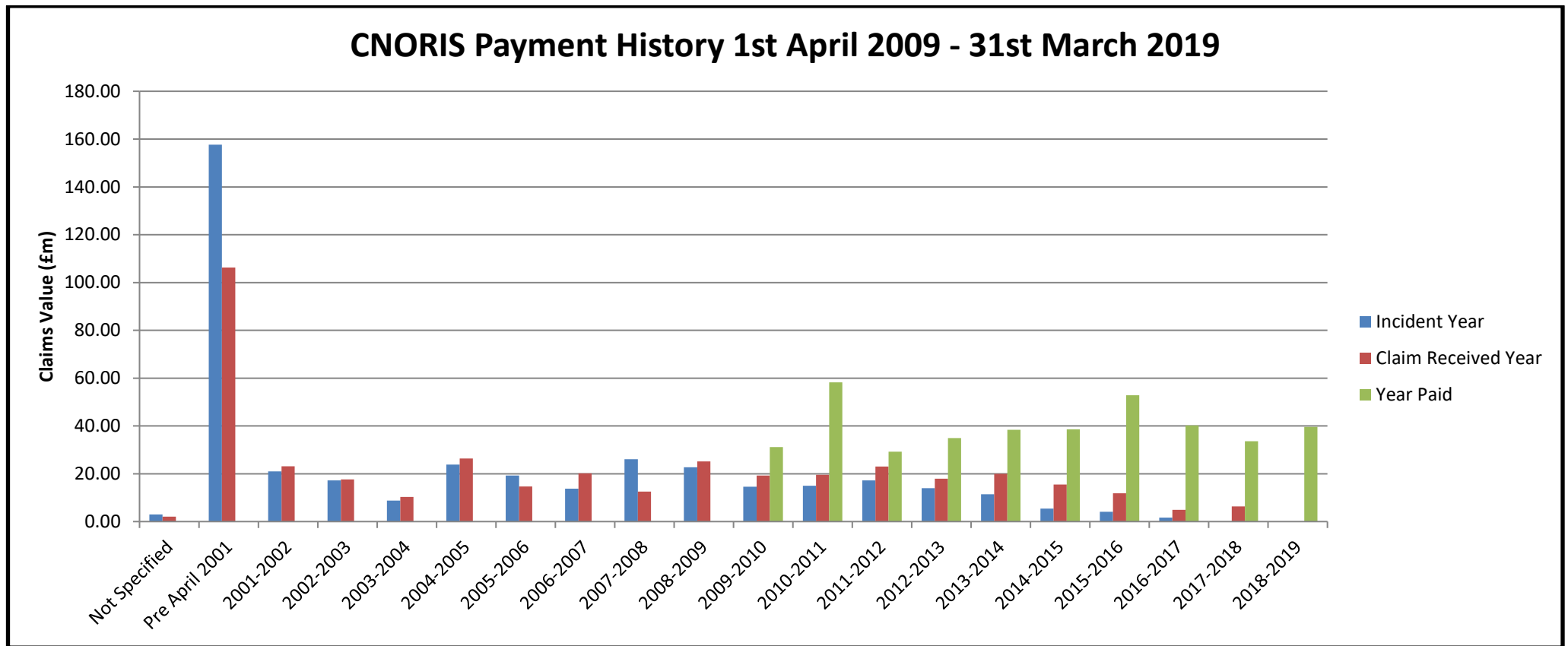
Graph 7 –CNORIS Payments (£396.79 million, net of deductibles), made between 2009-2010 and 2018-2019, In Percentage Terms



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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 2018-2019, where dates are provided, the average period between the incident date and the date the claim was received by CLO was 2.74 years, with an average of 4.50 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 2.29 years with 3.73 years between CLO receiving the claim and the health board being reimbursed through CNORIS

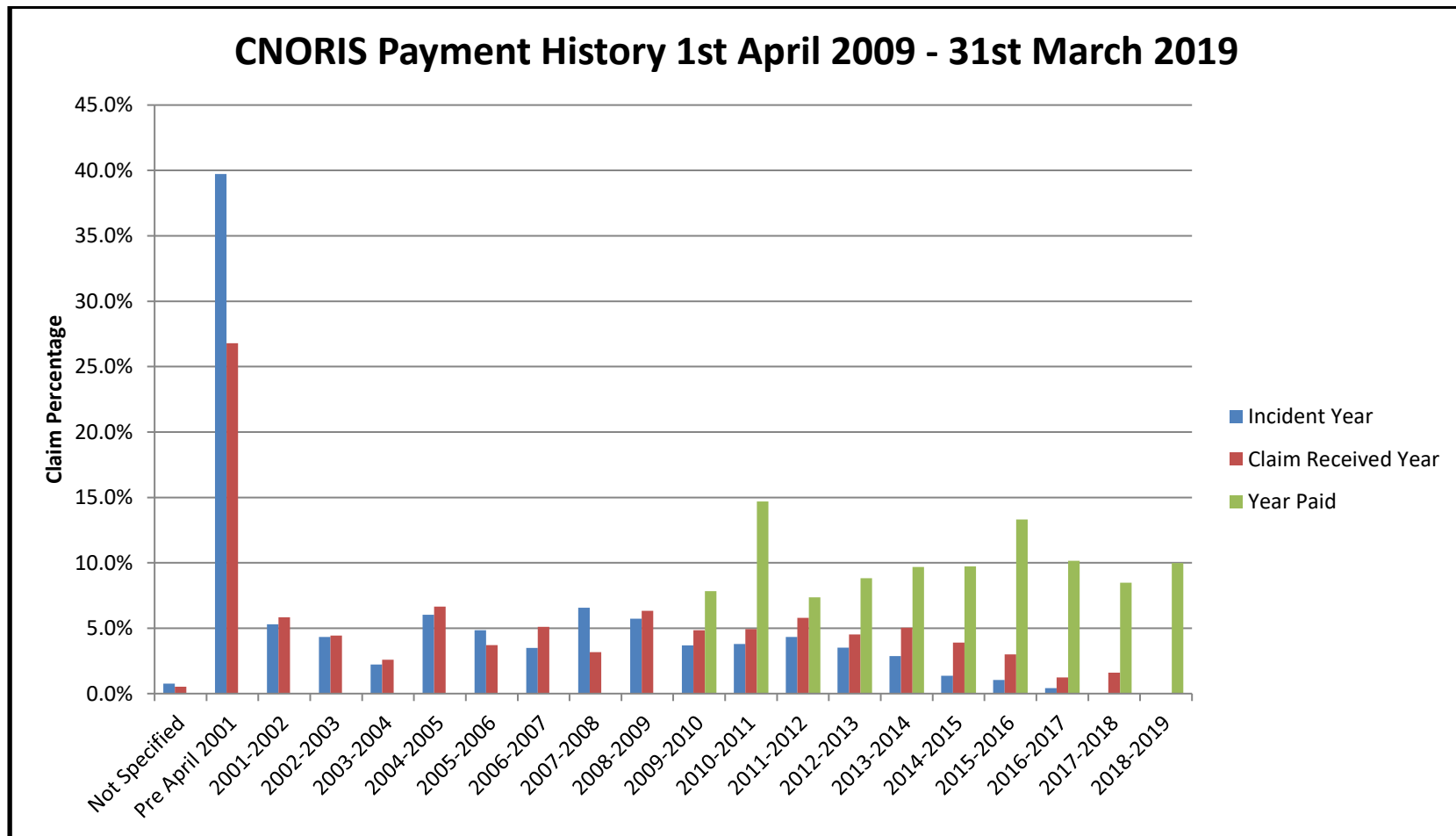
Graph 8a: CNORIS Payments Between 1 April 2009 and 31 March 2019, Analysed by Year of Incident and Year Received by CLO



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Graph 8b analyses this same data, but as a percentage of the total payments made during the period 1 April 2009 to 31 March 2019. For example, 39.7% 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 26.8% relating to claims received by health boards prior to 1 April 2001.

Graph 8b: CNORIS Payments Between 1 April 2009 and 31 March 2019, Analysed by Year of Incident and Year Received by CLO (by percentage)



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Pipeline Analysis⁵

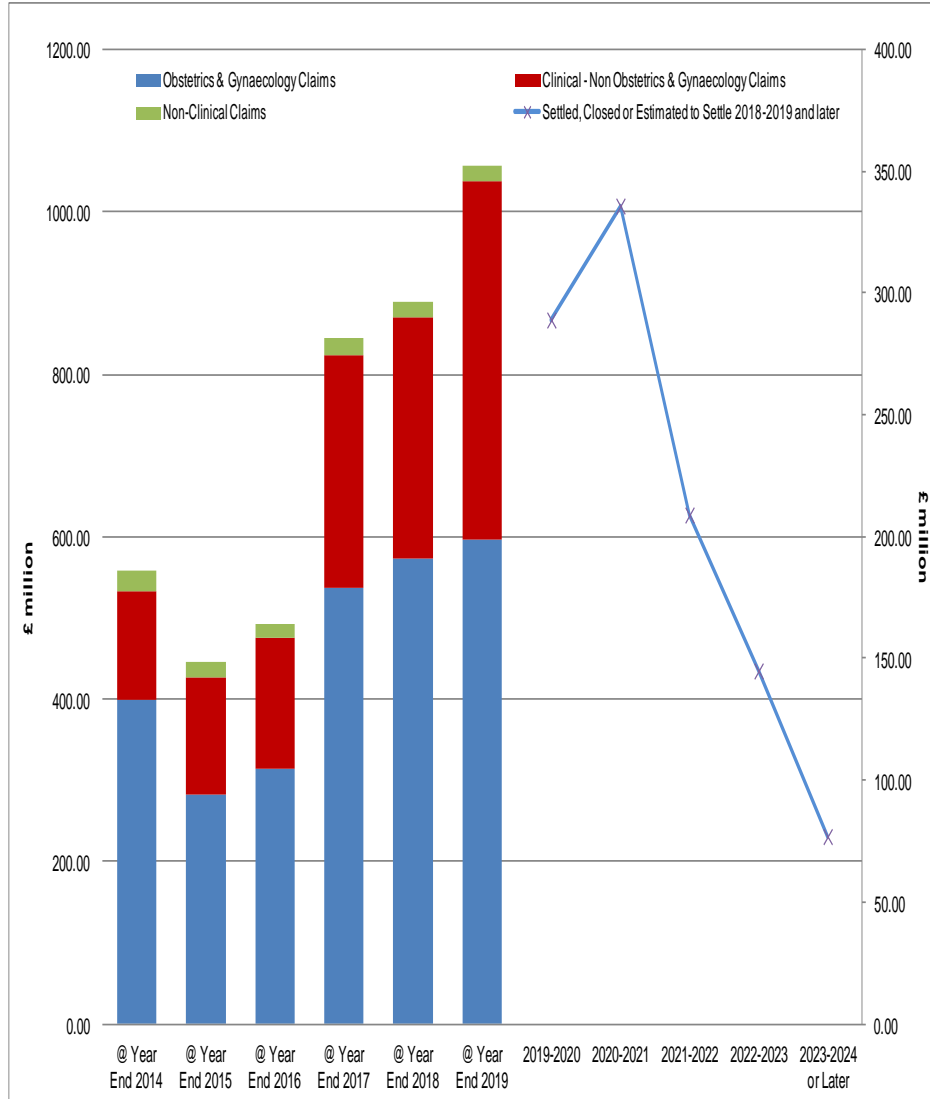
A pipeline analysis of the estimated values of all open (unsettled) claims as at year ends for the last 5 financial years (2014-2015 to 2018-2019), broken down by obstetrics & gynaecology claims, other clinical claims and non-clinical claims, is provided in Graph 9a below. The graph profiles the years in which the open (unsettled) claims “@ Year End 2019” were estimated to be settled, with 55% 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, see below, 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.

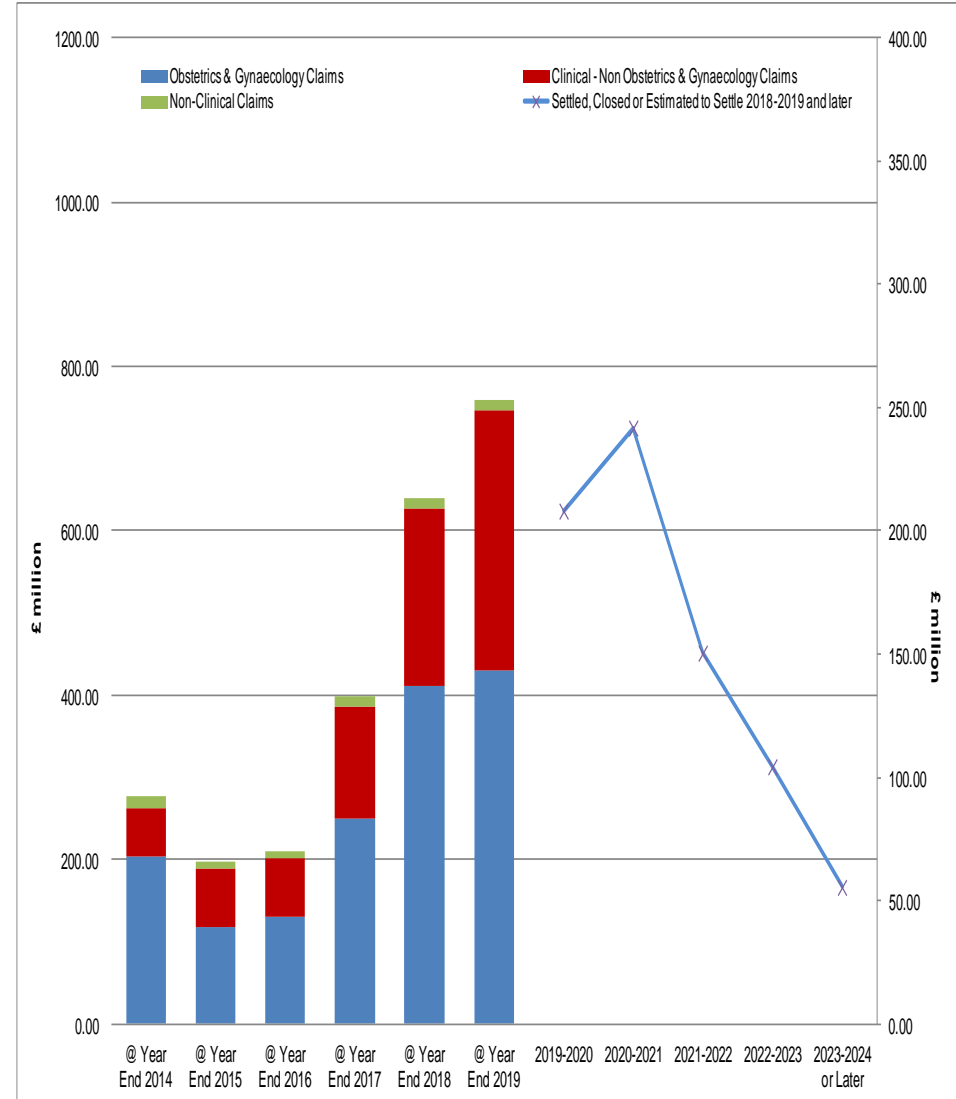
In both Graphs 9a and 9b, the Bar Chart represents the year end estimated settlement values of all open claims as they were at the specified year end. Whilst, the Line Graph represents the current estimated settlement values of those claims open @ Year End 2019, by the financial year in which they are currently estimated to settle.

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



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



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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.

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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 2019

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NOTES

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- 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 2019
 - 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.

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.
 - ³ 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.
 - ⁴ 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.
 - ⁵ 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.
 - ⁶ 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.
 - ⁷ For further information refer to the [Scottish Government website pages for CNORIS](#).
 - ⁸ For further information refer to the [Government website on legislation](#)