

Clinical Negligence & Other Risks Indemnity Scheme (CNORIS)

Annual Report 2019-2020

National Services Scotland's Values



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CNORIS Annual Report 2019-2020

Contents

Introduction	3
Outturn for 2019-2020	4
Table 1: Number & Value of 2019-2020 Payments	4
Incident Timeline	4
Graph 1: Claims Paid 2019-2020 by Year of Incident	5
Trends in Payments	5
Table 2: Payments made since 2010-2011*	6
Graph 2: Value of Claims Paid during 2017-2018, 2018-2019 & 2019-2020 by Speciality*	7
Graph 3: Number of Claim Payments made during 2017-2018, 2018-2019 & 2019-2020 by Speciality*	8
Periodic Payment Orders (PPOs) and Structured Settlements 2019-2020	9
Contribution Rates	9
Analysis of Claims by Year of Incident and Year	9
Graph 5 - Breakdown of the Number of All Claims Received by NSS CLO	10
Graph 6 – Breakdown of CNORIS Payments (£403.63 million, net of deductibles), made between 2010-2011 and 2019-2020	11
Graph 7 – CNORIS Payments (£403.63 million, net of deductibles), made between 2010-2011 and 2019-2020, In Percentage Terms	12
Graph 8a: CNORIS Payments Between 1 April 2010 and 31 March 2020, Analysed by Year of Incident and Year Received by CLO	13
Graph 8b: CNORIS Payments Between 1 Apr 2010 and 31 Mar 2020 (Analysed by Yr of Incident and Yr Received by CLO (%))	14
Pipeline Analysis	15
Graph 9a –Total Estimated Value of Open Claims	
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Graph 9b – Total Estimated Value of Open Claims (adjusted for risk)	16
Appendix 1: Background, Definitions, and Key Delivery Partners	17
Appendix 2: Organisations covered by CNORIS are as follows*:	18
NOTES	19

CNORIS Annual Report 2019-2020

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 2019-2020, and gives an insight into arrangements for payment of clinical negligence claims and the impact on the NHS in Scotland².

CNORIS covers both clinical and non-clinical claims³. In 2019-2020 there were 285 claims for reimbursement, which compares with 300 in both 2018-2019 and 2017-2018. In terms of claim values, then this dropped to £38.0 million during 2019-2020. This represented a 5.0% drop in numbers and 4.2% drop in value compared with 2018-2019. The division of 2019-2020 payments between clinical and non-clinical claims was 231 payments totalling £35.7 million for clinical claims and 54 payments totalling £2.3 million for non-clinical claims. The highest settlement payments cut across various specialities, however obstetrics and gynaecology claims feature most heavily with 5 out of the top 20 in terms of value.

It should be noted that although a claim may have been received in 2019-2020 it often related to an incident that occurred many years previously. This is highlighted by the fact that of the claims received in 2019-2020 there were none with an incident date in 2019-20 and only one from 2018-2019. This is analysed in greater detail in graph 1 below.

CNORIS Annual Report 2019-2020

Outturn for 2019-2020

The value of claims paid in 2019-2020 was £38.0million.

The breakdown of the number and value of claim payments made during 2019-2020 is detailed in Table 1 below.

Table 1: Number & Value of 2019-2020 Payments

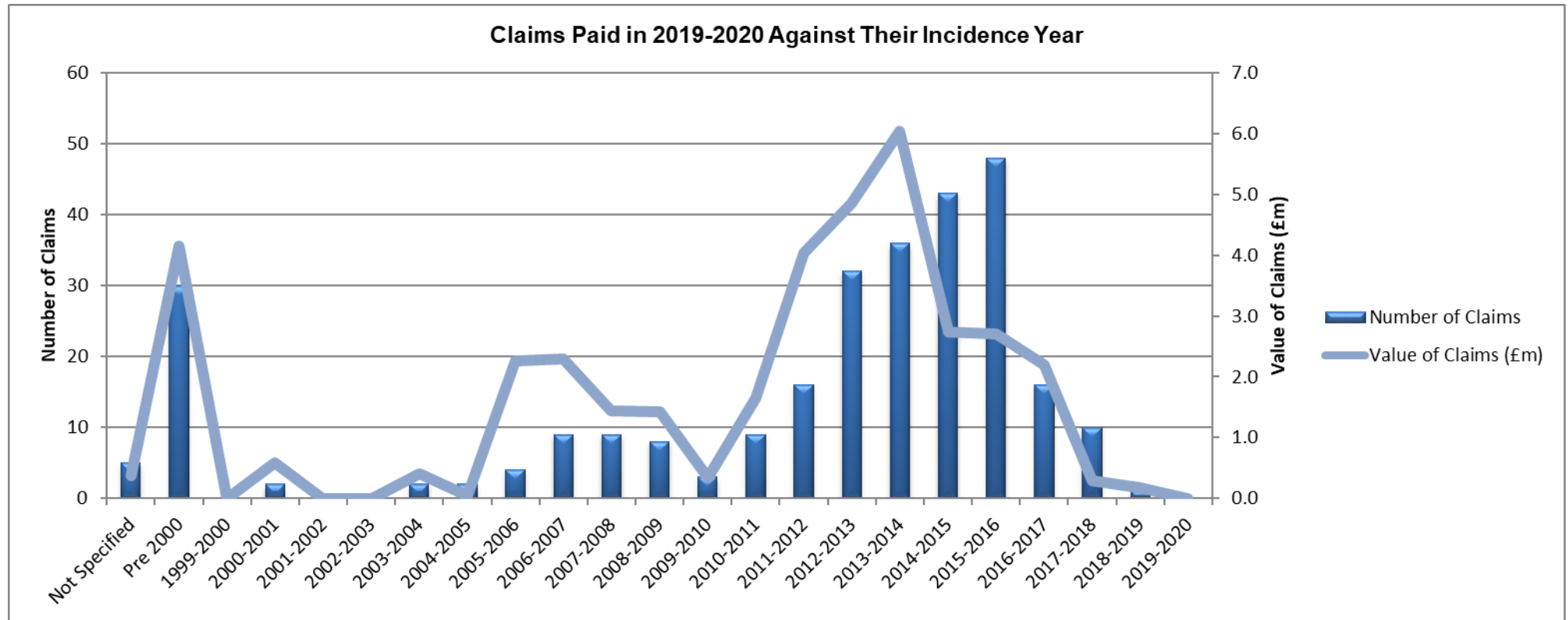
CNORIS Member	Number of Claims	Value of Claims £
National Waiting Times Centre	Less than 5	755,948
NHS Ayrshire and Arran	30	1,837,893
NHS Borders	5	114,592
NHS Dumfries and Galloway	7	1,674,959
NHS Fife	21	4,694,884
NHS Forth Valley	9	1,156,184
NHS Grampian	12	1,808,161
NHS Greater Glasgow & Clyde	61	5,194,164
NHS Highland	21	2,166,517
NHS Lanarkshire	36	8,271,519
NHS Lothian	48	7,150,660
NHS National Services Scotland	Less than 5	22,685
NHS Orkney	Less than 5	49,360
NHS Shetland	Less than 5	35,276
NHS Tayside	16	1,992,783
NHS24	Less than 5	652,972
Scottish Ambulance Service	9	382,406
Total	285	37,960,962

Incident Timeline

Graph 1 below provides a breakdown of all claims reimbursed in 2019-2020 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.

CNORIS Annual Report 2019-2020

Graph 1: Claims Paid 2019-2020 by Year of Incident



Trends in Payments

Table 2 below shows the change in the numbers and values of CNORIS reimbursements paid over the last 10 years; since 1 April 2010. It highlights the variation in values and how the increasing numbers of payments has not necessarily correlated to an increased value of payments. What can be seen however, with the exception of 2016-2017, is the levelling off of claims around 250 – 300 per year

CNORIS Annual Report 2019-2020

Table 2: Payments made since 2010-2011

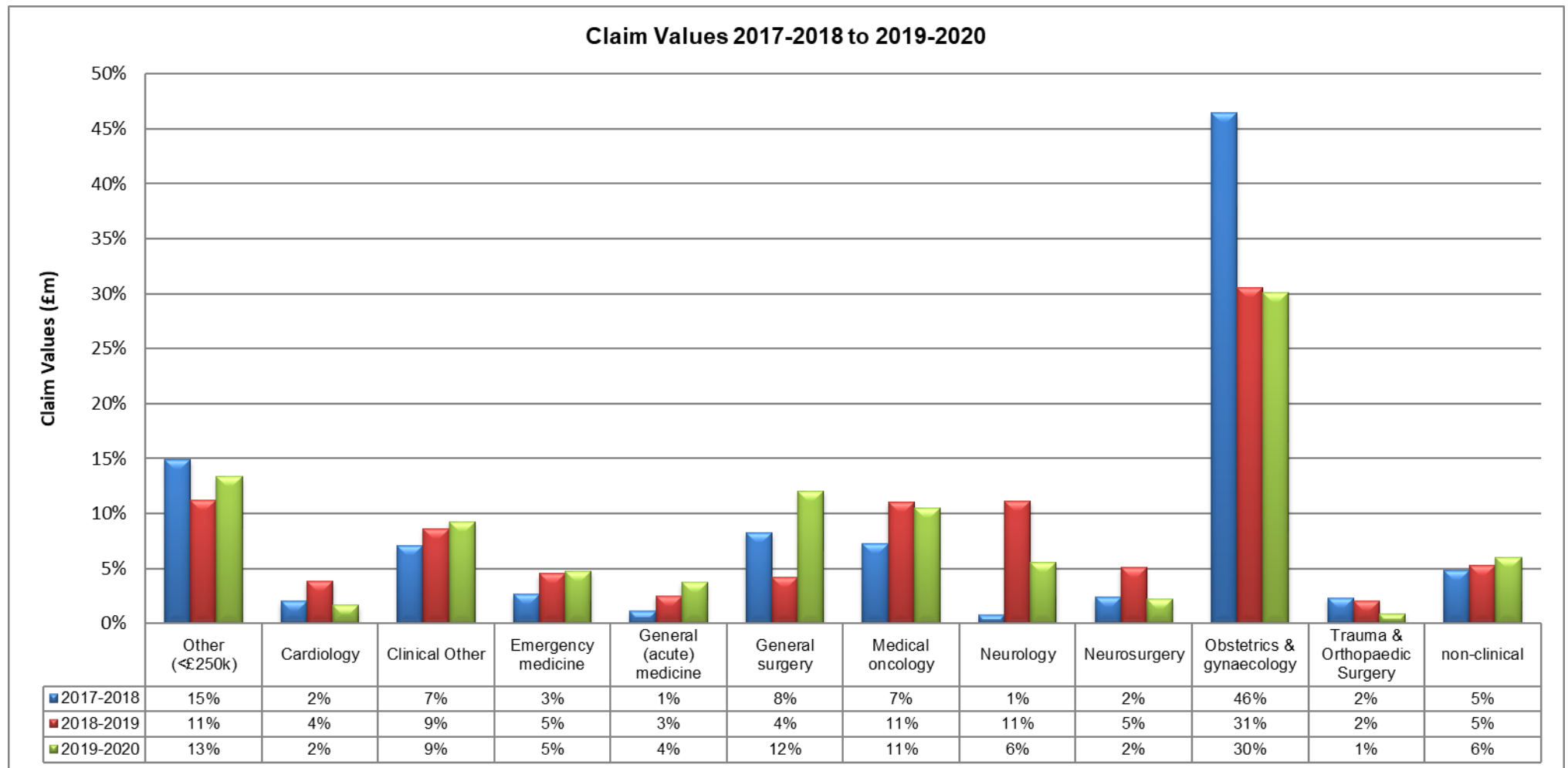
Financial Year	Payment Value Clinical (£m)	Payment Value Non-Clinical (£m)	Total Payment Value (£m)	Number of Payments Clinical	Number of Payments Non-Clinical	Total Number of Payments
2010-2011	57.36	0.88	58.24	122	25	147
2011-2012	27.15	2.05	29.19	126	36	162
2012-2013	33.13	1.85	34.98	168	49	217
2013-2014	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	36	301
2019-2020	35.69	2.27	37.96	231	54	285
Total	382.69	20.95	403.63	2,102	480	2,582

Of the 285 reimbursement payments made in 2019-2020, there were 4 valued at £1 million+ and 16, relating to 15 unique claims, where the total value of the claim was in excess of £1 million.

The breakdown, by percentage, of the numbers and values of claims over the last 3 financial years (2017-2018, 2018-2019 & 2019-2020), by speciality, is provided in graphs 2 and 3 below. The graphs, below, highlight that although obstetrics claims account, on average, for only 23.1% of the total number of claims they account, on average, for 35.7% of the total value of claims over these years. The category 'other <£250k' covers all clinical specialities where the value of claims was less than £250,000 in each of the last 3 years. There were a total 163 claims valued at £14.5 million, and across 39 specialities, that fell into this category.

CNORIS Annual Report 2019-2020

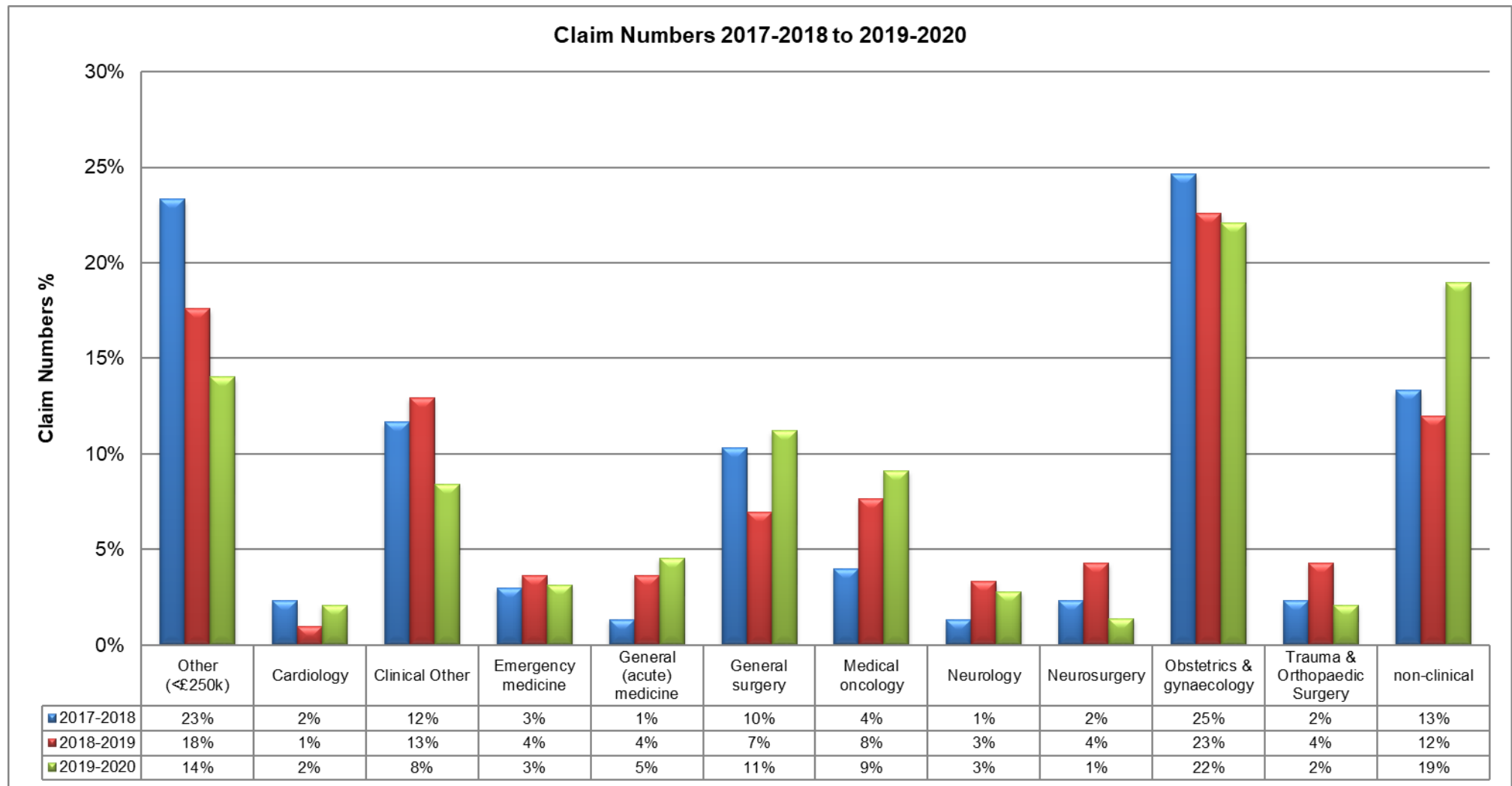
Graph 2: Value of Claims Paid during 2017-2018, 2018-2019 & 2019-2020 by Specialty*



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

CNORIS Annual Report 2019-2020

Graph 3: Number of Claim Payments made during 2017-2018, 2018-2019 & 2019-2020 by Speciality*



Periodic Payment Orders (PPOs) and Structured Settlements⁴ 2019-2020

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 2019-2020 there were 21 PPOs and 4 older structured settlements paid across 7 NHS Boards; one paid quarterly and the others annually. The values reclaimed by NHS Boards from CNORIS during 2019-2020 totalled £4.79 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), 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 levels – 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.

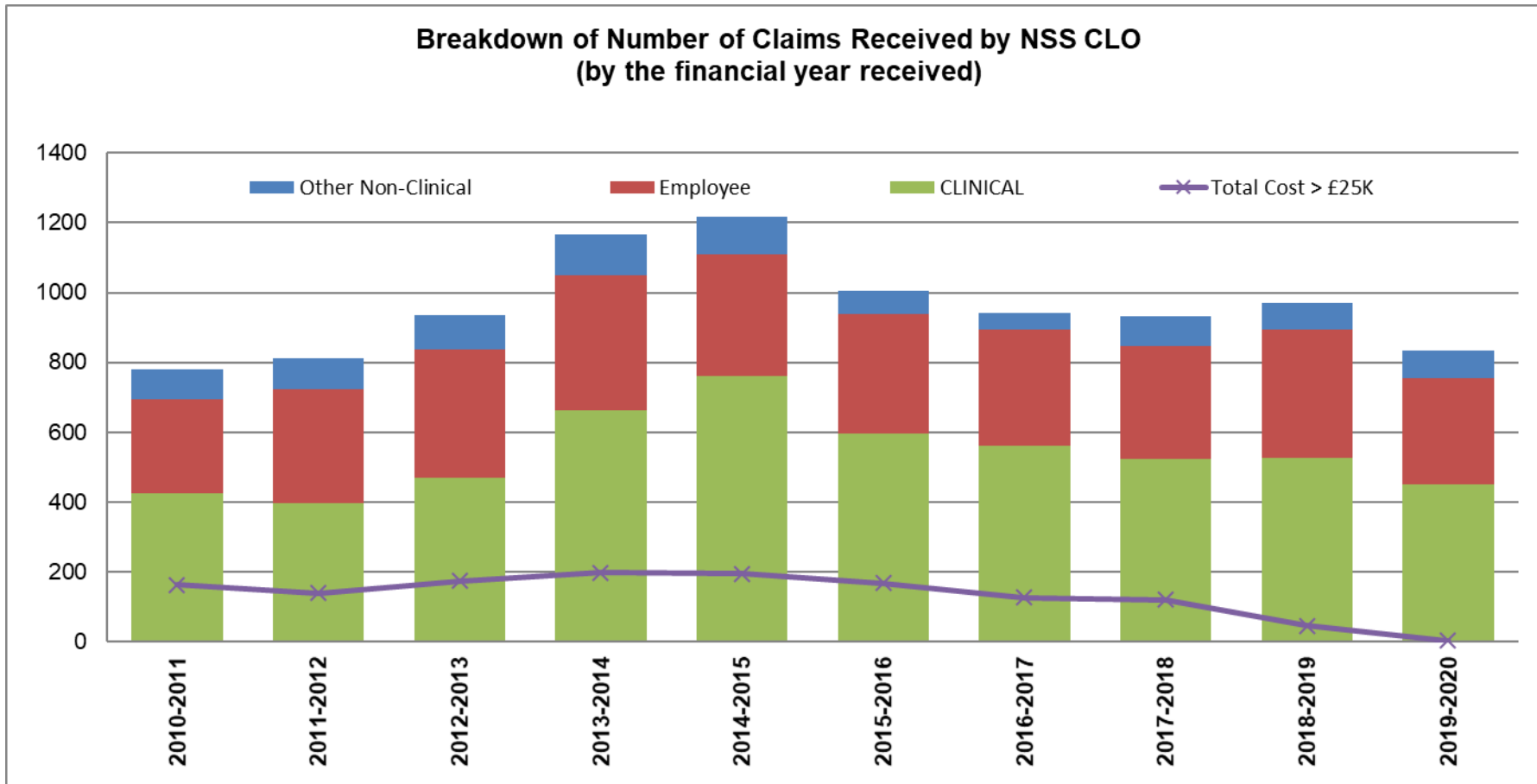
Analysis of Claims by Year of Incident and Year

Graph 5 below provides a breakdown of the total number of claims for compensation received by NSS CLO since 1st April 2010 by: Clinical (medical, nursing and mental health care); Employee; and all other non-clinical claims. The graph also details the number of those claims where the total costs, as at 31 Mar 2020, 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 decrease in the number of claims received this year compared with previous years, 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.

CNORIS Annual Report 2019-2020

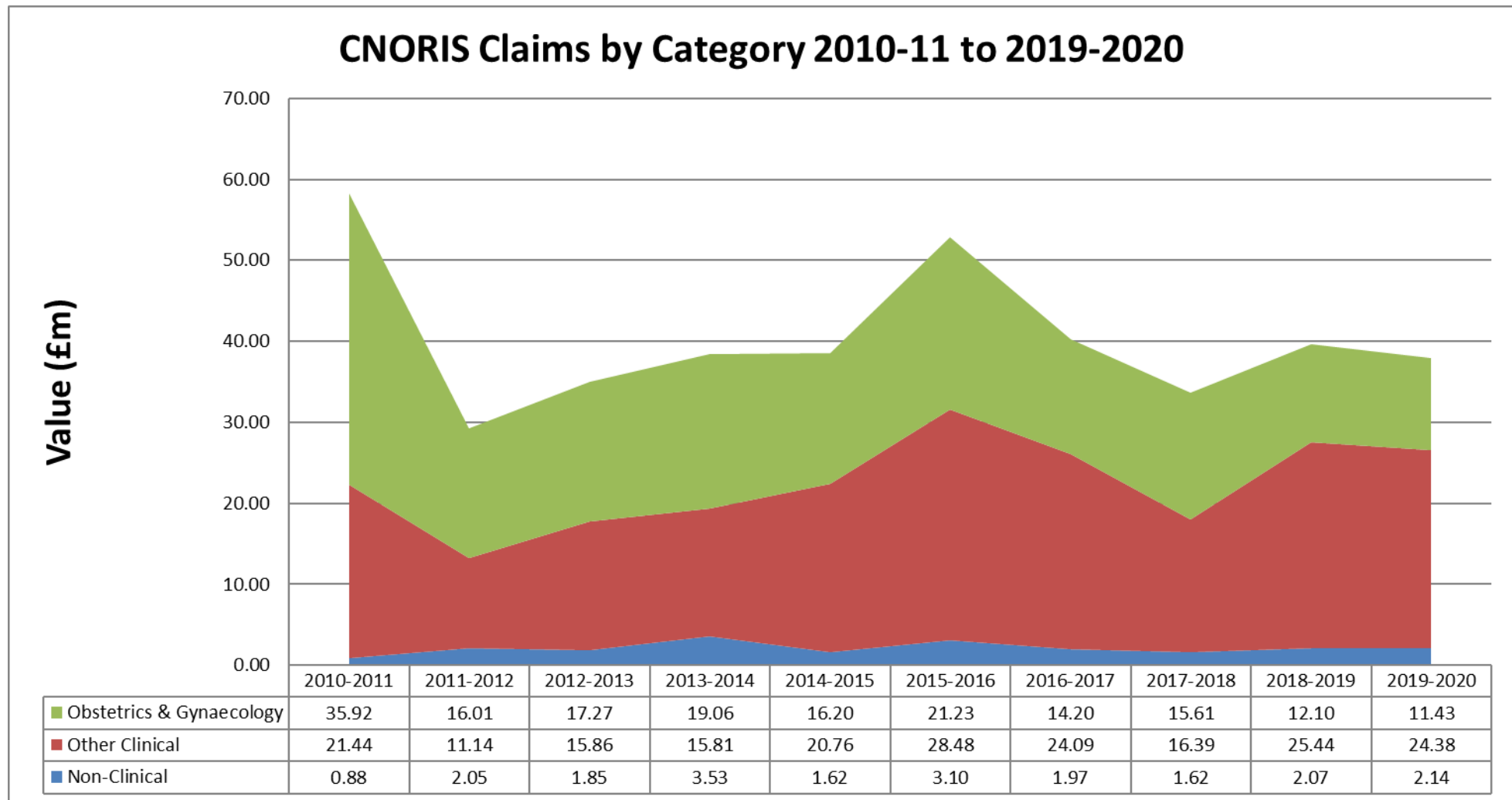
Graph 5 - Breakdown of the Number of All Claims Received by NSS CLO



Graphs 6 and 7 below provide a breakdown of payments reimbursed by CNORIS between 2010-2011 and 2019-2020 (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.

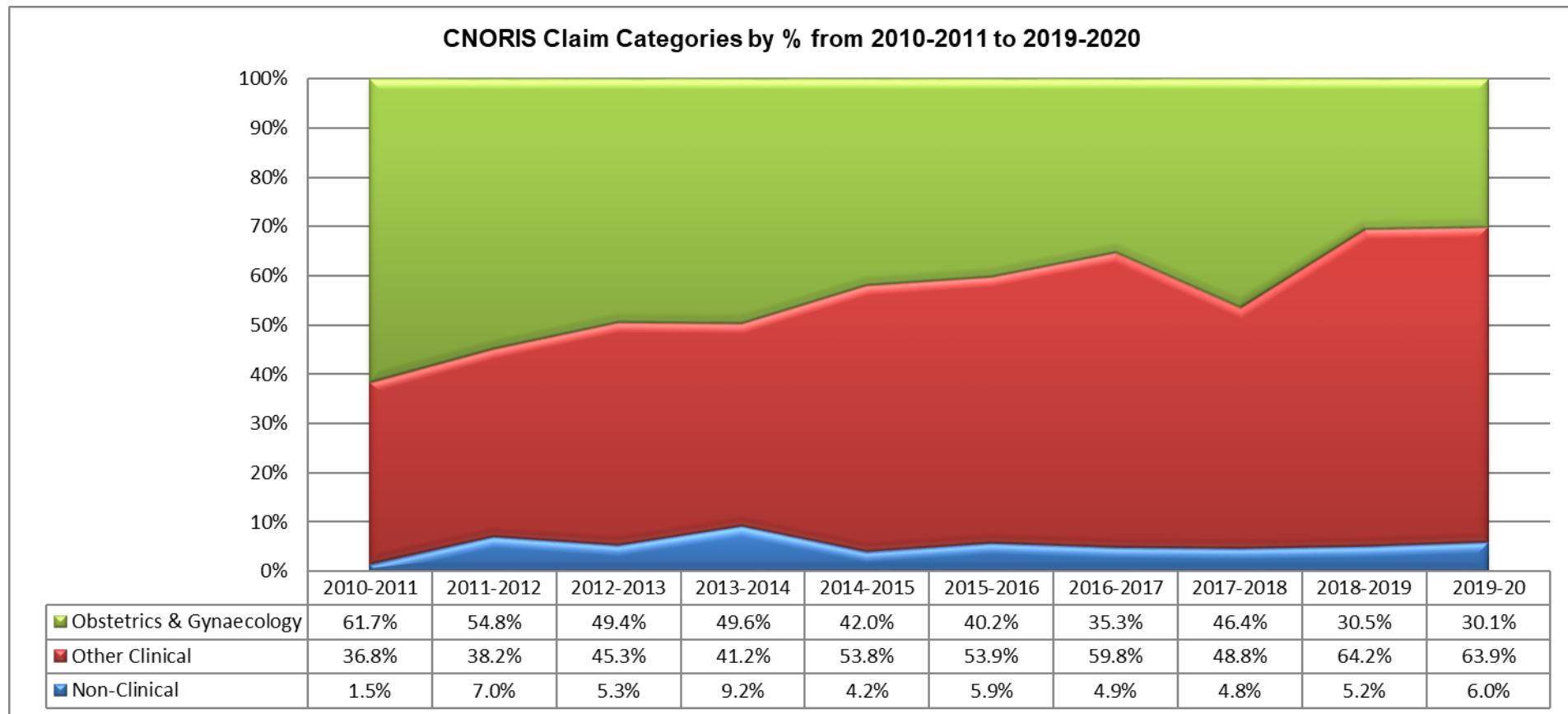
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Graph 6 – Breakdown of CNORIS Payments (£403.63 million, net of deductibles), made between 2010-2011 and 2019-2020



CNORIS Annual Report 2019-2020

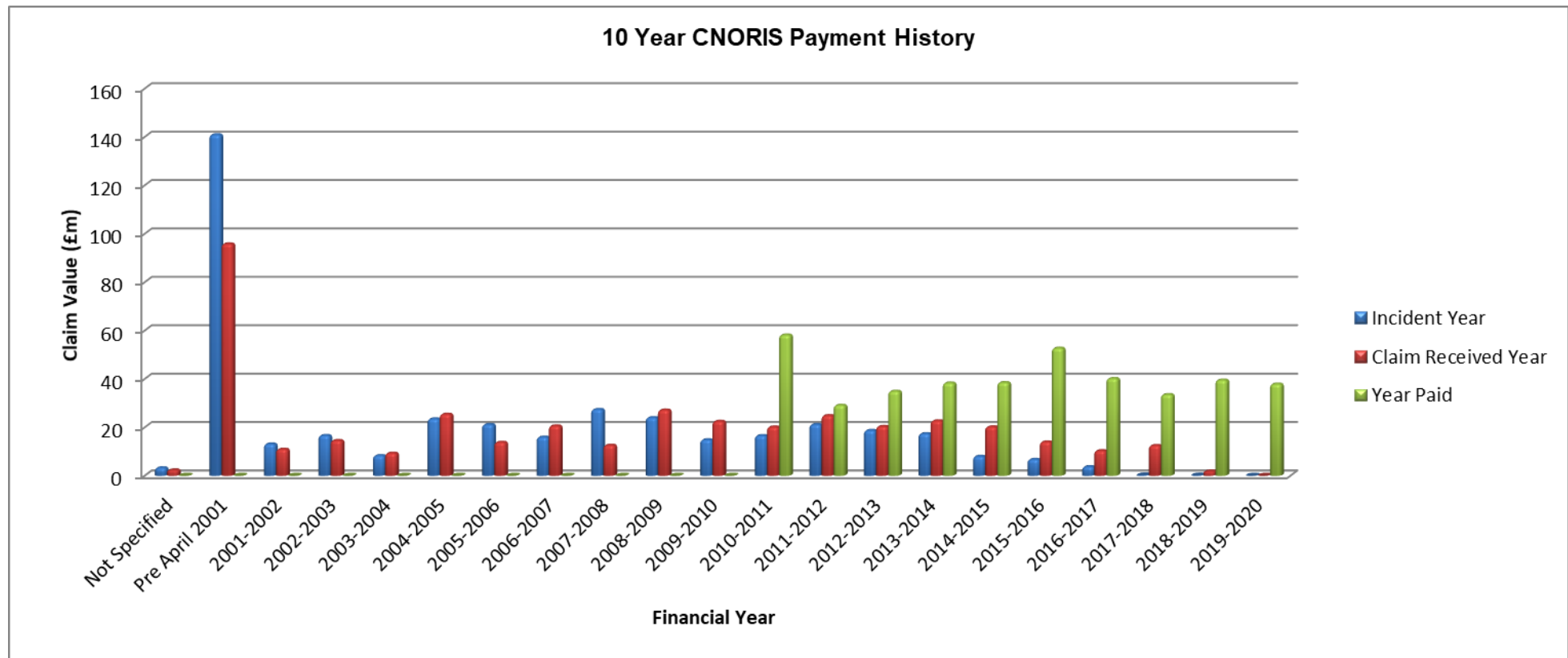
Graph 7 – CNORIS Payments (£403.63 million, net of deductibles), made between 2010-2011 and 2019-2020, In Percentage Terms



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 2019-2020, where dates are provided, the average period between the incident date and the date the claim was received by CLO was 3.52 years, with an average of 4.05 years between CLO receiving the claim to payments being reimbursed to health boards. The median period between the incident date and the date CLO received the claim was 2.19 years with 3.28 years between CLO receiving the claim and the health board being reimbursed through CNORIS.

CNORIS Annual Report 2019-2020

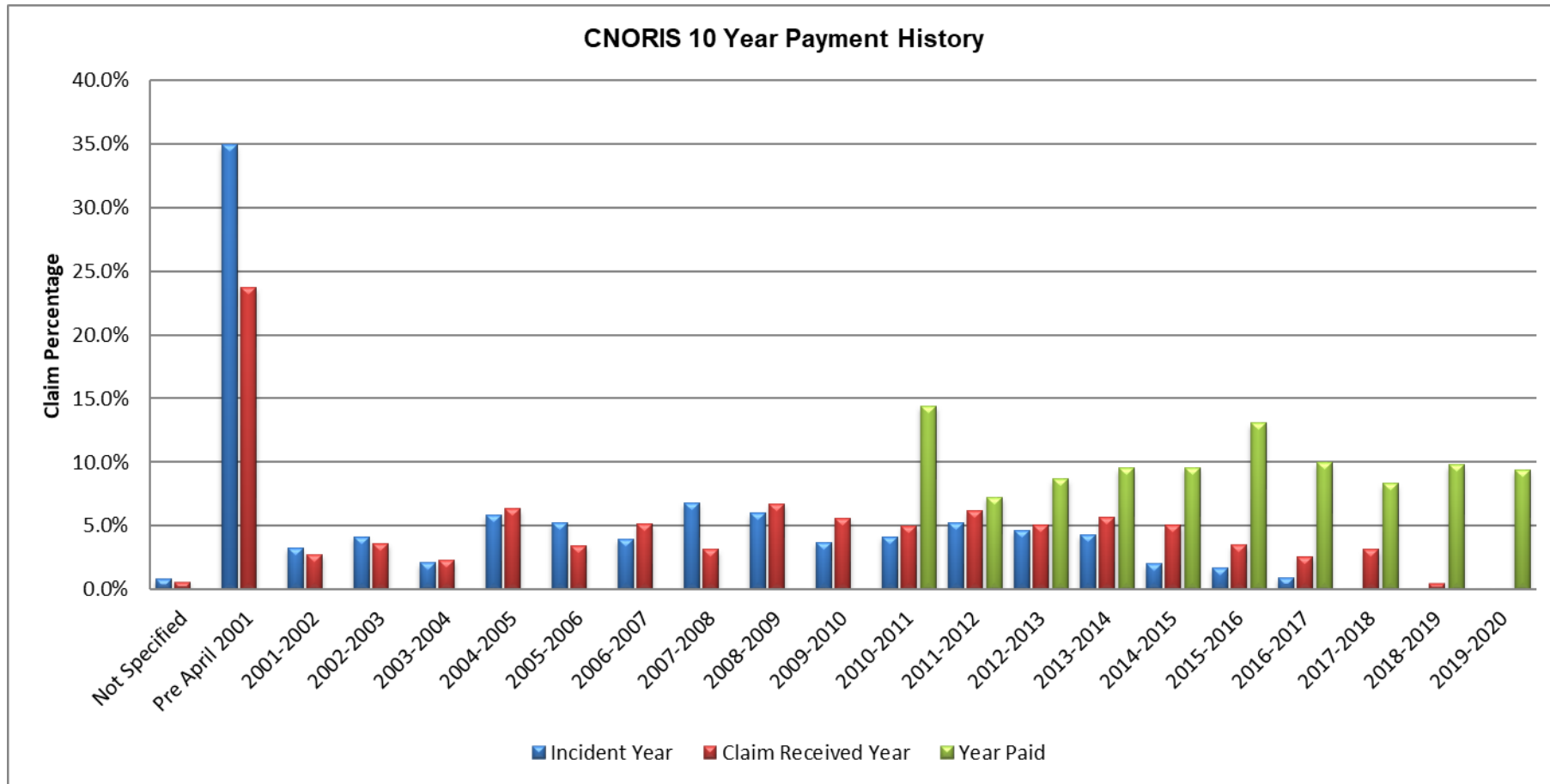
Graph 8a: CNORIS Payments Between 1 April 2010 and 31 March 2020, Analysed by Year of Incident and Year Received by CLO



Graph 8b analyses this same data, but as a percentage of the total value of reimbursements paid to health boards during the period 1 April 2010 to 31 March 2020. For example, 34.9% 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 23.8% relating to claims received by health boards prior to 1 April 2001.

CNORIS Annual Report 2019-2020

Graph 8b: CNORIS Payments Between 1 Apr 2010 and 31 Mar 2020 (Analysed by Yr of Incident and Yr Received by CLO (%))



Pipeline Analysis⁵

A pipeline analysis of the estimated values of all open (unsettled) claims as at year ends for the last 5 financial years (2015-2016 to 2019-2020), 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 and settled but not closed) claims “@ Year End 2020” were estimated to be settled, with 58% with an estimated settlement value above the CNORIS £25,000 deductibles threshold.

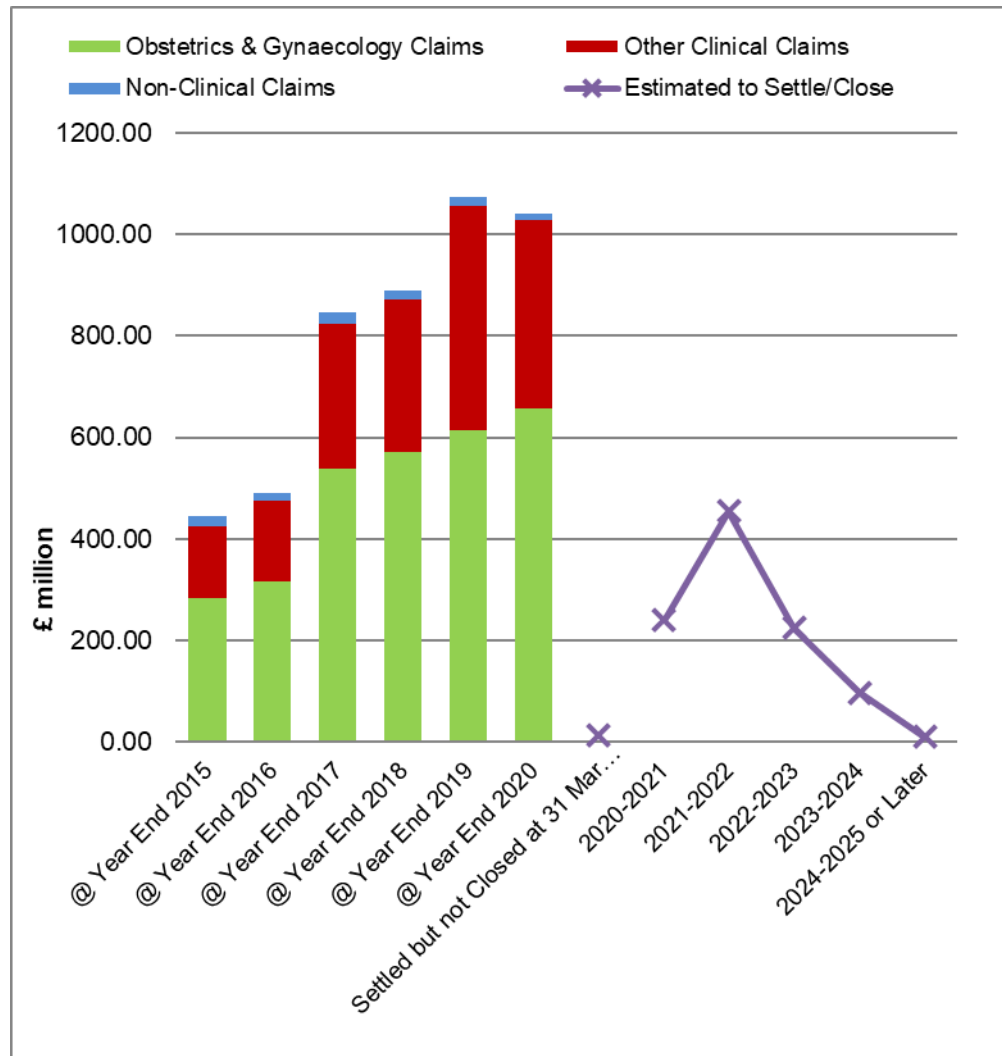
However, Graph 9a does not take into account the relevant risk profiles⁶ evaluating how many of these claims were anticipated to be settled in favour of the claimant. Graph 9b below, illustrates the significant reduction in estimated values when risk profiles were taken into account: 28% of claims with risk category 3, 35% with risk category 2 and 37% with risk category 1.

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.

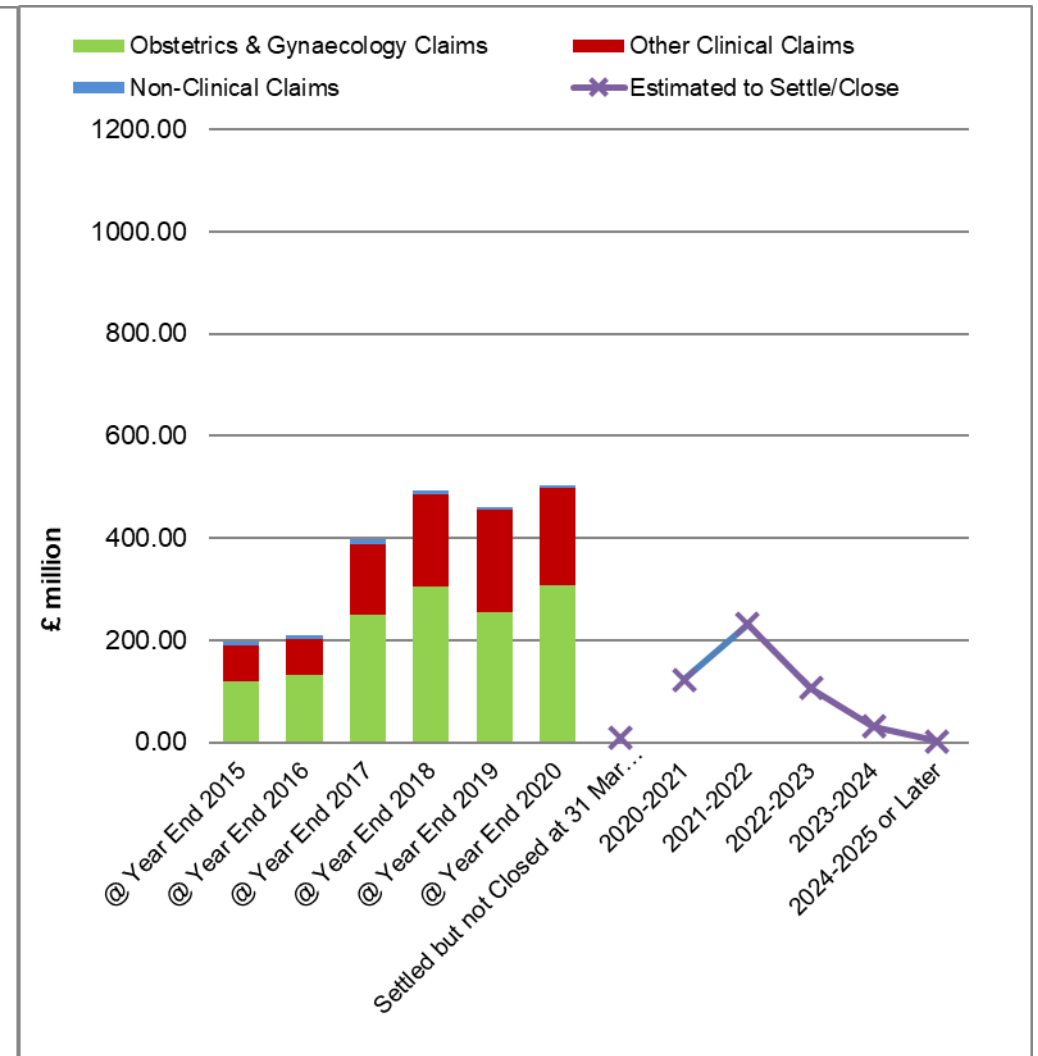
In both Graphs 9a and 9b, the Bar Chart represents the year end estimated settlement values of all open claims as they were at the specified year end. Whilst, the Line Graph represents the current estimated settlement values of those claims open @ Year End 2020, by the financial year in which they are currently estimated to settle, plus the estimated balance of costs for those claims settled but not closed at 31 Mar 2020. In both instances, graph 9b has been adjusted to take into account risk profiles.

CNORIS Annual Report 2019-2020

Graph 9a – Total Estimated Value of Open Claims



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 out with 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.

CNORIS Annual Report 2019-2020

Appendix 2: Organisations covered by CNORIS as at 31 March 2020 are as follows*:

Member of CNORIS	Member of CNORIS
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*	

**With effect from 1st April 2020, NHS Health Scotland was incorporated within the new public body Public Health Scotland*

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 2020
- 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. Risk category 3 indicates that there is more than 50% risk of a definite settlement being paid, risk category 2 that there is upto 50% and risk category 1 there is minimal or no risk of settlement.
- ⁷ For further information refer to the [Scottish Government website pages for CNORIS](#).
- ⁸ For further information refer to the [Government website on legislation](#)