



Clinical Negligence & Other Risks Indemnity Scheme (CNORIS)

Annual Report 2020-2021

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Date Published: March 2022

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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, National 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 2020-2021, 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 2020-2021 there were 311 claims for reimbursement, which compares with 285 in 2019-20, 301 in 2018-2019, 300 in 2017-2018 and 424 in 2016-17. In terms of claim values, this increased to £61.6 million during 2020-2021. This represented an increase of 9.1% in claim numbers and 62.3% increase in value compared with 2019-2020. The division of 2020-2021 payments between clinical and non-clinical claims was 278 payments totalling £60.3 million for clinical claims and 33 payments totalling £1.3 million for non-clinical claims. The highest settlement payments cut across various specialities, however obstetrics and gynaecology claims feature most heavily with 7 out of the top 20 in terms of value.

It should be noted that although a claim may have been received in 2020-2021 it often related to an incident that occurred many years previously. This is highlighted by the fact that of the claims received in 2020-2021 there were none with an incident date in 2020-2021 or 2019-2020. This is analysed in greater detail in graph 1 below.

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Outturn for 2020-2021

The value of claims paid in 2020-2021 was £61.6 million.

The breakdown of the number and value of claim payments made during 2020-2021 is detailed in Table 1 below.

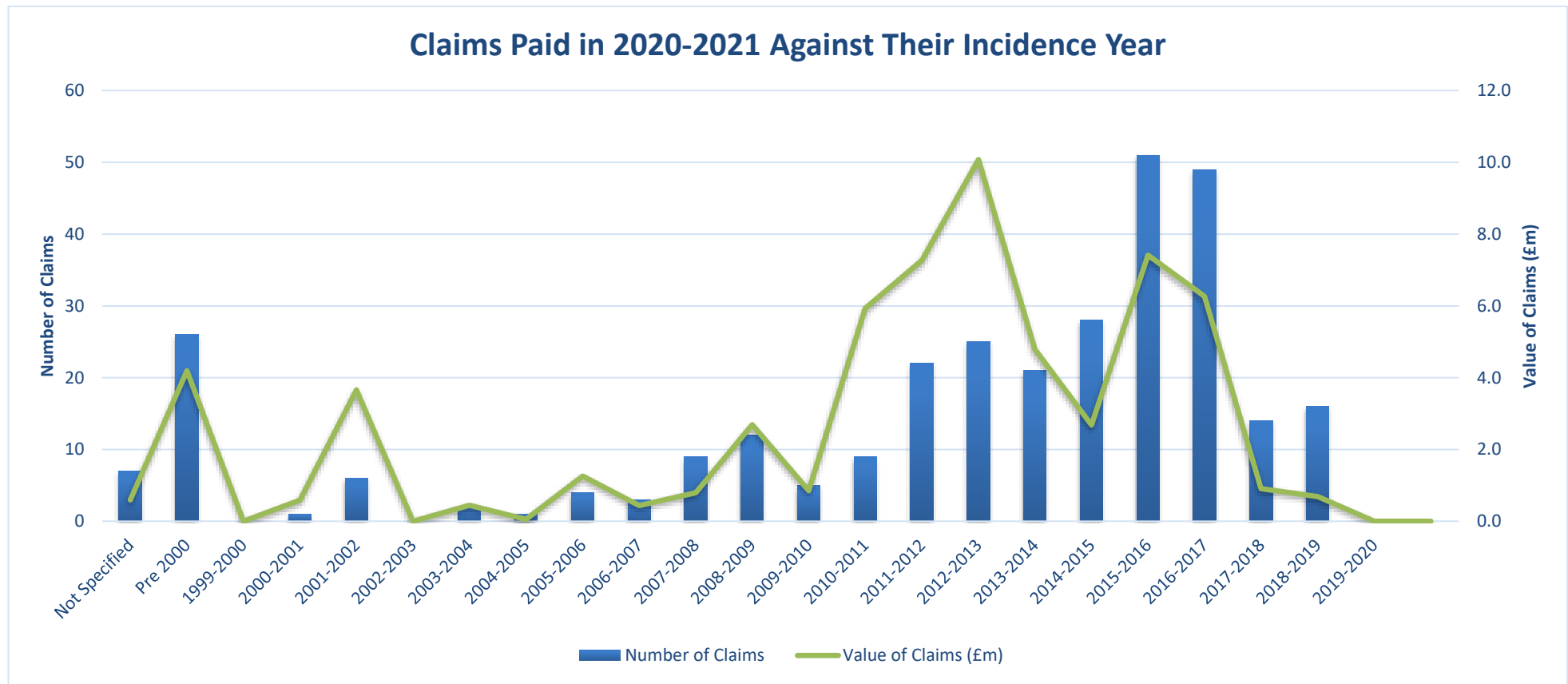
Table 1: Number & Value of 2020-2021 Payments

<u>NHS Board</u>	<u>Value of Claims</u>	<u>Number of Claims</u>
NHS Grampian	£9,833,084	32
NHS Ayrshire and Arran	£3,716,486	26
NHS Greater Glasgow & Clyde	£9,571,590	61
NHS Tayside	£2,979,257	12
NHS Lanarkshire	£7,589,614	45
NHS Highland	£1,445,008	14
NHS Lothian	£8,076,512	48
NHS Fife	£4,980,131	26
NHS Forth Valley	£2,835,012	16
NHS Dumfries and Galloway	£6,995,173	12
NHS Orkney	£55,921	<5
NHS Western Isles	0	<5
NHS Borders	£404,439	5
Scottish Ambulance Service	£529,805	6
NHS Shetland	£6,582	<5
National Waiting Times Centre	£2,393,235	<5
The State Hospital	£12,557	<5
NHS 24	£170,521	<5
Total	61,594,927	311

Incident Timeline

Graph 1 below provides a breakdown of all claims reimbursed in 2020-2021 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 2020-2021 by Year of Incident



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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 2011. 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 – 310 per year since 2014-2015.

Table 2: Payments made since 2011-2012*

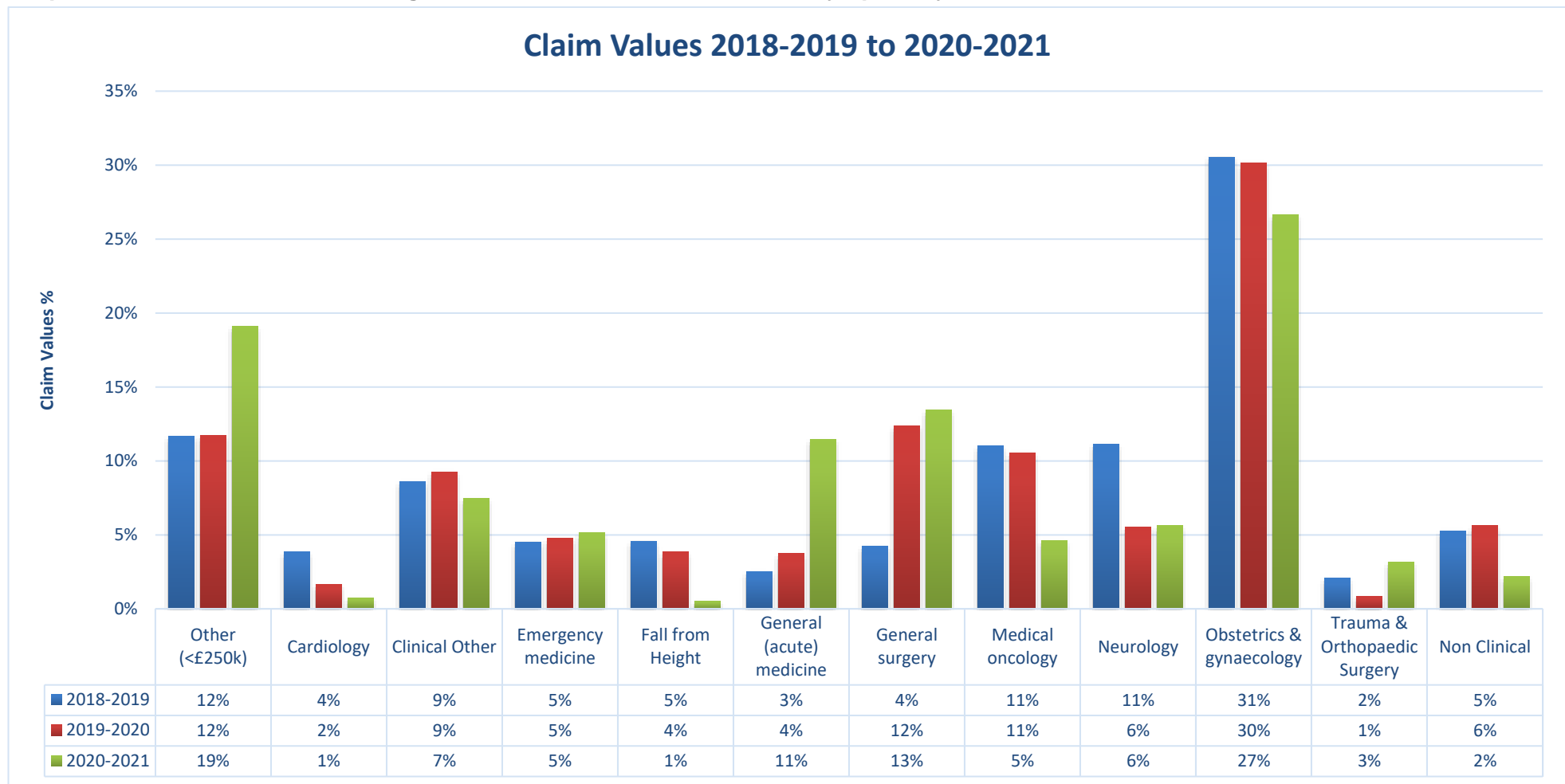
Financial Year	Payment Value Clinical (£m)	Payment Value Non-Clinical (£m)	Total Payment Value (£m)	Number of Payments Clinical	Number of Payments Non-Clinical	Total Number of Payments
2011-2012	27.15	2.05	29.19	126	36	162
2012-2013	33.13	1.85	34.98	168	49	217
2013-2014	34.87	3.53	38.40	160	41	201
2014-2015	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	35.82	2.14	37.96	232	53	285
2020-2021	60.26	1.33	61.59	278	33	311
Total	385.71	21.27	406.99	2,259	487	2,746

Of the 311 reimbursement payments made in 2020-2021, there were 11 individual payments that were over £1 million and 13 claim references where the total of payments made in year exceeded £1 million – this includes interim award claims and then a final claim on closure.

The breakdown, by percentage, of the numbers and values of claims over the last 3 financial years (2018-2019, 2019-2020 & 2020-2021), by speciality, is provided in graphs 2 and 3 below. The graphs, below, highlight that although obstetrics claims account, on average, for only 22.3% of the total number of claims they account, on average, for 29.1% 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 any of the last 3 years. There were a total 172 claims valued at £20.8 million, and across 36 specialities, that fell into this category.

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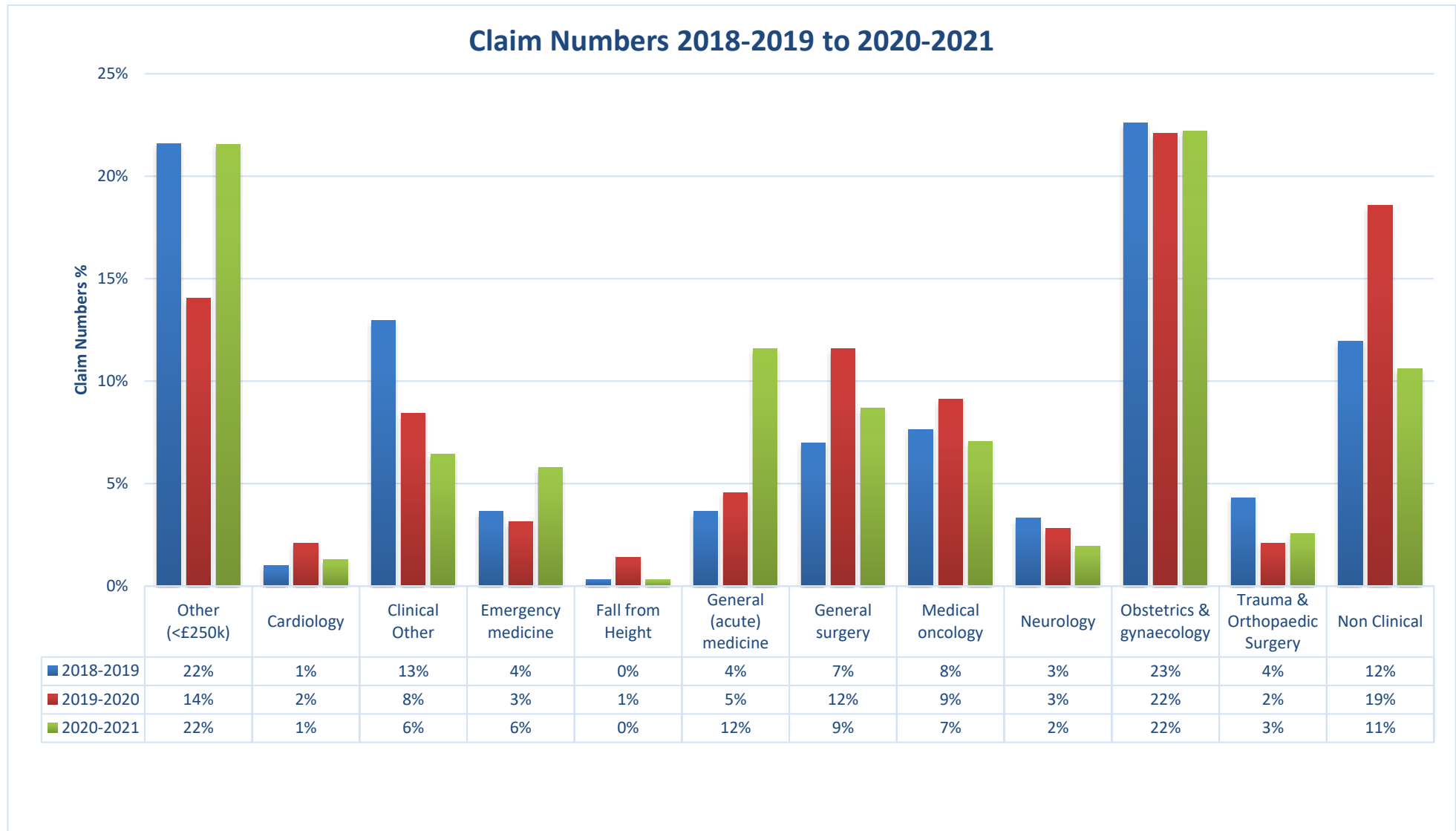
Graph 2: Value of Claims Paid during 2018-2019, 2019-2020 & 2020-2021 by Specialty*



*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 2018-2019, 2019-2020 & 2020-2021 by Specialty*



Periodic Payment Orders (PPOs) and Structured Settlements⁴ 2020-2021

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 2020-2021 there were 22 PPOs and four older structured settlements paid across seven NHS Boards; one paid quarterly and the others annually. The values reclaimed by NHS Boards from CNORIS during 2020-2021 totalled £5.06 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.

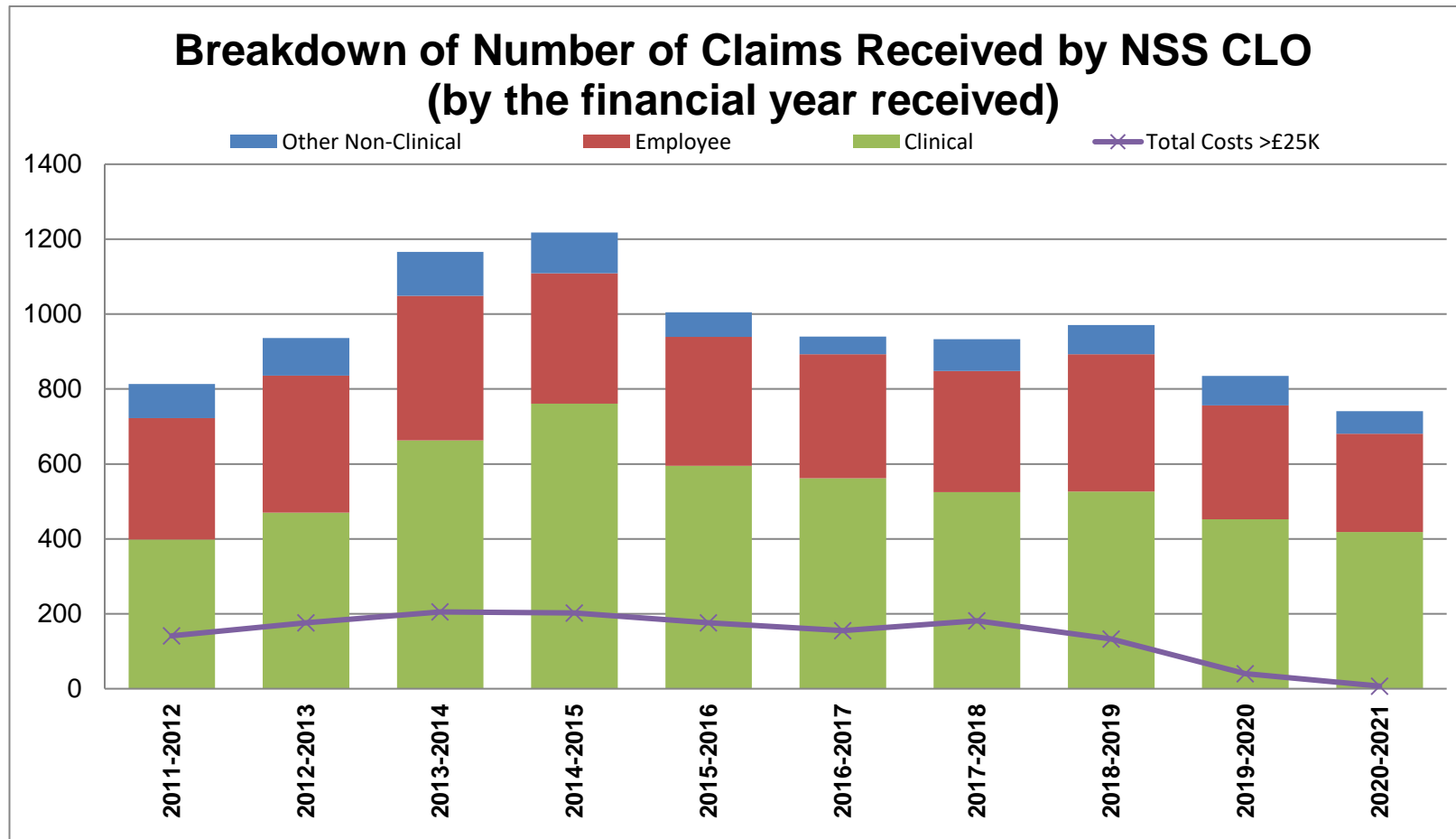
Analysis of Claims by Year of Incident and Year

Graph 4 below provides a breakdown of the total number of claims for compensation received by NSS CLO since 1st April 2011 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 2021, exceeded the CNORIS deductibles threshold of £25,000, irrespective of whether these costs have been reclaimed from CNORIS.

The graph shows that there has been a decrease in the number of claims received this year compared with previous years. However, it is important to bear in mind that the information relates to the number of claims received each year regardless of value and merit. It does not show the number, or value, of claims that will eventually be reimbursed via CNORIS, generally those where total costs (award plus legal expenses for both parties) exceed £25,000.

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Graph 4 - Breakdown of the Number of All Claims Received by NSS CLO*

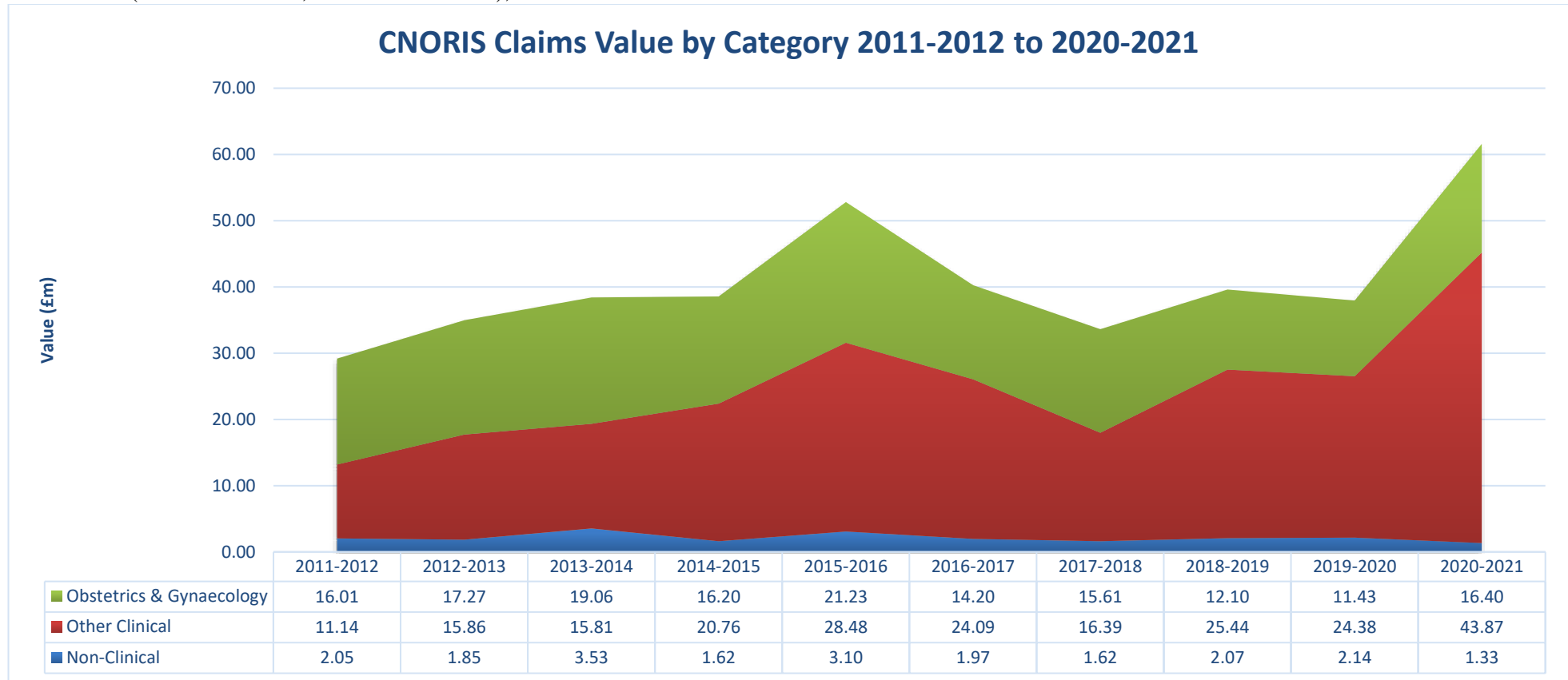


*Note that the line graph in Graph 4 represents the number of claims received, where the total costs to date exceed the CNORIS £25,000 deductibles threshold, irrespective of whether they have been settled or closed

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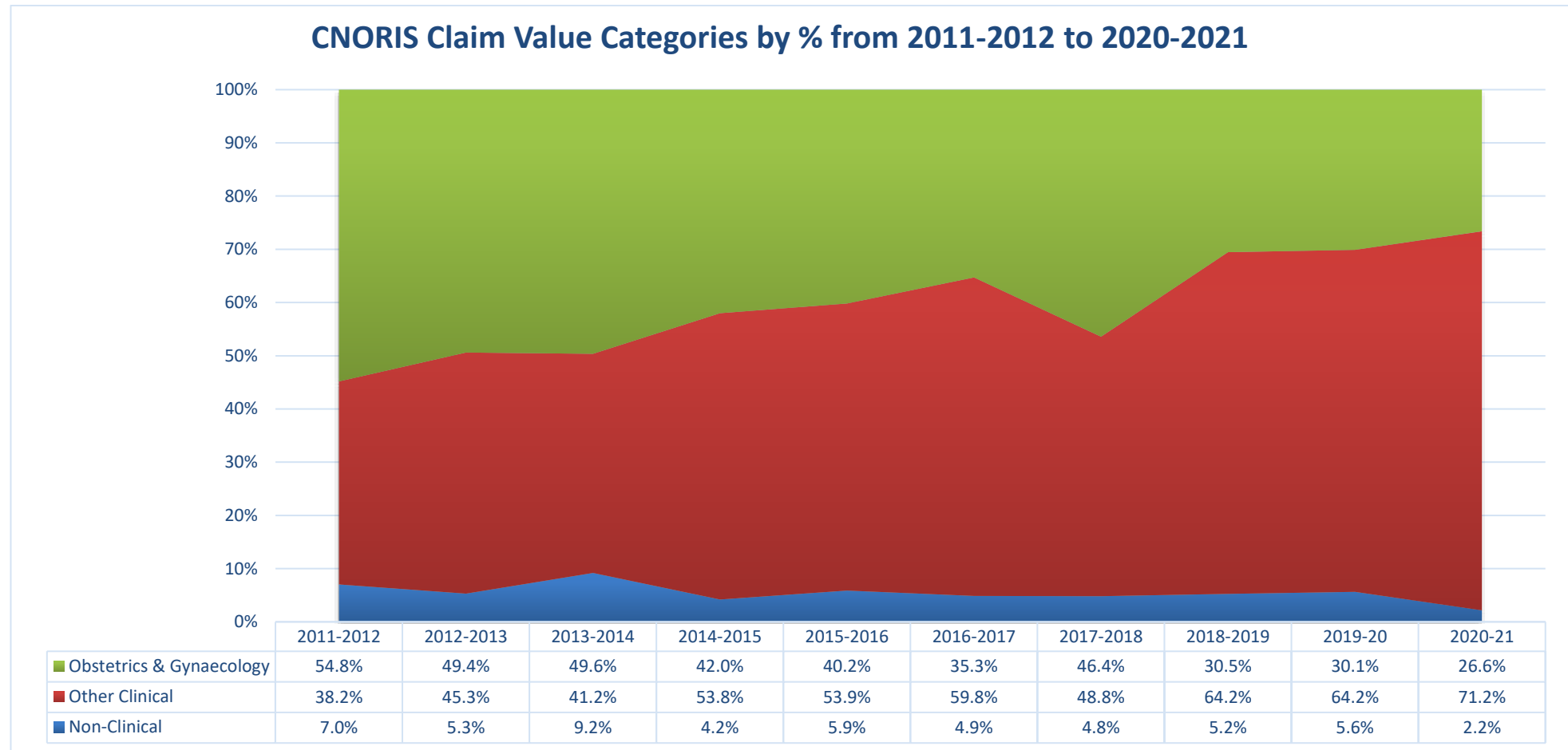
Graphs 5 and 6 below provide a breakdown of payments reimbursed by CNORIS between 2011-2012 and 2020-2021 (total value of net payments made was £406.99 million), in relation to whether the claim related to an obstetrics & gynaecology incident, another type of clinical incident or a non-clinical incident. Graph 6 is in monetary terms and graph 7 in percentage terms.

Graph 5 – Breakdown of CNORIS Payments made between 2011-2012 and 2020-2021
(£406.99 million, net of deductibles),



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Graph 6 –CNORIS Payments made between 2011-2012 and 2020-2021 (in Percentage Terms)



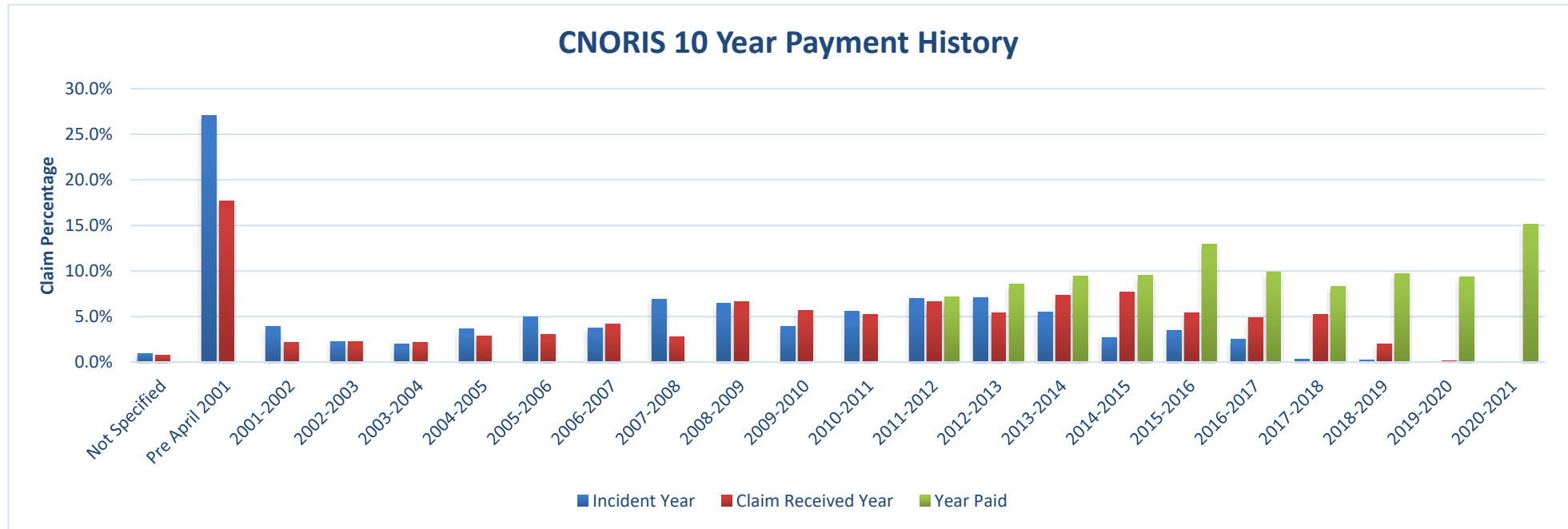
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Graph 7 profiles the same time period, but provides an analysis in percentage terms, based upon the total value of reimbursements paid to health boards during the period 1 April 2011 to 31 March 2021, by the years in which incidents that led to each 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 example, 27.1% 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 17.7% relating to claims received by health boards prior to 1 April 2001.

For claims paid in 2020-2021, where dates are provided, the average period between the incident date and the date the claim was received by CLO was 3.34 years, with an average of 4.15 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 2.70 years with 3.52 years between CLO receiving the claim and the health board being reimbursed through CNORIS.

Graph 7: CNORIS Payments Between 1 Apr 2011 and 31 Mar 2021, Analysed by Year of Incident and Year Received (in Percentage Terms)

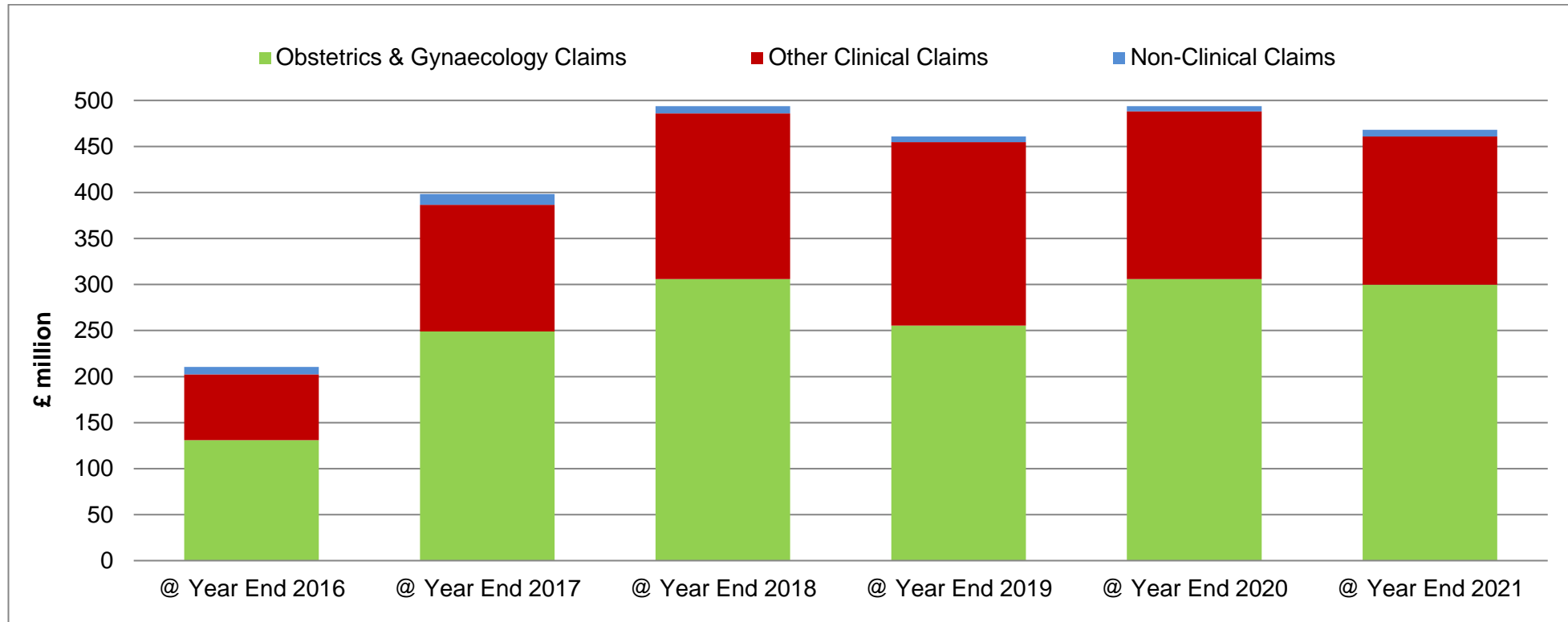


Pipeline Analysis

A pipeline analysis of the estimated values, adjusted for risk, of all open (unsettled) claims as at each year-end of the last 5 financial years (2016-2017 to 2020-2021), broken down by obstetrics & gynaecology claims, other clinical claims and non-clinical claims, is provided in Graph 8 below. As at 31 March 2021 there were 31% of these claims with an estimated settlement value, adjusted for risk, above the CNORIS £25,000 deductibles threshold.

Claims are continually being reviewed as they progress through the legal process and adjustments are made to the estimated settlement values, risk profiles and estimated settlement dates, as required. Therefore, these values do not necessarily reflect actual or future CNORIS payments.

Graph 8 – Total Estimated Value of Open (Not Settled) 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 amended⁵, 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) Act⁶ 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 national 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*:

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
Public Health Scotland**	* As at 31 March 2021

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

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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 2021.
- 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 For further information refer to the [Scottish Government website pages for CNORIS](#).
- ⁶ For further information refer to the [Government website on legislation](#).