

# The Early Notification Scheme

*The second report: the evolution of the Early Notification Scheme*



 **@NHSResolution**

**#ImprovingMaternityOutcomes**

# Welcome to today's programme:

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## **CHAIRS:**

<b>Sangita Bodalia</b>	Head of Early Notification (Legal)
<b>Annette Anderson</b>	Head of Early Notification (Clinical)

## **SPEAKERS:**

<b>Jyoti Sidhu</b>	Consultant Obstetrician & Gynaecologist, former National Obstetric Clinical Fellow to NHS Resolution
<b>Hannah De Haan</b>	Senior EN Case Manager (Legal)
<b>Lynn Tilley</b>	Safety and Learning Lead (Clinical)

# Housekeeping rules for today's session

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- This is a live event
- This session will be recorded
- The presenters will not be able to see or hear you during the session
- Please add any questions or comments in the chat box during the session and we will answer as many as we can at the end

- NHS Resolution Purpose and Strategy
- Early Notification Scheme and process update
- The second report: the evolution of the Early Notification Scheme
- Q & A session

# NHS Resolution purpose, functions and strategic focus:



Resolution



# Strategy overview – Strategic Priorities



## **Priority 1. Deliver fair resolution.**

All of our services will focus on achieving fair and timely resolution, wherever possible keeping patients and healthcare staff out of formal processes to minimise distress and cost.



## **Priority 2. Share data and insights as a catalyst for improvement.**

Ensuring that our unique datasets help derive usable insights that benefit patients and the healthcare and justice systems.



## **Priority 3. Collaborate to improve maternity outcomes.**

Bringing together key parties to determine what further improvements can be made within our areas of expertise to support the government's maternity safety ambition.



## **Priority 4. Invest in our people and systems to transform our business.**

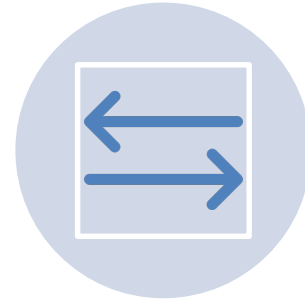
Develop our people, systems and services so that we can continue to deliver best value for public funds.

# Early Notification Scheme

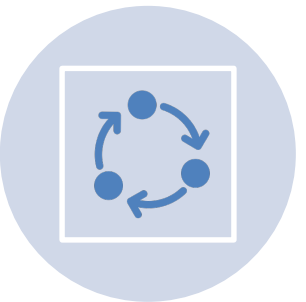
**Sangita Bodalia and Annette Anderson**  
**Heads of Early Notification (Legal and Clinical)**



Reminder of why Early Notification (EN) exists and its impact



Changes in reporting



The EN process



Key actions for trusts

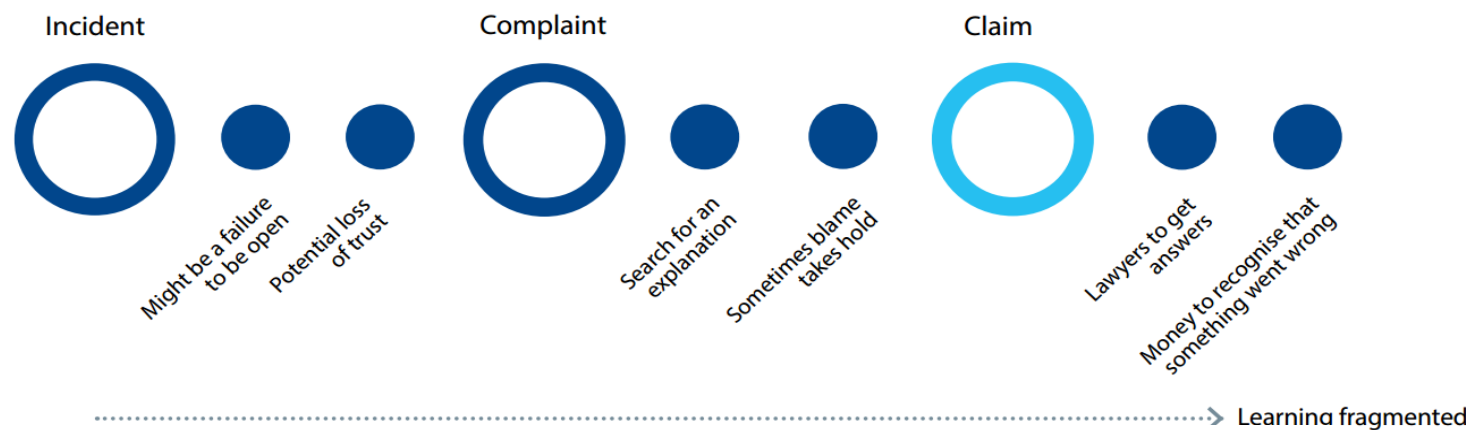


# Early Notification Scheme (EN)

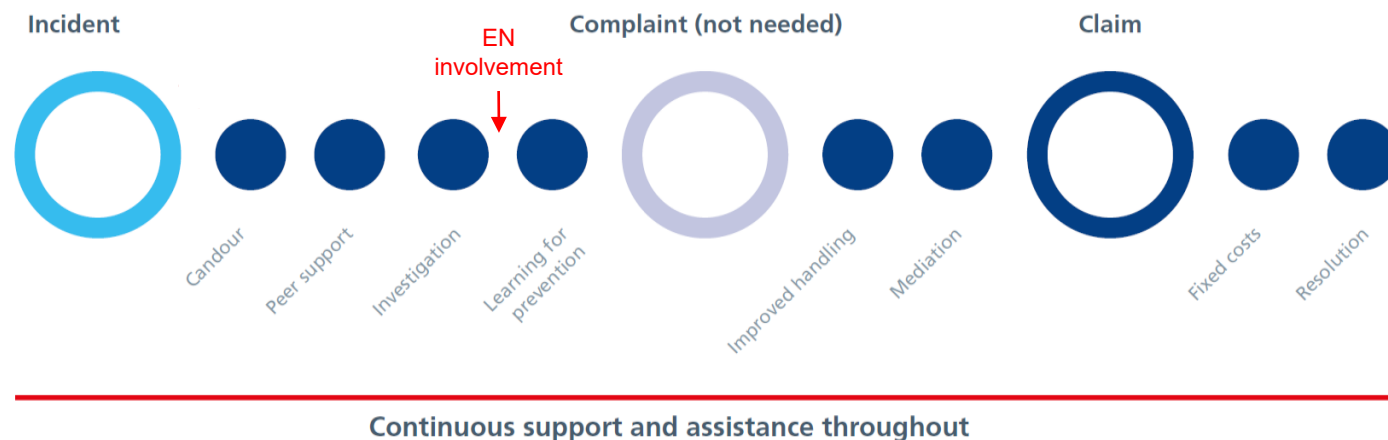
- NHS Resolution's Early Notification (EN) Scheme aims to provide a more rapid, caring response to families whose baby may have suffered severe harm.
- The scheme was established in April 2017 and it is designed primarily to do two things:
  1. To speed up investigations into whether or not a baby is entitled to receive compensation, reducing the need for costly, formal processes where possible and
  2. To help ensure that steps are taken to learn from things that have gone wrong to improve maternity care as well as sharing good practice.

# Our role – getting closer to the incident

## Past



## Current



Source: Five years of cerebral palsy claims: a thematic review of NHS Resolution data

# The Early Notification Scheme – why?



Investigate potential eligibility for compensation and reduce legal costs

Early assessment of risk closer to the incident

Build on [Saying Sorry](#) and [Being Fair](#)

Unique contribution to patient safety landscape

Improve the experience for the family and affected staff

Share learning with individual trusts

- From 1<sup>st</sup> April 2022, we will continue to apply the following clinical definition to cases:
- *“Babies who have an abnormal MRI scan where there is evidence of changes in relation to intrapartum hypoxic ischaemic encephalopathy (HIE)”.*

# HSIB and EN - Changes in Reporting

## 01.04.17 – 31.03.20

- Trusts reporting all EN criteria cases to NHS Resolution via Claims Wizard
- NHS Resolution investigated all cases meeting criteria:
- *Babies born at term (≥37 completed weeks of gestation), following labour, had a potentially severe brain injury diagnosed in the first 7 days of life and:*
  - 1. Diagnosed with grade III HIE; or
  - 2. Was therapeutically cooled (active); or
  - 3. Had decreased central tone AND was comatose AND had seizures of any kind

## 01.04.20 – 31.03.21

- Covid-19 period. Trusts reporting all EN criteria cases to HSIB only
- HSIB decided not to investigate all maternity events involving cooled babies where there was no apparent neurological injury confirmed following therapy
- HSIB shared datasets and completed investigation reports directly with NHS Resolution

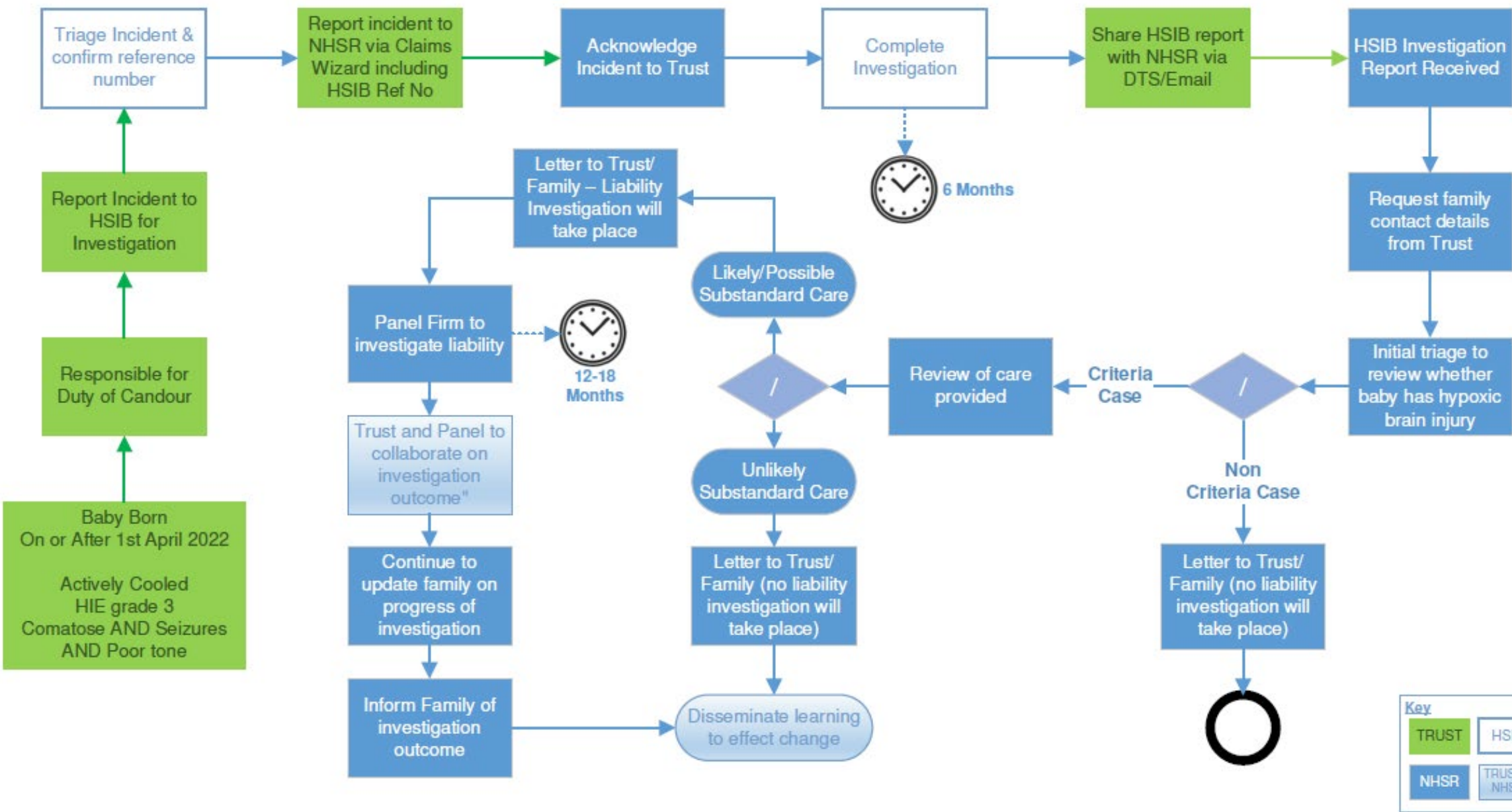
## 01.04.21 to 31.03.22

- Trusts reporting all EN criteria cases to HSIB only
- NHS Resolution's definition of brain injury: *"Babies who have an abnormal MRI scan where there is evidence of changes in relation to intrapartum hypoxic ischaemic encephalopathy"*.
- NHS Resolution: no steps will be taken to investigate eligibility for compensation until HSIB has completed a safety investigation
- NHS Resolution to write to families directly (for babies born after 01.04.21)

## 01.04.22 onwards


- Trusts report cases to NHS Resolution which HSIB have confirmed are being investigated
- NHS Resolution triage cases based on definition of brain injury
- NHS Resolution inform Trusts which cases will be investigated
- NHS Resolution will write to families
- Trusts to share final HSIB Reports with NHS Resolution within 30 days of receipt (usually within six months of incident)

# New process from 1 April 2022



# Claims Reporting Wizard

**Early Notification Incident Details (9 of 10)**

Birth Trust:  

EBC Criteria: Recommended

Family Advised of NHSR Involvement/Disclosure: Recommended ☐ Yes ☐ No

Records Received: Recommended ☐ Yes ☐ No

Trust assessment of substandard care: Recommended

SI Investigation: Recommended

Any other comments:

On Page 9 – complete details on

- **Family awareness of NHS Resolution involvement**
- **HSIB reference** to be inserted into “**Any Other Comments**”
- Without a HSIB reference the case will be rejected

**No requirement to:**

- upload medical records at this stage;
- provide trust assessment of substandard care; or
- Complete the field for SI investigation (as these options are outdated).

Once HSIB final report received, **Trust to send to NHS Resolution** via DTS using NHS Resolution Claim Reference.



# Key actions for Trusts



## When reporting incidents to NHS Resolution Trusts should:

- Complete the Claims Reporting Wizard
- Provide details for the baby and mother
- Undertake statutory duty of candour conversations and inform families of the EN process
- **Do not** upload medical records or other documents at the point of initial reporting **until requested**
- **Send** the final **HSIB** report to the EN Case Assistant via DTS quoting the EN reference



# Key actions for Trusts

**Safety action 10: Safety action 10:** Have you reported 100% of qualifying cases to Healthcare Safety Investigation Branch (HSIB) and to NHS Resolution's Early Notification (EN) Scheme from 1 April 2021 to 5 December 2022?



<b>Required standard</b>	<p>A) Reporting of all qualifying cases to HSIB from 1 April 2021 to 5 December 2022</p> <p>B) Reporting of all qualifying EN cases to NHS Resolution's Early Notification (EN) Scheme from 1 April 2022 until 5 December 2022</p> <p>C) For all qualifying cases which have occurred during the period 1 April 2021 to 5 December 2022, the Trust Board are assured that:</p> <ol style="list-style-type: none"><li>1. the family have received information on the role of HSIB and NHS Resolution's EN scheme; and</li><li>2. there has been compliance, where required, with Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 in respect of the duty of candour.</li></ol>
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# Maternity Incentive Scheme update

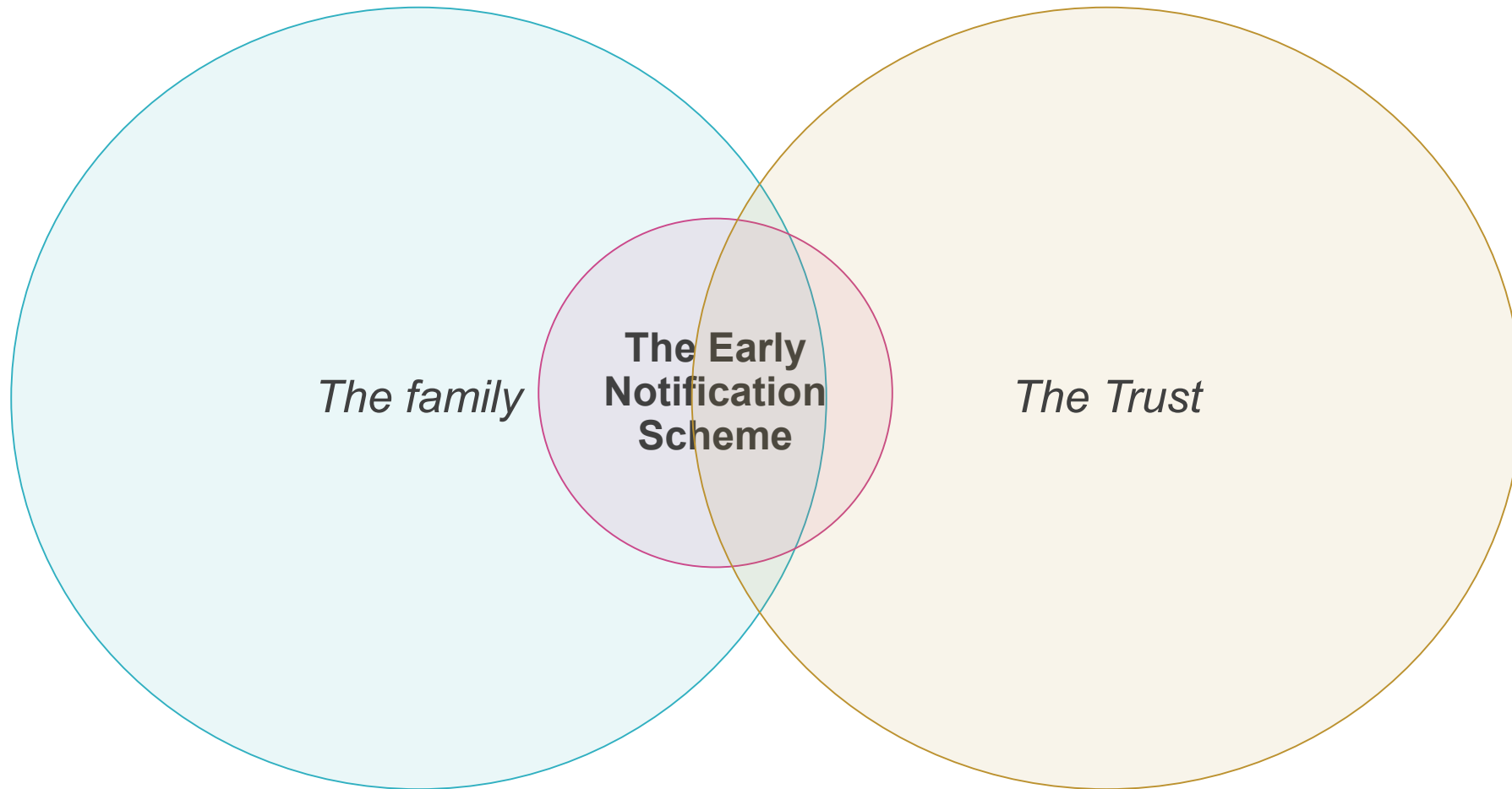
MIS team are in the process of publishing the revised maternity incentive scheme guidance.

The technical guidance has been strengthened, which includes amendments to the following safety actions:

- **Two** - Maternity Services Data Set (MSDS) (includes reporting for continuity of care)
- **Five** - Midwifery workforce planning
- **Six** - Saving babies' Lives care bundle Version 2
- **Eight** – Multidisciplinary Training
- **Nine** – Assurance to board on maternity and neonatal issues (includes continuity of care)

Submission deadline has been extended to **Thursday 2<sup>nd</sup> February 2023**

# Collaboration in Early Notification



# The Second EN report: The evolution of the Early Notification Scheme

**Jyoti Sidhu** – Consultant Obstetrician & Gynaecologist and former National Obstetric Clinical Fellow to NHS Resolution

**Lynn Tilley** - Safety and Learning Lead for Early Notification

**Hannah De Haan** - Senior Early Notification Case Manager, Early Notification

# Content of the EN Report

1. Impact of the six recommendations outlined in the first EN Report
2. Potential benefits of early liability investigations
3. Emerging clinical theme of impacted fetal head at caesarean section
4. Overview of the clinical themes derived from a cohort of 98 cases
5. Progress of the EN Scheme and an early investigation of potential benefits
6. Recommendations

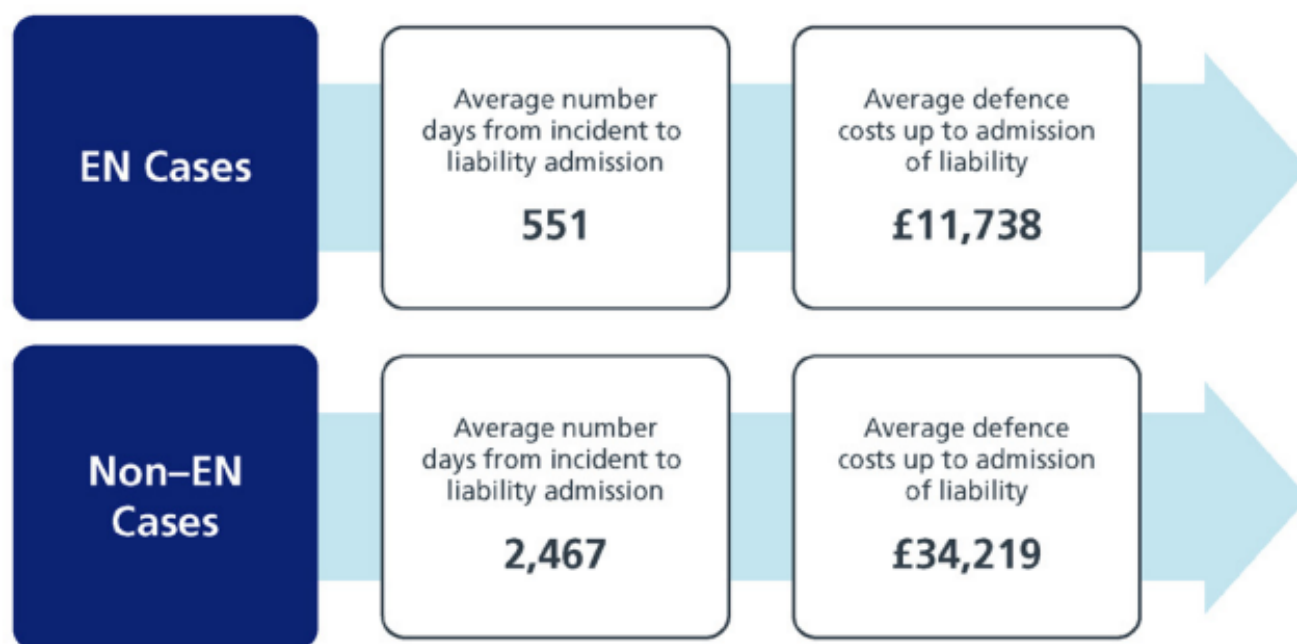
- Year 1 NHS Resolution Early Notification Scheme report 2019 recommended six areas for maternity care improvement based on the findings of the first year of the EN Scheme
- Working closely with the maternity system, progress has been made with each of the recommendations to further enable high quality maternity care.

## Chapter 2 - Analysis of 20 EN liability admissions

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- Analysis of 20 cases where admissions of liability were made, supporting the change of the EN Scheme criteria.
- 50% confirmed or emerging CP
- 40% died within the first two years of life from injuries related to severe hypoxic brain injury
- 10% sustained an Erb's palsy injury following shoulder dystocia at delivery
- Clinical themes included delays in recognition and escalation of problems, issues with fetal heart rate monitoring and location changes.

### Comparative analysis of 10 EN CP admissions with 10 traditional CP claims



Important reduction in the process duration from incident to admission with the EN scheme  
*(From approximately 80 months to approximately 18, saving approximately five years).*

In addition, an important reduction in the defence costs up to admission of liability  
*(a saving of several thousands on NHS legal costs)*



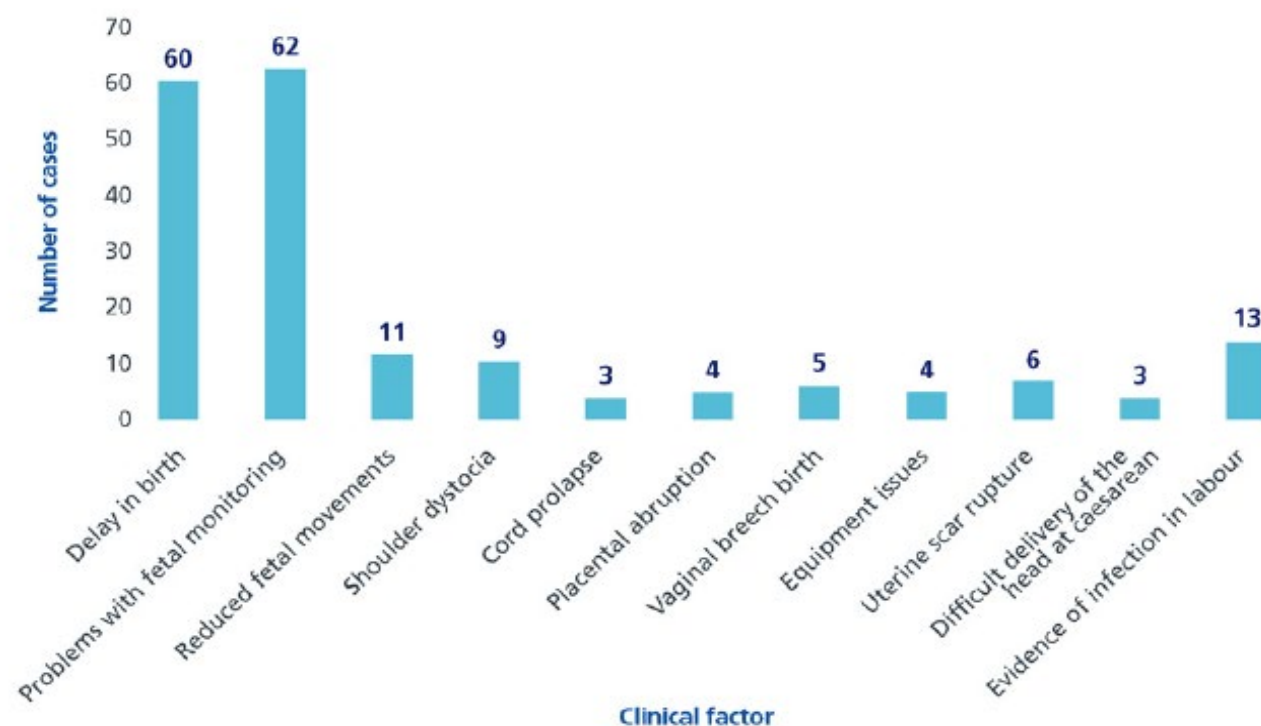
## Chapter 3 - Impacted fetal head at caesarean section

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- Clinical complication contributing to poor outcome.
- First EN report found that 9% of the cohort of infants born with suspected HIE.
- There remains a shortage of information and NHS Resolution acknowledge the ongoing work on this topic. NHS Resolution will continue to work with the national Avoiding Brain Injury in Childbirth (ABC) programme.

## Chapter 4 - Clinical themes from EN cases

- A clinical analysis of EN cases demonstrates various factors contributing to the poor neonatal outcomes identified



Two themes analysed in detail:

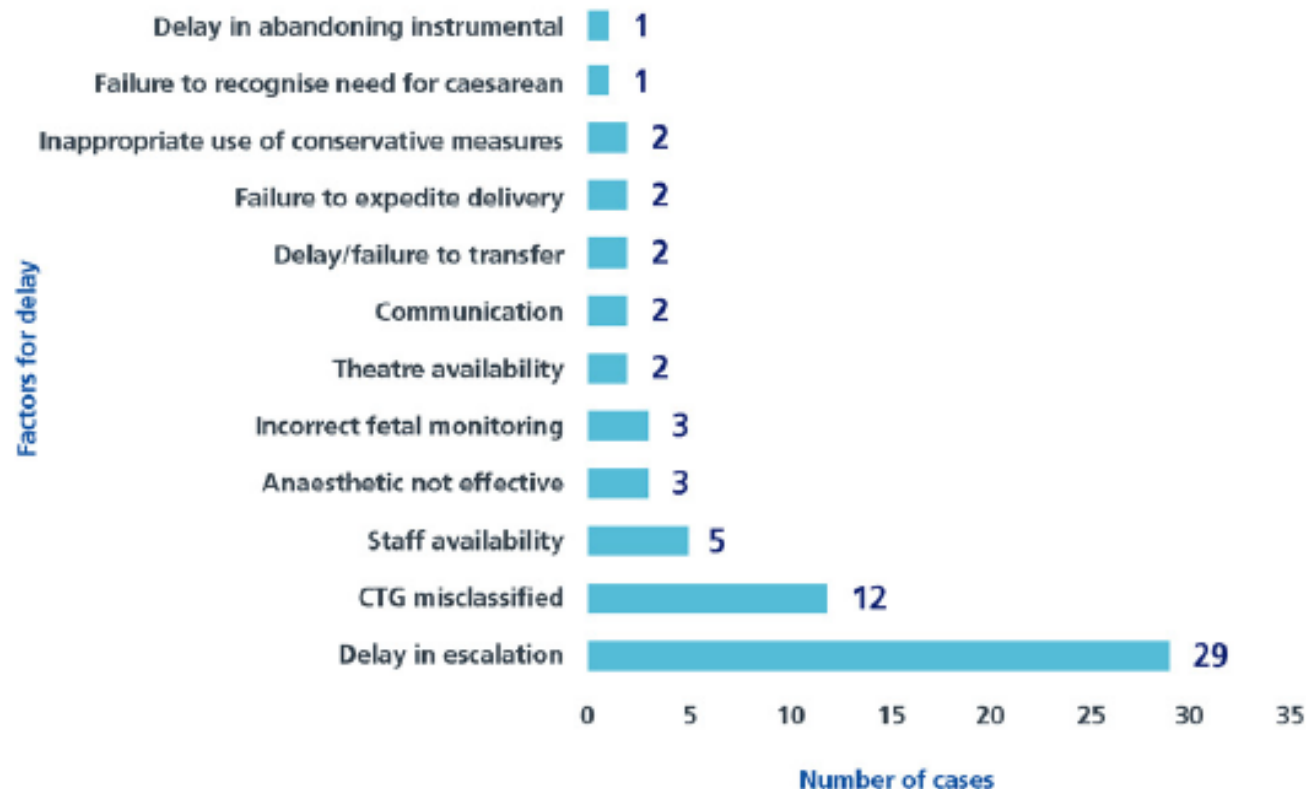
Delay in birth

Uterine rupture

Present in 64% of cases

Underlying themes:

Loss of situational awareness and issues surrounding escalation



Seen in 25% of cases of cases in the year 1 cohort; however, this increased to 42% in the year 2 cohort of incidents.

Quality of antenatal counselling was highlighted as an issue, as were recognition of rupture and delay in action after recognition.

## Chapter 5 - Progress and evolution of the EN Scheme

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- New **clinical definition** of qualifying injury - scheme focused on cases where there is potential for high-value compensation payment
- **Outcome-first** approach
- New streamlined **Liability Protocol** (“Expert Summit” approach) - expedites provision of a high-quality response to families
- Illustrative **Case Story**

## Chapter 5 - Progress and evolution of the EN Scheme

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- A total of **439 claims identified**:
  - from 1 April 2017 to 31 March 2022
  - includes admissions of breach and of liability and claims received in traditional sense.
  - Going forward – its likely that admissions of liability will increase and admissions of breach will decrease as we focus on cases of brain injury only
- Creation of **Maternity Voices Advisory Group**

# Feedback on the Scheme

*"As solicitors, the Early Notification Scheme has changed not only the way we investigate potential brain injury cases but the overall mindset towards these cases... the focus is very much on the family, to provide them with an explanation as to what has happened and get support to them when it really matters... this shift, which has changed the landscape we work in, rightly puts the patient at the heart"*

**Panel/Defendant solicitors**

*"The EN Scheme worked very well for our son and for us as a family. It accelerated the investigation process and resulted in an early admission of liability which meant we received interim payments as our son's claim continued. This was so helpful as it meant we could access support and rehabilitation for him when it was needed. It was really beneficial to be able to put in place care, therapy, aids and equipment, and accommodation at an early stage"*

**Family**

*"The Early Notification Scheme is allowing swifter investigations and rapid resolution for affected families. This has significant benefits for me as a clinician... there is a greater opportunity for the wider system to benefit from a more contemporaneous learning process as a result of the scheme."*

**Clinical Expert**

*"The Early Notification Scheme offers a series of significant advantages over the conventional pathway. In short, where care has not met an appropriate standard, the EN Scheme allows for lessons to be learned, for care to be improved, for patients to be kept fully informed and for potential litigation to be resolved swiftly and cost effectively"*

**Counsel quote**

*"My experience of the scheme has been extremely positive. In particular, the family has been spared the years of stress and uncertainty that usually ensues while liability and causation are established; early interim payments have enabled my client to access specialist case management and a team of therapists"*

**Claimants Solicitors**



1: Support the work to improve antenatal counselling before trial of vaginal birth after caesarean

2: Support the work to improve awareness in relation to response to harm for families and staff

3: Support working relationships and encourage a joined-up approach between trust legal services and maternity and risk teams.

# What next?

Evaluation  
of EN  
scheme

Continue to  
work  
collaboratively  
with HSIB  
(and MNSI  
from April  
2023)

Innovative  
methods to  
proactively  
compensate  
families

# Maternity Conference

## Collaborate to improve maternity care

Royal College of Physicians 11 St Andrews Place Regent's Park London, NW1 4LE



### Event details:

Date: 28th November 2022

Time: 09:00-16:30

Cost to attend: Free

Organiser: NHS Resolution

Event theme(s): Maternity

Event type: Conference

### Event location:

Royal College of Physicians  
11 St Andrews Place  
Regent's Park  
London, NW1 4LE

[View on Google Maps](#)

**Book event**

- If you're interested in attending, please email [siobhan.pickard@nhs.net](mailto:siobhan.pickard@nhs.net)

## The second report: the evolution of the Early Notification Scheme

# Question time

Please drop any questions into the chat box and we will answer as many as we can.



**@NHSResolution**

# Thank you for joining

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 [@NHSResolution](https://twitter.com/NHSResolution)

 [nhsr.enteam@nhs.net](mailto:nhsr.enteam@nhs.net)

**#ImprovingMaternityOutcomes**

Please fill out our evaluation survey:



<https://forms.office.com/Pages/ResponsePage.aspx?id=CP4h0Mb4fE-F0sdREkh7pBfNI1vCtf1OqHPRqCVstMFUOVFDU0NYSzhFQkZQQIA2TEgzVTBFT0JPVi4u>