

Annual report and accounts Summary document 2021 / 22



This document provides a summary of some key elements of NHS Resolution's Annual report and accounts 2021/22. The document can be found in full at <https://resolution.nhs.uk/corporate-reports/>

We also release data in Excel spreadsheets which include top level data from 2006/07 to date as a central resource. The data includes for example: volumes of claims notified, volume of settled claims, speciality and payments made by damages reserve band (in year). We also provide data on payments for damages, claimant legal, and NHS legal costs by financial year by speciality and damage reserve band. Also covered are average damage, claimant costs and NHS legal costs; time from incident to notification of claim and from notification to settlement. The schemes covered include our Clinical Negligence Scheme for Trusts (CNST), Ex-Regional Health Authority (Ex-RHA) Scheme, Existing Liabilities Scheme (ELS), Department of Health and Social Care (DHSC) clinical, Clinical Negligence Scheme for General Practice (CNSGP), Existing Liabilities Scheme for General Practice (ELSGP), and Clinical Negligence Scheme for Coronavirus (CNSC). Matters covered by Existing Liabilities for General Practice (ELGP) are excluded from these tables. ELGP was a transitional financial arrangement for general practice indemnity.

Our datasets are available at <https://resolution.nhs.uk/resources/annual-report-statistics/>. In addition we will also provide more granular data at a trust level for CNST claims and payments in our Factsheet 5 – this can be found here: <https://resolution.nhs.uk/page/2/?s=factsheet+5>

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Overview

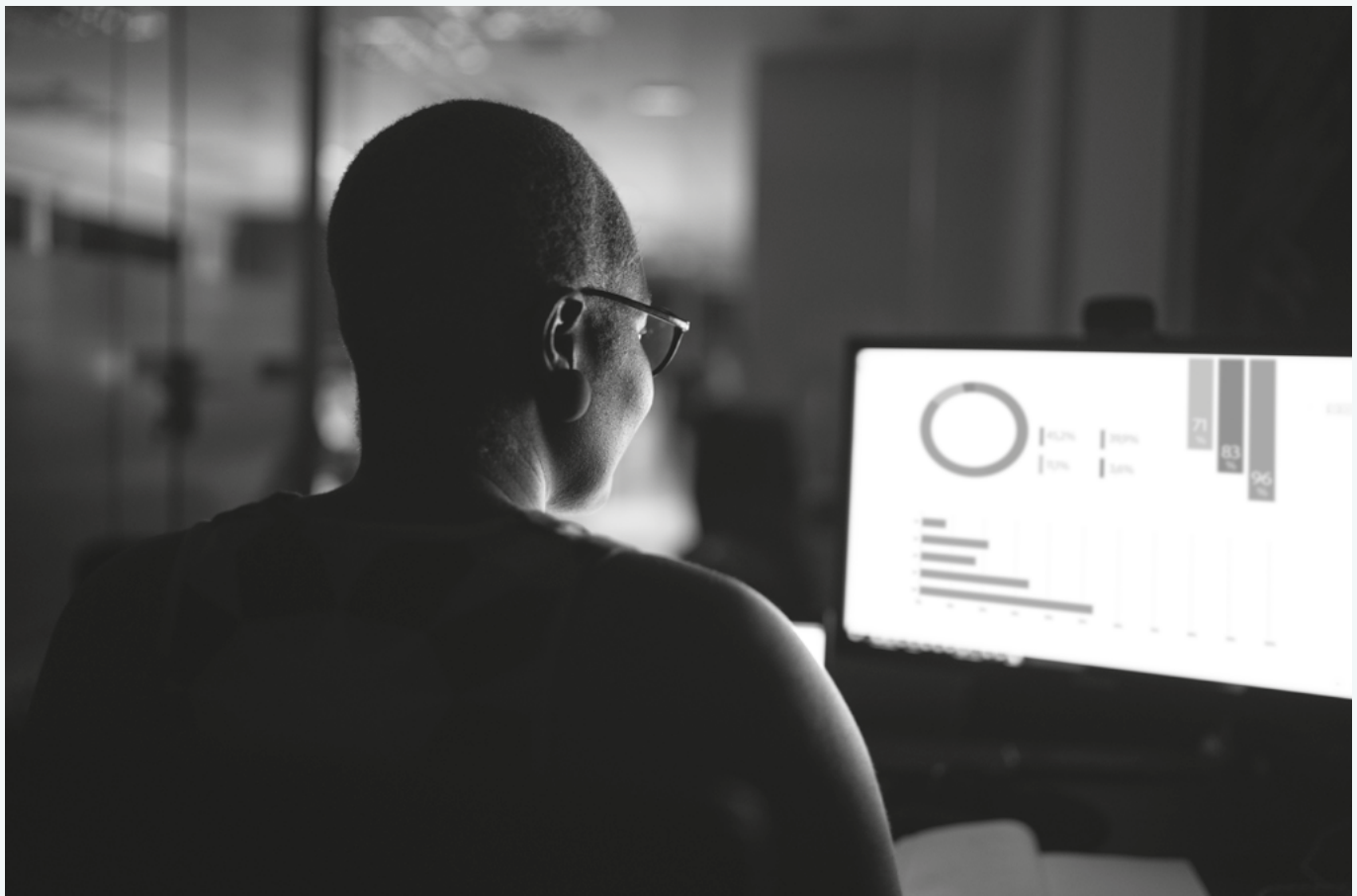
We are an arm's length body of the Department of Health and Social Care tasked with:

- Providing indemnity to the NHS for the risks involved in delivering healthcare services
- Delivering expert advice and support on the management of concerns about the performance of doctors, dentists and pharmacists
- Resolving contracting disputes between primary care contractors and commissioners of primary care, operating independently and transparently to reduce the need for such disputes to be managed via the courts
- Using our unique perspective across the causes of claims, performance concerns and contracting disputes to provide insights back to the NHS to help to improve safety and manage risk.

The successful delivery of these strategy aims and those outlined in *Advise, resolve and learn: Our strategy to 2025* will see us contribute to a reduction in:

- **harm** to patients;
- **distress** caused to both patients and healthcare staff involved when a claim or concern arises; and
- the **costs** required to deliver fair resolution, thereby releasing public funds for other priorities, including healthcare.

Against the background of ongoing disruption caused by the Covid-19 pandemic, this year marked the completion of our former five-year strategy, creating a firm foundation for the generation of our approach for the next three-years outlined in *Advise, resolve and learn: Our strategy to 2025*¹. The new strategy builds on the work undertaken since 2017 to focus on early intervention, and avoid unnecessary court action and other formal processes. For the first time maternity is a stand-alone priority, along with the three other priorities: delivering fair resolution, sharing data and insights to improve services, and investing in our people and systems.



¹ <https://resolution.nhs.uk/2022/05/19/nhs-resolution-strategy-to-2025-published/>

New 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 & systems to transform our business.

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

Our services

Claims Management

Delivers expertise in handling both clinical and non-clinical claims through our indemnity schemes.

Primary Care Appeals

Offers an impartial resolution service for the fair handling of primary care contracting disputes.

Practitioner Performance Advice

Delivers expert advice, support and interventions on the fair management of concerns about the performance of doctors, dentists and pharmacists.

Safety and Learning

Supports the NHS, our members and beneficiaries to better understand their claims risk profiles, to target their safety activity while sharing learning across the system to improve patient care.

Enabled by

Finance and Corporate Planning

Digital, Data and Technology

Membership and Stakeholder Engagement

Policy, Strategy and Transformation

Our values

Professional: we are dedicated to providing a professional, high quality service.

Expert: we bring unique skills, knowledge and expertise to everything we do.

Ethical: we are committed to acting with honesty, integrity and fairness.

Respectful: we treat people with consideration and respect and encourage supportive, collaborative and inclusive team working.

Partnership working is important to us because nothing that we set out to achieve can be done alone, and in that regard we are indebted to our partners across health and justice who have worked with us to deliver against shared objectives. For example, we work with system partners on implementing the Maternity Incentive Scheme. The scheme supports the delivery of safer maternity care by using the CNST pricing lever to reward trusts who deliver against ten maternity safety actions designed by expert partners. We are also grateful this year to the members of our new Maternity Voices Partnership who are helping us to develop our services in a way which is better connected with the needs of patients and families.

The issues we deal with are complex and the initiatives we have launched during the last five years have been aimed at long term and sustainable change. We have worked hard to achieve a shift in adversarial environment to one where formal litigation has fallen year on year to an all-time low, and where dispute resolution outside of the court system or other formal processes is no longer exceptional or novel. In 2021/22, the proportion cases resolved without formal court proceedings reached 77%. This is compared to 74.7% in 2020/21 and 71.5% in 2019/20.

Figure 1:
Litigation rate for clinical claims (2017/18 to 2021/22)*



(Source: NHS Resolution Annual report and accounts 2021/22, Page 38, Figure 9)

We continue to develop legal precedent, taking cases to trial or to the higher courts in areas of law which need to be challenged in the broader interests of the NHS, or which require certainty. Testing claims at trial often has wider implications for other, similar cases and so the outcome of a case can either provide an opportunity for others to claim under similar circumstances or deter claims without merit.

In 2021/22 our two multi-year change programmes began on the ground in earnest, aimed at reforming our claims operating model and replacing our legacy IT systems in order to enhance our data capability. The combined and related impacts of these two change programmes will be a step change in efficiency and effectiveness with better, more informed services and, importantly, to support evidence-based improvement across the NHS.

* The number of claims with and without proceedings will differ from those reported in 2020/21 as we have retrospectively incorporated historical claims received under our ELSGP.

Table 1: The year in numbers

Financial element	2020/21 (£ million)	2021/22 (£ million)	Change (£ million)	%	
Funding for clinical schemes					
Income from members	2,243.7	2,458.7	215.0	9.6%	↗
Funding from DHSC (budget)	418.9	199.8	(219.1)	-52.3%	↘
Total funding	2,662.6	2,658.5	(4.1)	-0.2%	↘
Payments in respect of clinical schemes					
Damages payments to claimants	1,609.8	1,775.3	165.3	10.3%	↗
Claimant legal costs	448.1	470.9	22.8	5.1%	↗
NHS legal costs	151.4	156.6	5.2	3.4%	↗
Total payments	2,209.3	2,402.8	193.5	8.8%	↗
Funding for non-clinical schemes					
Income from members	65.0	65.9	0.9	1.4%	↗
Funding from DHSC (budget)	5.0	7.2	2.2	44.0%	↗
Total funding	70.0	73.1	3.1	4.4%	↗
Payments in respect of non-clinical schemes					
Damages payments to claimants	28.5	32.0	3.5	12.3%	↗
Claimant legal costs	16.3	17.3	1.0	6.1%	↗
NHS legal costs	5.9	6.3	0.4	6.8%	↗
Total payments	50.7	55.6	4.9	9.7%	↗
NHS Resolution administration of schemes					
Clinical	24.2	32.5	8.3	34.3%	↗
Non-clinical	5.1	5.0	(0.1)	-2.0%	↘
NHS Resolution other activities					
Income	0.8	0.9	0.1	12.5%	↗
Expenditure	6.1	6.7	0.6	9.8%	↗
Staff numbers	400	500	100	25.0%	↗
Provisions cost of claims restated 2020/21²					
Claims provisions expenditure ³	659	45,766	45,107	6847.5%	↗
Of which:					
• Change in discount rate	229	42,623	42,394		↗
• Other changes	430	3,143	2,713		↗
Provisions for claims restated 2020/21⁴	85,242	128,550	43,308	50.8%	↗
Capital expenditure	0.6	3.0	2.4	398.5%	↗

² The provision expense for 2020/21 has been reduced by £333 million to reflect a prior period adjustment in respect of the revaluation of the known claims provision. See Note 7.4 in the NHS Resolution Annual report and accounts 2021/22 for further details.

³ Total charge to Statement of Comprehensive Net Expenditure. The key change year on year is due to the reduction in the HM Treasury long term and very long term discount rates.

⁴ The total provision at year end value for 2020/21 has been increased by £2,457 million to reflect a prior period adjustment in respect of the revaluation of the known claims provision. See Note 7.4 in the NHS Resolution Annual report and accounts 2021/22 for further details of the revaluation.

The **provision for the liabilities** arising from claims rose by 55%, or £45.8 billion, to £128.6 billion. £42.6 billion of the increase arises from a change to the HM Treasury long-term discount rates, an accounting estimate which places a value in today's prices on liabilities that are expected to fall due for settlement in the future.

The cost of CNST **clinical negligence claims** incurred as a result of incidents in 2021/22 was £13.3 billion, up from £7.9 billion reported in 2020/21. This increase is also mainly due to the change in the HM Treasury discount rates, which places a much higher value on projected claims costs. Removing the effect of the HM Treasury discount rate change translates this figure to £8.7 billion which is comparable to previous years, while remaining a very significant sum.

Payments made to settle claims in 2021/22 increased by £199 million (8.8%), to £2.459 billion. The key contributor to this is the cost of maternity related claims which make up 62% of secondary care clinical claims by value and 12% by volume, hence our continued focus on supporting improvements in maternity care and the magnification of this priority within our new strategy.

We have forecast £1 billion in our provision for Covid-19 related claims. This compares to a net impact of Covid-19 of £0.5 billion across all schemes last year. The main driver of the increase relative to 2020/21 is the higher number of assumed claims in relation to the indirect impacts of Covid-19 of delays, cancellations and misdiagnosis reflecting longer waiting lists. In 2021/22, we received 22 claims related to Covid-19 under CNSC, an increase of just 15 from seven in the previous year, and it is therefore too early to draw conclusions about future trends related to these claims given their low volumes to date.

The estimated impact of Covid-19 on the provision continues to be limited because:

- the vaccination programme was successful in reducing the impact on NHS activity in 2021/22;
- the impact of Covid-19 is largely on incidents which have occurred in the last two financial years and the majority of the provision relates to incidents before this; and
- the majority of the provision relates to maternity claims (70%) and the evidence available to date suggests that the number of claims for 2021/22 is expected to be similar to previous years.

16,484 clinical and non-clinical claims were resolved⁵ in 2021/22, compared with 15,712 in 2020/21.

The volume of clinical negligence claims and reported incidents received in-year increased from 13,351 to 15,078. The bulk take-on of general practice indemnity claims for pre-1 April 2019 incidents from medical defence organisations is the most significant driver of this increase. The volume of claims taken on in respect of our CNSGP for incidents increased from 973 to 1,502. Numbers of claims fell marginally for the main indemnity scheme, CNST.

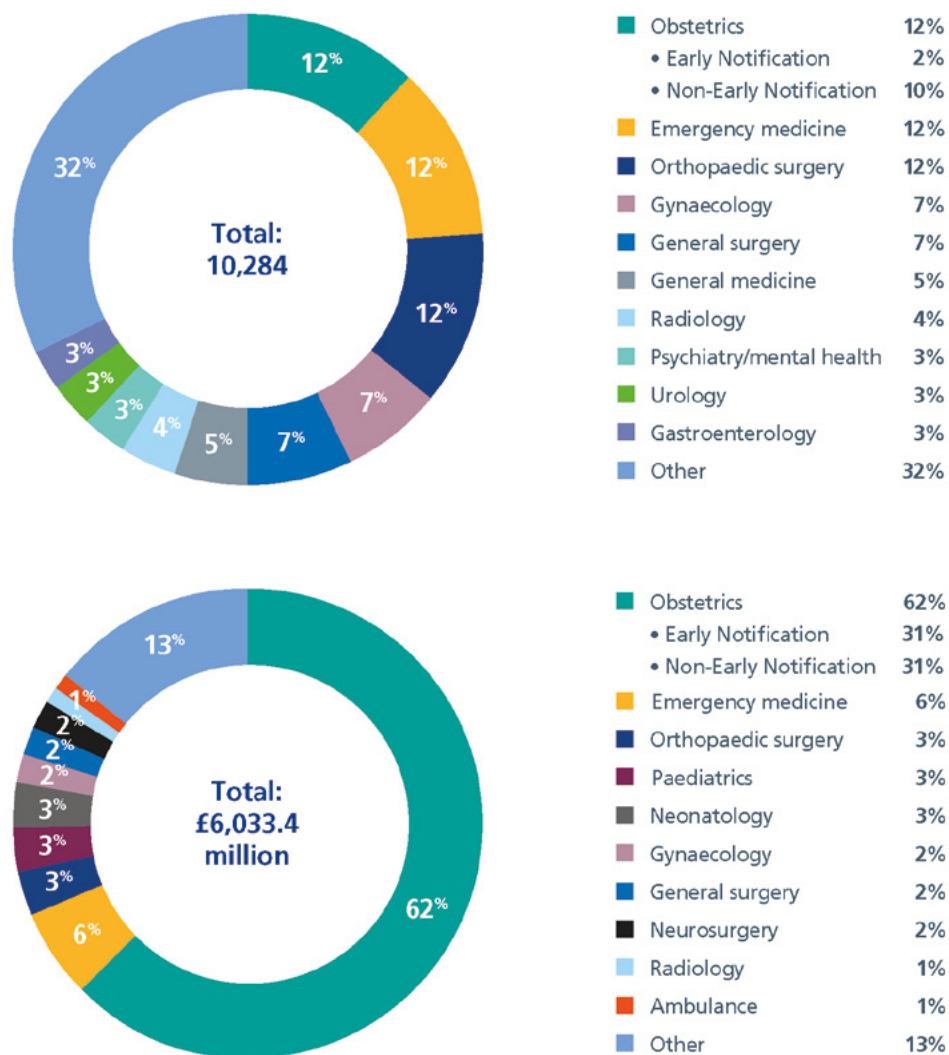
Our Practitioner Performance Advice service received 798 requests for advice in 2021/22, compared with 805 in the previous year. There was an increase in demand for our behavioural assessments (42 assessments) and action planning remediation services (44 cases), as well as our education programmes. Our Primary Care Appeals service received 128 cases in 2021/22, compared to 113 in 2020/21.



⁵ Resolved, or settled, claims include claims that have been agreed with ongoing periodical payment orders and claims where damages have been agreed or successfully defended, and costs have yet to be agreed. This differs from closed claims, which do not include claims settled with periodical payment orders.

Figure 2:

The percentage of clinical negligence claims reported in 2021/22 by specialty, with a breakdown by volume (total 10,284 claims) and by value (total £6,033.4 million)



(Source: NHS Resolution Annual report and accounts 2021/22, Page 30, Figure 2)

Business priorities

How we performed against our 2021/22 priorities, in the last year of our five-year strategy

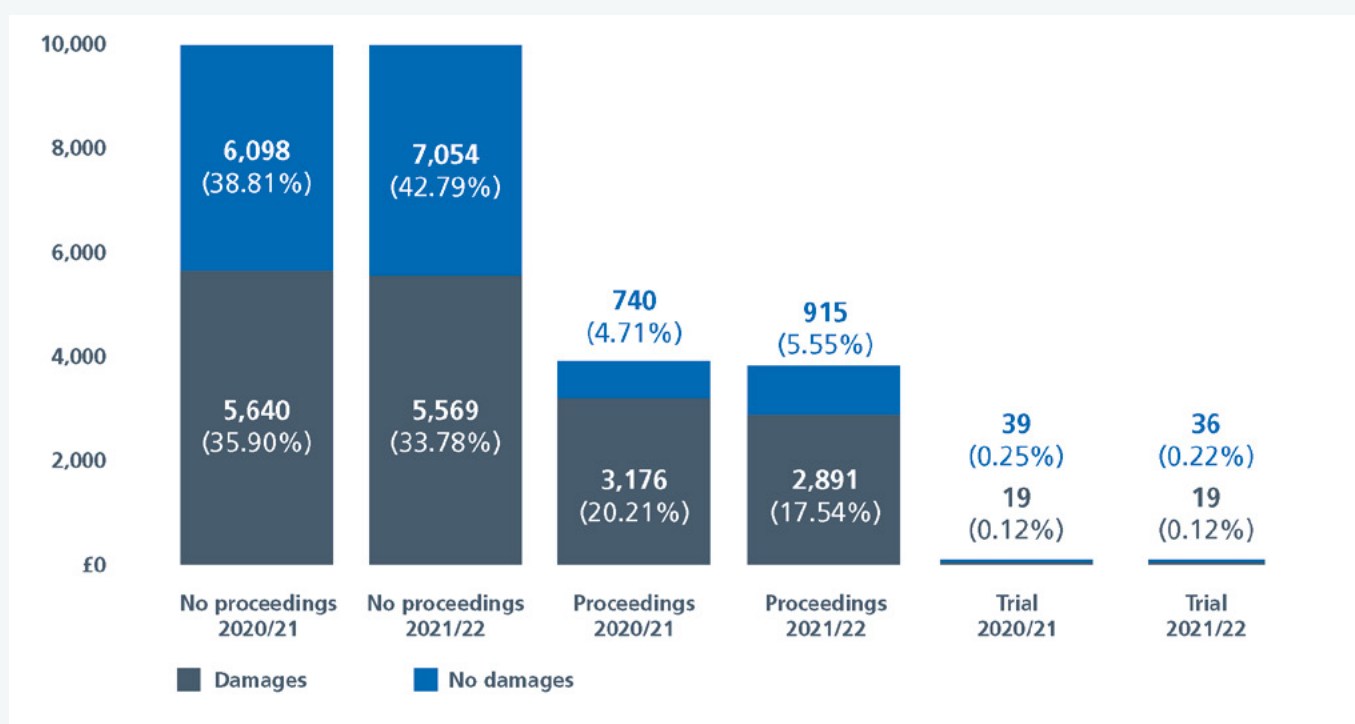
Priority 1

Deliver the next phase of our strategy to move claims, concerns and disputes into a neutral and less adversarial space

We expanded the use of alternative dispute resolution initiatives across all of our core services. We increased our use of resolution (global settlement) meetings which involve parties gathering to discuss, share and agree solutions to progress a claim. These meetings were also convened to discuss a number of claims simultaneously, to save time and resources. 'Stock-take' meetings involved formal meetings with claimant lawyers at fixed stages during a claim in a collaborative approach, and have proved successful in reaching early resolution and reducing costs. We are continuing to develop the early neutral evaluation tool, which involves appointing an independent evaluator to assess cases in a non-binding and non-prejudicial approach with parties.

Figure 3:

16,484 clinical and non-clinical claims were settled in 2021/22 compared with 15,712 in 2020/21 with an increasing percentage settled without proceedings



(Source: NHS Resolution Annual report and accounts 2021/22, Page 38, Figure 8)

Priority 2

Further develop our new indemnity schemes (for general practice and Covid-19) while using our expertise to support wider improvements, including how healthcare-related claims are managed

In 2021/22 we successfully integrated claims arising from historical liabilities of current and former general practice members in England into our systems, under the Existing Liabilities Scheme for General Practice.

In February 2022 we launched our Claims Evolution Programme. Through it we aim to deliver a single, integrated claims function that provides the best service we can to the NHS. On 1 March 2022 we launched our new, regionally-focused Legal Panel Service framework, which promotes early investigation, robust decision making and proactive investigations. We continued to innovate and develop our Practitioner Performance Advice and Primary Care Appeals services. We have redesigned our regionally aligned service delivery in advance of integrated care systems launching in July 2022.

Priority 3

Build on our unique role in sharing learning from claims and concerns back to the health system, in particular in relation to the interplay between general practice and secondary care and how to respond when harm occurs

NHS Resolution has a wealth of data which we have used to share intelligence and learning to support reduction of harm, such as claims scorecards, engagement events and thematic reviews. This supports the broader NHS safety architecture to learn from harm through, for example, the reporting of incidents via the National Reporting and Learning System and investigations by trusts and the Healthcare Safety Investigation Branch. A significant amount of work has been undertaken on analysis of the first year of CNSGP as well as further work on learning from claims for lower-limb complications in the diabetic patient. Work continued on the development of our Faculty of Learning⁶ and in collaboration with our academic and other partners to develop eLearning tools. We have continued to collaborate with NHS England's Getting It Right First Time (GIRFT) team through sharing data.

We continued to innovate and develop our Practitioner Performance Advice and Primary Care Appeals services. We have redesigned our regionally aligned service delivery in anticipation of integrated care systems launching in July 2022. Our Insights series continues to support the healthcare system to better understand, manage and resolve concerns about doctors, dentists or pharmacists. We have enhanced our behavioural assessments, and introduced virtual elements to our clinical performance assessments. New products include an annual activity report for employing organisations, and a 'compassionate conversations' learning programme. Both pilots have been successful and will be rolled out more widely over the course of 2022/23.

⁶ <https://resolution.nhs.uk/faculty-of-learning/>

Priority 4

Responding to the changing health landscape including reviewing our indemnity scheme pricing and the role of incentives in light of wider system changes

Over the last year, we have worked with policy colleagues from Department of Health and Social Care and NHS England to understand the implications arising from the Health and Care Bill⁷ to ensure that our indemnity schemes provide continuity of cover for new and legacy organisations. A Court of Appeal ruling on Primary Care Appeals interest payments has meant that NHS Resolution as an adjudicator now has a power to award interest when it finds that a contractor has been paid the wrong amount. An interim approach to the consideration and award of interest is available on our website⁸.

Priority 5

Develop and support our people through a period of significant change, building on our Investors in People accreditation, including a renewed focus on equality, diversity and inclusion

We have relocated both our Leeds and London-based staff into new, flexible Government Hub offices, working in consultation with staff to make sure that we capitalise on opportunities to improve the way that we work across the business. We have modernised our internal communications, launching a new intranet, *Connect*, for staff in July 2021. As a result of the ongoing pandemic, 2021/22 continued to be a challenging period for the workforce, both personally and professionally. Our focus has continued on maximising the health and wellbeing of our entire workforce in order to support staff to work as productively as possible. Our health and wellbeing offer for staff was updated and launched on Connect in September 2021. A key part of this offer is a health and wellbeing toolkit which provides information on a range of physical, mental and financial health support measures for both staff and managers. We have progressed a significant number of the key priorities noted in our workforce and organisational development strategy.

Priority 6

Make a step change in our technology and data analytics capabilities and infrastructure

We are committed to an ambitious programme of change and growth through implementation of new operational IT systems and infrastructure, and the business model for the Claims Management function. Following our Core Systems procurement in August 2021, we are progressing with the development of our new IT platform to streamline our processes, to deliver more efficient services and support our strategic priorities. We have started work to explore the potential for Artificial Intelligence in relation to claims and have established a Data Science team to deepen our analytical capabilities. Our IT team is now more streamlined and responsive to the ever-evolving threat to cyber and data security. We have adopted some of the NHS Digital⁹ sponsored cyber security services, allowing us access to specialist security expertise. We continue to test and independently audit our systems to ensure they meet the highest level of cyber security standards.

⁷ Health and Care Act 2022 – Parliamentary Bills – UK Parliament: <https://bills.parliament.uk/bills/3022>

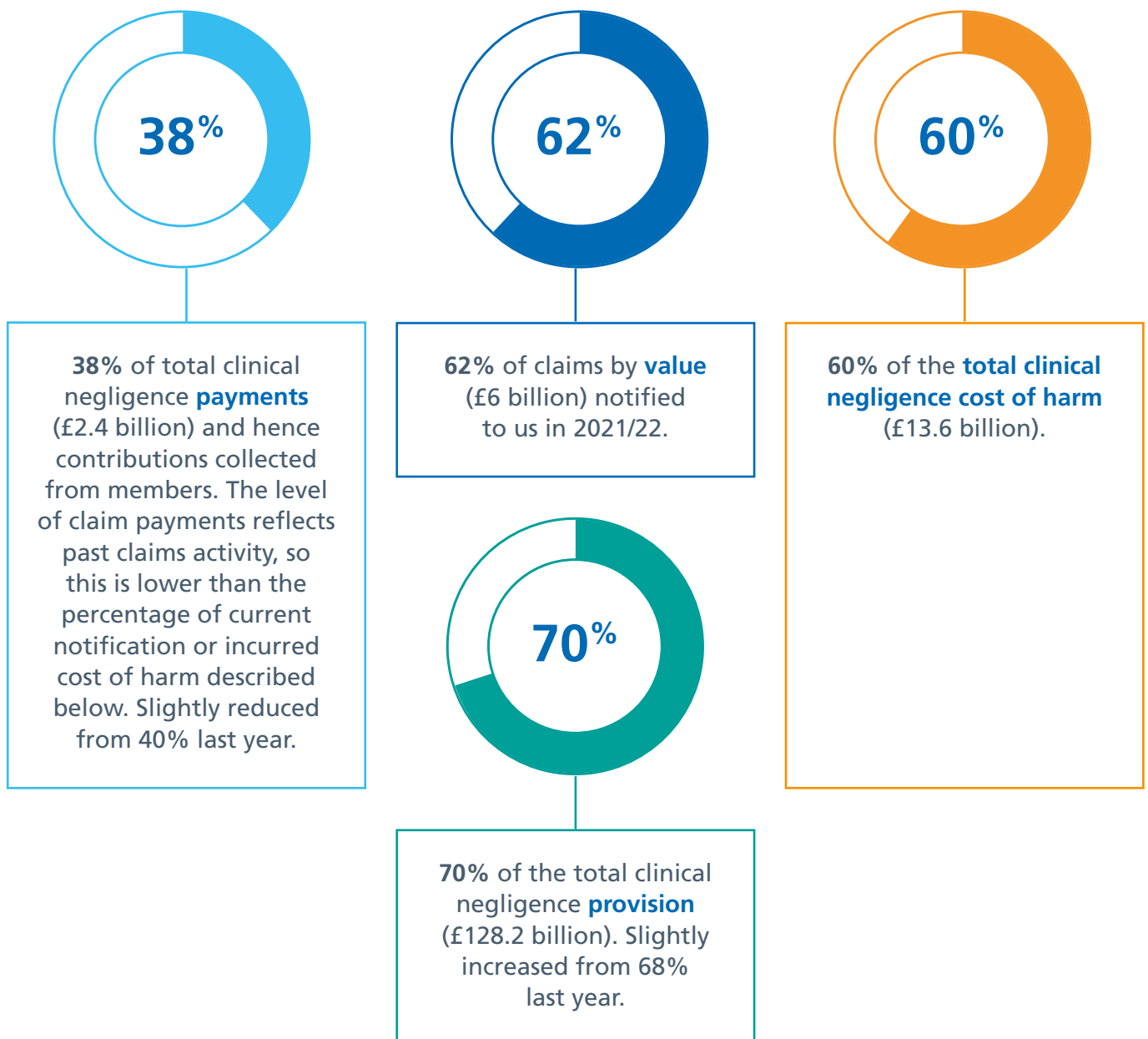
⁸ <https://resolution.nhs.uk/wp-content/uploads/2021/03/NHS-Resolution-approach-to-Interest-Payments-FINAL.pdf>

⁹ NHS England have now created a Transformation Directorate, incorporating NHSX and NHS Digital.

Maternity

Figure 4:

Our continued focus on making maternity care safer (as of 2021/22)



(Source: NHS Resolution Annual report and accounts 2021/22, Page 31, Figure 3)

There were 1,243 obstetrics claims reported in 2021/22, accounting for 12% of all clinical negligence claims by volume, placing maternity-related claims among the top three specialities by volume, alongside emergency medicine and orthopaedic surgery.

Obstetrics claims accounted for 62% of all clinical claims by value received in the year, highlighting the underlying impact of the financial costs of maternity indemnity payments, alongside the impact of harm on patients, families and healthcare staff.

Of the £13.3 billion annual cost of harm incurred through CNST, maternity claims accounted for 60% in 2021/22.

The growth in obstetrics claims volumes over the past three years is due to the impact of trusts reporting cerebral palsy/brain damage claims earlier through our Early Notification Scheme i.e. an acceleration. The scheme, established in 2017, allows us to investigate potential eligibility for compensation and to take action to reduce legal costs while improving the experience for the patient's family and affected staff.

The scheme has already achieved reductions in the time between an incident occurring, an investigation into eligibility for compensation initiated, and admissions of liability being made. Seeking early notification of maternity incidents means that NHS Resolution can proactively investigate liability sooner, while trusts are encouraged to be open about incidents, be candid with families and maximise opportunities to learn from them.

Given these figures, maternity continues to be a central plank of our strategic focus as we transition from our previous five-year strategy (spanning 2017 to 2022) to a new three-year strategy (2022 to 2025).



Glossary

An online glossary is now available to support this document at

https://resolution.nhs.uk/glossary/?fwp_glossary_topic=annual-report-and-accounts



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