



The evolution of the Early Notification Scheme

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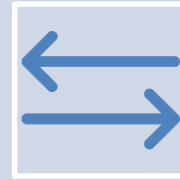


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Reminder of why Early Notification (EN) exists and its impact



Changes in reporting for EN cases



The second report: the evolution of the Early Notification Scheme



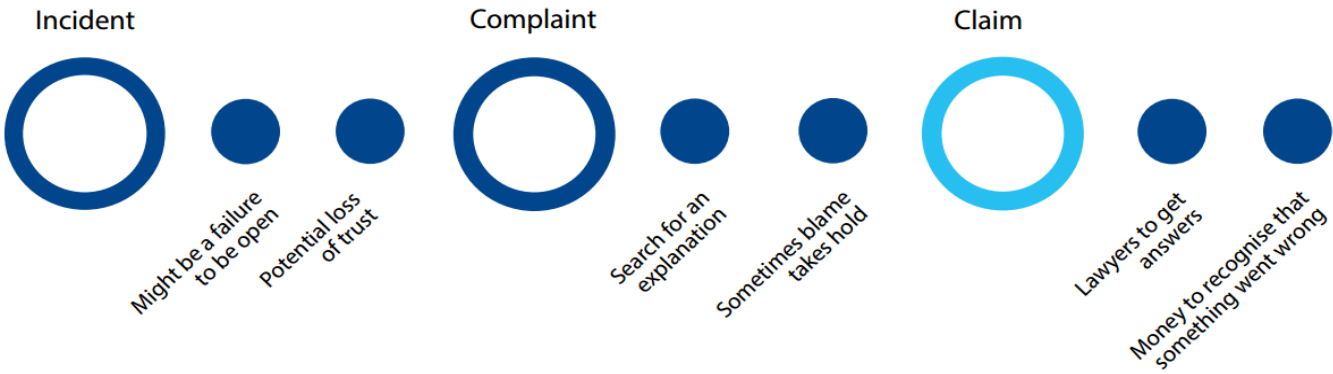
Why clinical involvement in claims is crucial

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:
 1. Accelerate investigations into whether or not a baby is entitled to receive compensation, reducing the need for costly, formal processes where possible and
 2. Help ensure that steps are taken to learn when things have gone wrong to improve maternity care as well as sharing good practice.

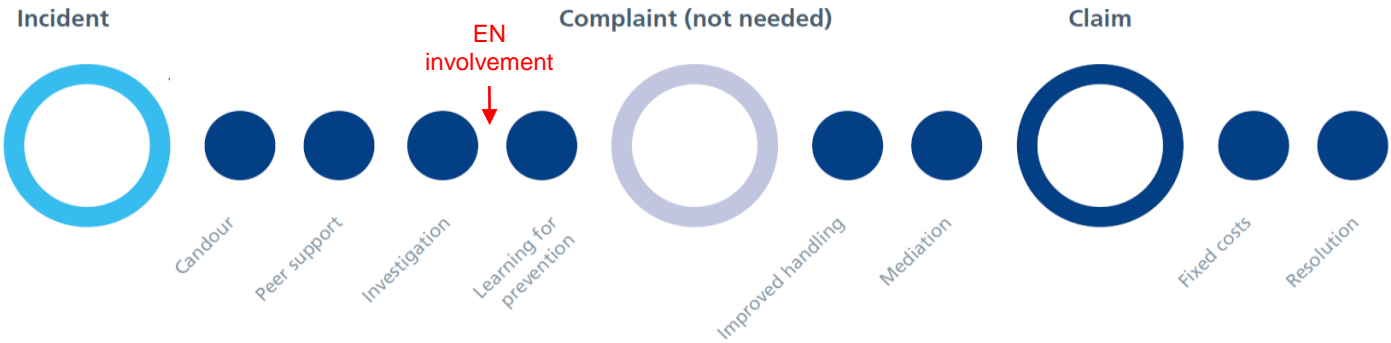
Our role – getting closer to the incident

Previously



.....> Learning fragmented

Current



—————> Continuous support and assistance throughout

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

The Early Notification Scheme – aims

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

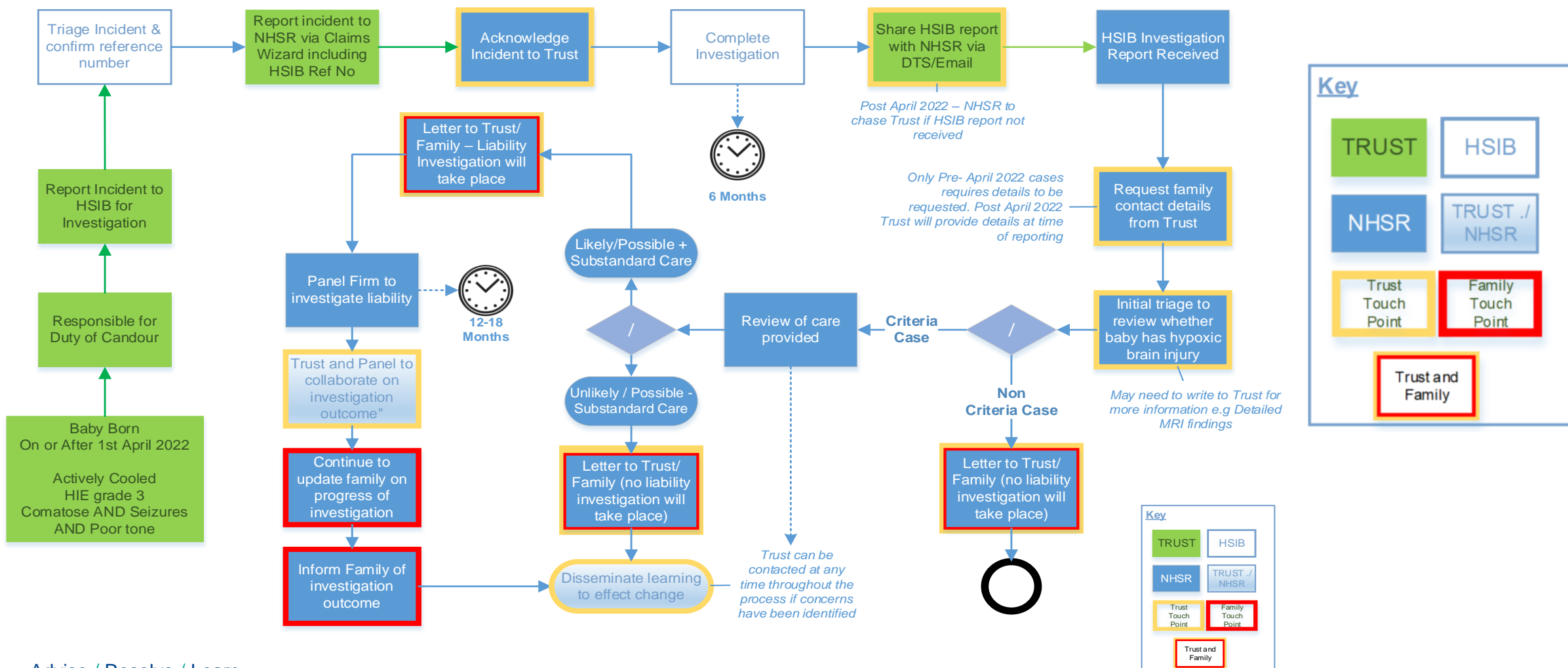


ENS Criteria

- Entry criteria based on Each Baby Counts which continues to apply
- From 1st April 2022, EN triage and clinically review according to 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)”



New process from 1 April 2022



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)

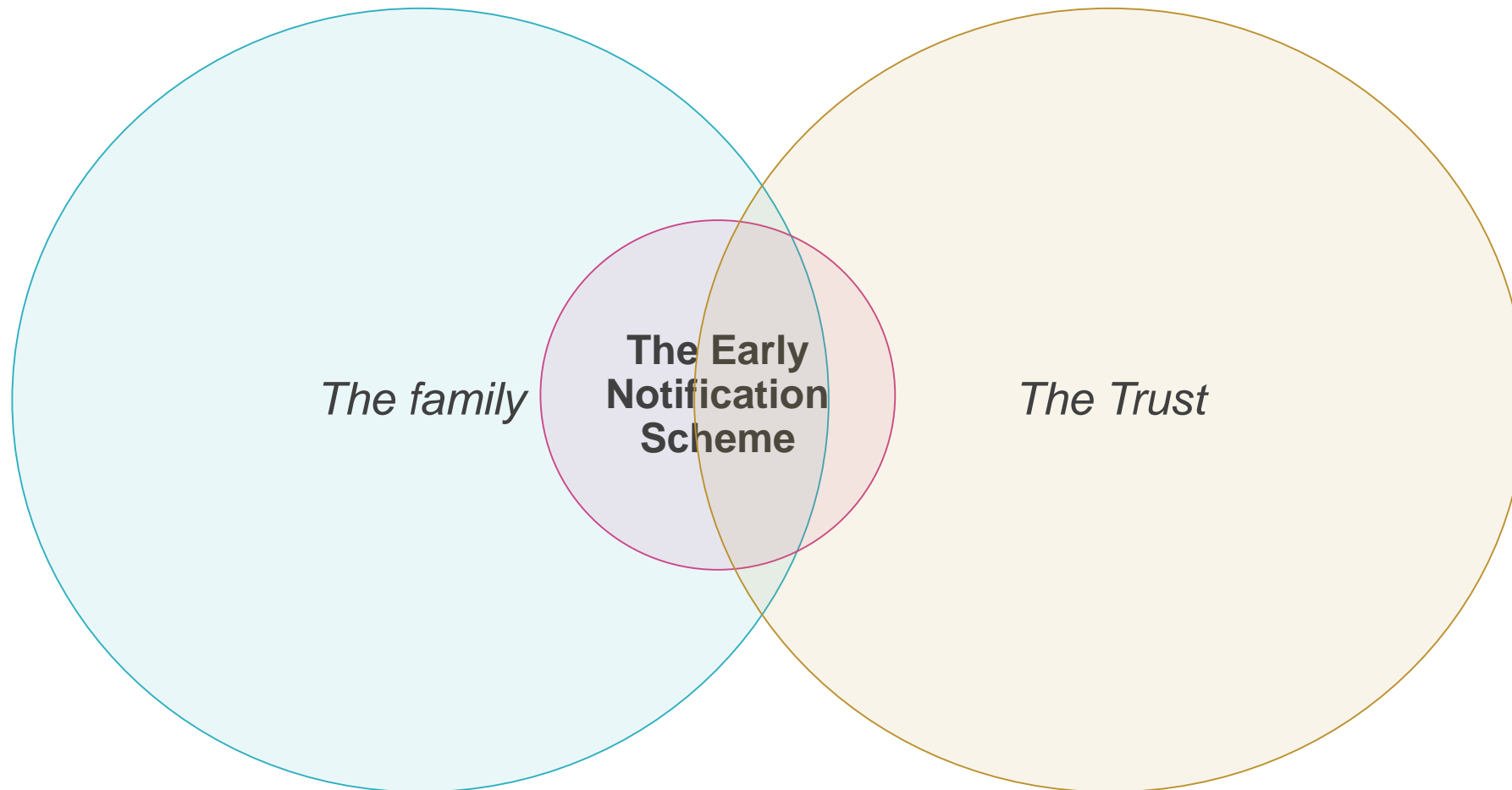
Key actions for Trusts



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

Collaboration in Early Notification



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



Key actions for Trusts



The second report into our Early Notification scheme can be found on our website.

We also created an accompanying infographic to summarise the reports key messages.

The second report: The evolution of the Early Notification Scheme

NHS Resolution

Overview

Our new Strategy from 2022 to 25 includes a specific priority to collaborate to improve maternity outcomes and continue to support the National Maternity Safety Ambition.

The Early Notification (EN) Scheme proactively investigates specific brain injuries at birth to establish if clinical negligence has caused harm. We do this by requiring our Clinical Negligence Scheme for Trusts (CNST) members to notify us of maternity incidents which meet a certain clinical definition.

The EN Scheme is a key initiative supporting the delivery of safer maternity care, providing a more rapid, caring response to families in cases of severe harm, and supporting a learning culture.

The estimated clinical negligence cost of harm was £13.3 billion, with maternity claims making up 60% of this

Key clinical themes from the second report

- Delayed delivery with problems arising from delays in escalation
- Problems with fetal heart rate monitoring
- Uterine rupture in women opting for vaginal birth after caesarean

Improvements in timeframe

18 MONTHS Approximately 18 months from birth to admission of liability on EN cases analysed (for non EN cases it is almost 7 years)

What's changed since the first EN report?

- We have adopted an expert summit process which allows for multiple similar cases to be discussed simultaneously
- We've made changes to the EN reporting criteria, focusing efforts where they are both needed most and will provide the greatest impact
- We've set up a Maternity Voices Advisory Group to build closer links with families, to support the development of the scheme.

Our resources to support you in practice

- Faculty of Learning
- EN case stories
- Saying sorry leaflet
- Duty of Candour animation
- Being Fair guidance
- Coming soon - eLearning maternity module

Recommendations from this report

NHS Resolution will support the work of royal colleges and wider stakeholders to:

- improve antenatal counselling before trial of vaginal birth after caesarean section
- improve awareness in relation to response to harm for families and staff

NHS Resolution will support the work with NHS Providers and wider stakeholders, encouraging a joined up approach between trust legal services and maternity and risk teams.

NHS Resolution's Annual report and accounts 2021/22

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

Chapter 1- Impact and progress with recommendations from the first report

- 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 - Potential benefits of early liability investigations

- 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.

Chapter 2 - Potential benefits of early liability investigations

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).

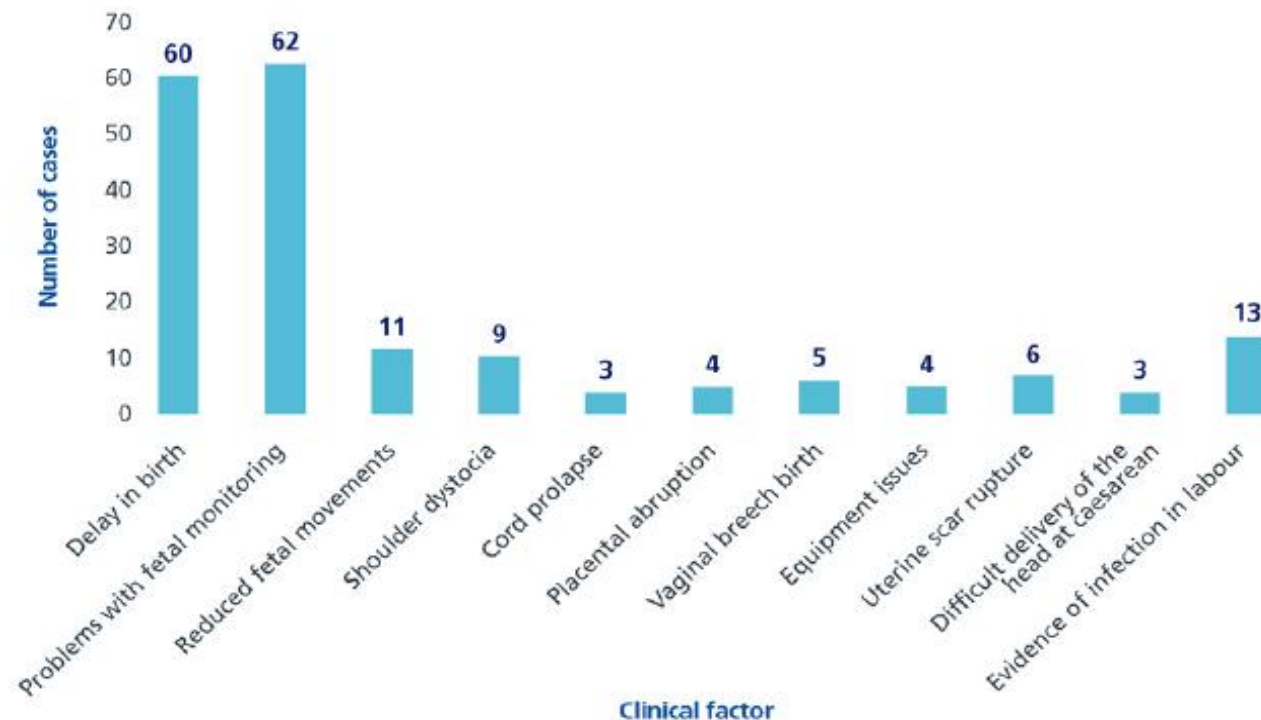
In addition, an important reduction in the defence costs up to admission of liability
(a saving of several thousands on NHS legal costs)

Chapter 3 - Impacted fetal head at caesarean section

- 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



Chapter 4 - Clinical themes from EN cases

Two themes analysed in detail:

Delay in birth

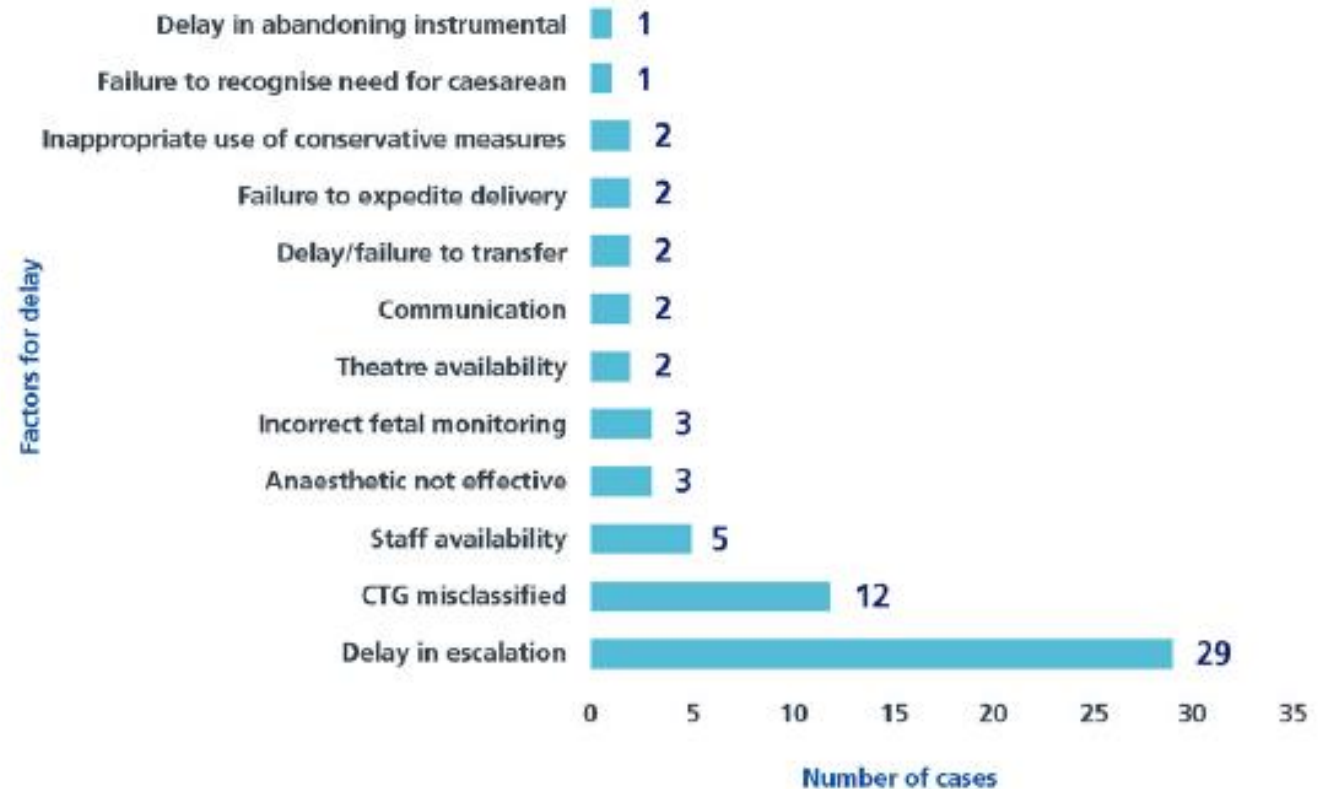
Uterine rupture

Chapter 4 - Clinical themes from EN cases

Present in 64% of cases

Underlying themes:

Loss of situational awareness and issues surrounding escalation



Chapter 4 – Uterine Rupture

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

- **Clinical Negligence test:**
 1. Breach of Duty – was there a breach of duty of care?
 2. Causation - was any harm (injury) caused as a result of the breach?
- Evolved to **outcome-first** approach

Chapter 5 - Progress and evolution of the EN Scheme

- A total of **439 claims identified** (1 April 2017 to 31 March 2022 including:
 - admissions of breach of duty only
 - admissions of liability (breach of duty and causation) and
 - letters of claims received in traditional sense or damages paid
- New streamlined **Liability Protocol** (“Expert Summit” approach) - expedites provision of a high-quality response to families
- Illustrative **Case Story**
- **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"

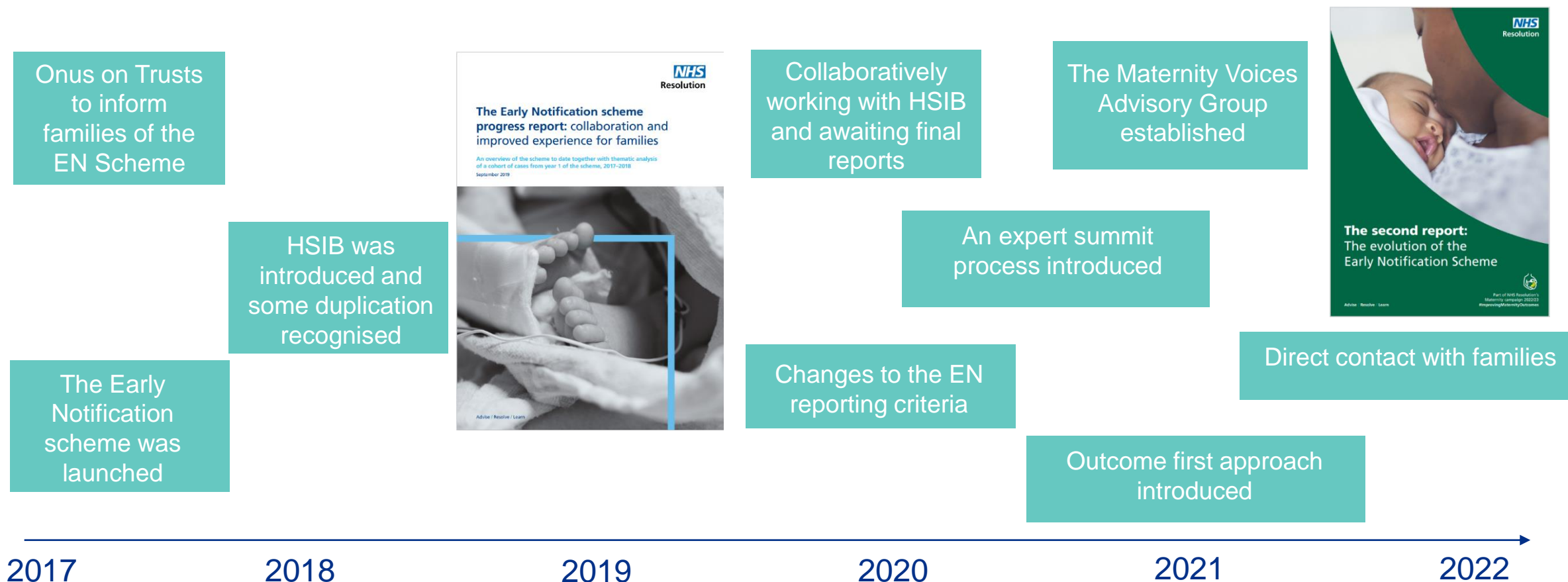
Counsel quote

"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



Evolution of the ENS



Chapter 6 - Recommendations

- 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

The evolution of the Early Notification Scheme - Clinical involvement and what next



Why clinical involvement in claims is crucial

To continue the dialogue and relationship with the family

To help us conclude whether any clinical negligence can be established

For learning to be disseminated from senior level to frontline staff

What do we need from you:

- Clinical comments and/or statements
- Preservation of evidence
- Attendance by senior clinicians/leaders at Expert Summits or conferences
- Leaders to approve admissions and outcome letters for families without unnecessary delay
- Understanding of the impact on families (when there are avoidable delays)
- Willingness to attend mediations or family liaison meetings

What next?

Evaluation of
EN scheme

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

Innovative
methods to
proactively
compensate
families