

NHS Resolution Annual report and accounts 2018/19 – costs briefing

Our data: some key considerations

Claim levels have remained largely stable for the last two years. Against a backdrop of increasing activity across the NHS, as a proportion of activity the number of claims is falling. This, combined with the benefit of other measures, has meant that we have been able to follow a modest 2% increase in 2018/19 with a 2% reduction for 2019/20 in contributions¹ by our members to our Clinical Negligence Scheme for Trusts (from £1.98 million to £1.94 million) the first reduction in 10 years. However, it is inevitable that charges will rise in future years unless there is reform of the legal environment in which we operate.

The payments made in-year may relate to incidents that occurred many years in the past. This is due to the time lag between when an incident occurs, a claim is lodged and when payments are made – these payments in-year include annual payments (periodical payment orders²) to provide on-going care. Periodical payment orders often provide claimants with a lifetime of support to meet complex care needs while spreading the cost to NHS providers into the future. This pay-as-you-go approach to operating our indemnity schemes allows NHS funds to be spent on delivering the services of immediate need and spread the future costs to be met as and when they are needed.

£2.4 billion was paid out to meet clinical and non-clinical claims in 2018/19, however the incurred cost of harm for incidents in 2018/19 that we estimate will turn into claims was approximately £9 billion. The cost in respect of all incidents up to 31 March 2019 that either have become claims, or we estimate will become claims in the future (the provision³ for future liabilities) by £6 billion from £77 billion in 2018 to £83 billion as of 31 March 2019. These costs will be met from annual budgets allocated to the NHS, and as such, NHS Resolution is not required to hold assets to cover the provision.

¹ This is the funding collected from members to meet the following financial year's claims and may differ from the payments made

² A Court order, usually reflecting an agreement between the parties, to pay an initial lump sum and regular future payments covering the injured party's ongoing care needs, usually for life. The amount reserved against the claim will include an estimate of the capitalised value of future payments based on the injured party's life expectancy as at the date of settlement

³ The provision is the best estimate of the expenditure required to settle the present obligation at the balance sheet date or transfer it to a third party (for claims made and predicated to be made, so called incurred by not reported claims). The figure is updated annually and is an informed estimate that depends on assumptions about future developments and therefore lies within a range of possible results. When considering the provision, it is important to note that:

- this figure currently only relates to the secondary care sector (hospitals) for the NHS in England;
- it is a figure correct at the date of issuing our annual report and accounts and needs always to be linked to the 'as of' date;
- it is not the total cost of claims (which would need to include the 'hidden' costs of claims – such as lost staff time dealing with incidents, investigating what went wrong and dealing the aftermath of an incident etc.); and
- if there is a value allocated to a future periodical payment order this will by its very nature change in response to changing needs and lifespan of the claimant concerned