

Legal Review of the Year

Tracy Head

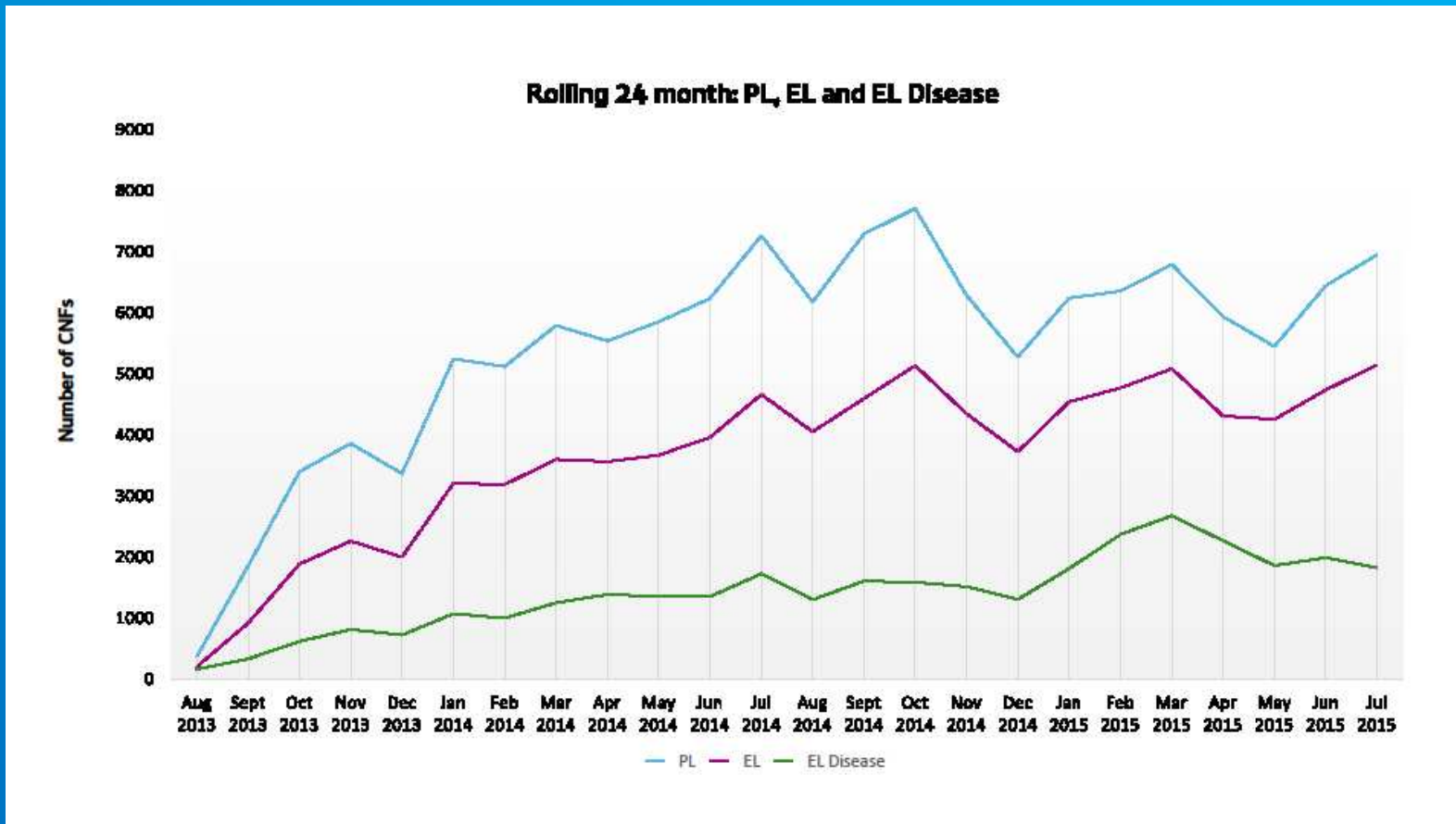
7 September 2015

Claims

- EL/PL Portal is leading to claims inflation
- QOCS ≠ automatic settlement
- Timing out remains issue - Insureds need educating on need for prompt response
- Majority of claims fall out of Portal without settling - why?
- Portal is not acting to reduce number of claims

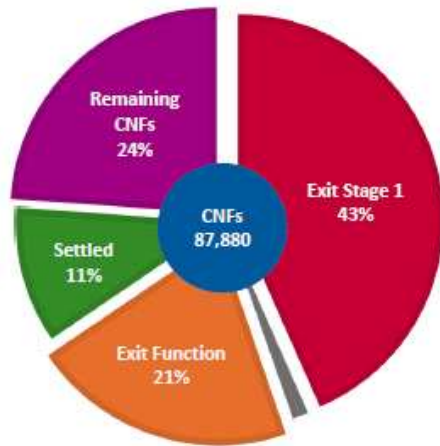
CLAIMSPORTAL

Portal Claims



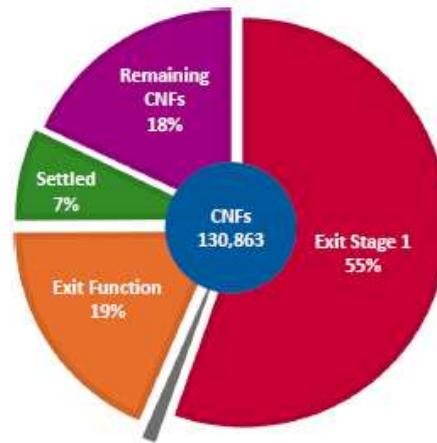
Settlement within the Portal

Employers' liability
31 July 2013 to 31 July 2015



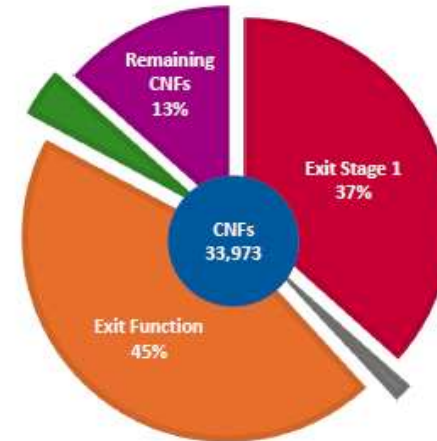
Exit Stage 1	38,183
Exit Stage 2	1,096
Exit Function	18,264
Settled	9,359
Remaining CNFs	20,978

Public liability
31 July 2013 to 31 July 2015



Exit Stage 1	72,503
Exit Stage 2	1,428
Exit Function	24,136
Settled	9,276
Remaining CNFs	23,520

Employers' liability (disease)
31 July 2013 to 31 July 2015



Exit Stage 1	12,445
Exit Stage 2	521
Exit Function	15,155
Settled	1,278
Remaining CNFs	4,574

Whiplash and medical evidence



- All change - medical experts for motor soft tissue claims to be chosen at random via Medco Portal.
- Are expert independence and quality reports being achieved?
- Changes to Part 36 mean that fixed fee regime will not attach to “pre-med offers”.

Fatal Accidents - change is coming?

- *Cookson v Knowles* CA [1978] has been challenged by Claimant in *Knauer v Ministry of Justice* [2014] - permission granted for claim to be heard in Supreme Court.
- 1999 Law Commission report '*Claims for Wrongful Death*' recommended revision.
- Supreme Court will now consider whether to assess multiplier as at date of trial rather than as *Cookson* requires at date of death.

S69 Enterprise and Regulatory Reform Act 2013

- No more strict liability for accidents post-October 2013
- No liability for breach of health and safety regulations unless regulation specifically says so (e.g. Management of Health and Safety at Work Regulations).
- However, uncertainty increases costs and need for investigation.
- Claimants still pleading breach of statutory duty.

Social Action, Responsibility and Heroism Act 2015

Bill now law - unlikely to change position because s1 of Compensation Act already provides protection



Secondary Victims



Occupiers' Liability

Courts have been more stringent in applying OLA criteria in 2015:

- *Kolasa v Ealing Hospital NHS Trust* [2015]
- *Buckett v Staffs CC* [2015]



Surveillance

- Remains important in fight against fraud.
- However, need to avoid ambush
- *Rall v Hume* [2001] and *Douglas v O'Neill* [2011] Defendant allowed to rely upon evidence because disclosed at earliest opportunity.
- Also issue for costs budgeting - include or exclude surveillance costs?



Fraud



Fraud /2

- ABI 2014 figures value fraudulent claims at £1.32 billion, a 3% increase on 2013.
- Overall value of frauds detected between 2009 and 2014 up 57%.



Fraud /3

- From 01.06.15, on motor claims submitted via Portal, all CNFs must include askCUE PI search reference number.
- Incomplete because not all compensators are members: only covers Personal Injury and Motor claims.
- Insurance Fraud Taskforce: report due end 2015.
- S57 Criminal Justice and Courts Act 2015: tightening of rules on dishonesty

Fraud and settlement

- Settle at haste, repent at leisure!
- If aware of potential fraud and settle at discount, court will not allow re-trial if insurer later decides incorrectly settled.
- Caveat: Supreme Court to review Court of Appeal decision (*Hayward v Zurich Insurance Company plc*, CA [2015]).

Part 36 Offers - Changes

New Rules allow offers to be varied or withdrawn:

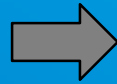
- Part 36 costs protection now limited

Vs.

- Operation of QOCS: defendants can still recover costs in post-April 2013 claims

QOCS - Fast Track

Claim
(liability
admitted)
valued at
£5,000



Protective
Part 36
offer of
£3,500



Claimant
awarded
£3,000



But Defendant has
incurred costs of
£8,000 so overall claim
loss

Defendant
recovers
costs of
£3,000

QOCS and Notice of Discontinuance



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Don't
despair!

Funding Arrangements



Civil Justice Council report on damages based agreements (DBAs): recommendations to simplify the statutory regime.

Costs

- *Coventry v Lawrence* SC [2015] - no change
- **Cost Budgeting** - judicial application remains slow and inconsistent. Many courts reluctant to engage. Disapplied for clinical negligence claims in High Court
- **Frontloading costs** - to avoid Cost Management
- **Approved costs** - often 20-30% higher
- **Court fees** - further rise to occur (despite resistance voiced in consultation)

Round-up



My 2014 Predictions

Tackling motor claims' costs - on-going

Mesothelioma consultation

Cost budgeting

Medco operational

Jackson and LASPO

DBA

Changes to Fixed Recoverable costs



My predictions /2

Third Party (Rights Against Insurers) Act 2010 - still not in force

Fundamental Dishonesty revision - now law

SARAH - now law

Insurance Bill - now law (in force August 2016)

What's Next?

