



National trends and cost of litigation in UK National Health Service (NHS): A specialty-specific analysis from the past decade

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Abstract:	<p>Background: The burden of medical litigation in UK is reported to be rising but a detailed analysis of actual costs has not been published. This study aims to analyse the 10-year trend in litigation costs for individual clinical specialties in the UK from 2009/10 to 2018/19.</p> <p>Methods: Data were procured from National Health Service(NHS) Resolutions. Number of claims, total litigation costs and cost per claim were ascertained for each financial year. The data collected also includes the number of claims and average amount per claim per speciality during the years 2009-2019(2009/2010 to 2018/2019 financial years).</p> <p>Results: The total annual cost of NHS litigation is currently £3.6 billion(2018/2019). Damages make up the greatest proportion of costs(£1.5 billion). Surgical specialties have the greatest number of claims annually(2847) but Obstetrics has the greatest total litigation(£1.9 billion) and cost per claim(£2.6 million). Number of claims, total costs and cost per claim are significantly greater in 2018/2019 than in 2009/2010.</p> <p>Conclusions: With growing demands on the NHS, these trends are unlikely to change in the near future. As an organisation, healthcare systems should endeavour to reduce the number of claims by adequate recruitment, mandatory revalidation, and implementation of national 'Getting it right first time' initiative.</p>

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3 1 **National trends and cost of litigation in UK National Health Service (NHS): A specialty-**
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5 **specific analysis from the past decade**
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51 22 **Authors' contributions**

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53 23 BKS conceptualised the paper. JL procured the data. JL and RB analysed the data and wrote
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55 the manuscript, with critical review by BKS.

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3 26 **Abstract**
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5 27 **Background and aims:** The burden of medical litigation in UK is reported to be rising but a
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8 28 detailed analysis of actual costs has not been published. This study aims to analyse the 10-
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10 29 year trend in litigation costs for individual clinical specialties in the UK from 2009/10 to
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12 30 2018/19.

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16 32 claims, total litigation costs and cost per claim were ascertained for each financial year. The
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20 34 speciality during the years 2009-2019 (2009/2010 to 2018/2019 financial years).

21
22 35 **Results:** The total annual cost of NHS litigation is currently £3.6 billion(2018/2019).
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24 36 Damages make up the greatest proportion of costs(£1.5 billion). Surgical specialties have the
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36 42 number of claims by adequate recruitment, mandatory revalidation, and implementation of
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38 43 the national 'Getting it right first time' initiative.
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3 **46 1. Introduction**
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7 48 Total healthcare spending in the UK was £195 billion in 2017 [1]. A proportion of that budget,
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9 49 which has been rapidly rising is the cost of litigation. The NHS reports that between 2006/2007
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11 50 and 2017/2018, clinical claims payments have quadrupled (£0.4 billion to £2.2 billion) with
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13 51 the numbers of reported claims doubling over the same period [2]. The NHS cannot afford to
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15 52 continue to have such a steep increase in the cost of clinical negligence claims, especially in
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17 53 the “Covid-19” era, when spending is more limited. The NHS has acknowledged the rising
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19 54 numbers of negligence claims, by creating a dedicated litigation department, NHS Resolutions,
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21 55 which helps to manage claims, support local systems with their responses and carry out early
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23 56 liability investigations.
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28 57 Our aims were to ascertain the actual burden of NHS litigation, identify temporal trends and
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30 58 compare litigation in different clinical specialties. In this study we have procured, analysed and
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32 59 presented data from NHS Resolutions outlining the number of claims and cost of litigation
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34 60 across all specialties over the last 10 years. This is the first paper of its kind to unite all
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36 61 specialties in this regard.
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62 2. Methods

63 Data was requested from NHS Resolutions under the Freedom of Information Act. The data
64 collected include the number of claims and average amount per claim per speciality during the
65 years 2009-2019 (2009/2010 to 2018/2019 financial years). The information was provided on
66 and is correct as of 30th June 2020. Specialities which had less than five claims per year were
67 masked in accordance with data protection guidelines and not every speciality had a claim each
68 year.

69 Specialities were grouped into broader categories to enable more effective data analysis (**Table**
70 **1**). For each category, the number of claims, total litigation costs and average cost per claim
71 were identified for each financial year. A breakdown of costs to include damages, defence and
72 claimant costs was also identified. A comparison between 2009/2010 and 2018/2019 for
73 number of claims, total litigation costs and average cost per claim was conducted. Normality
74 of the data was analysed by Shapiro-Wilk test and subsequently Wilcoxon (non-parametric)
75 tests were used to compare data from these time periods.

77 3. Results

78 The total annual cost of NHS litigation currently stands at £3.6b (2018/2019), which is over
79 three times greater than in 2008/2009 (£970m). An initial rise in litigation costs to 2010/2011
80 was followed by a plateau until 2015-2016, when there was a marked acceleration (**Figure 1**).
81 A breakdown of costs revealed that damages make up the greatest proportion, currently
82 standing at £1.5b (2018/2019). The trend in damages has mirrored total costs in the past 10
83 years, with claimant costs (£470m in 2018/2019) and defence costs (£120m in 2018/2019)
84 having remained relatively stable.

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3 85 A direct comparison of 2009/2010 and 2018/2019 financial years demonstrated a statistically
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5 86 significant increase in number of claims (5821 to 9104), total litigation costs (£970m to £3.6b)
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8 87 and average cost per claim (£166,274 to £398,946) (**Table 2**). The greatest increase in number
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10 88 of claims over the 10 year period was seen in surgical specialties (1614 to 2847), medical
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12 89 specialties (811 to 1431), acute specialties (508 to 952) and Obstetrics (467 to 722). ‘Other’
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14 90 (uncategorised) claims have seen a rise, plateau and fall in number, with comparable numbers
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17 91 in 2009/2010 and 2018/2019 (**Figure 2A**). In terms of fold changes, Anaesthetics (2.1-fold),
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19 92 Diagnostic Medicine (3.6-fold), Primary Care (2.6-fold), Mental Health (2.4-fold) and Allied
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21 93 Health Services (2.5-fold), all had at least a doubling in number of claims.

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25 94 With regard to total litigation costs, surgical specialties (£194m to £619m), medical specialties
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27 95 (£53m to £605m) and acute specialties (£52m to £257m) have seen linear increases in the past
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29 96 10 years. However, Obstetrics sits apart from these (£478m to £1.88b), with a higher starting
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31 97 point and an exponential rise in total costs, specifically from 2014/2015 onwards (£619m to
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33 98 £1.88b) (**Figure 2B**). Of the specialty categories with lower litigation costs, Primary Care
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35 99 (10.5-fold), Mental Health (7.9-fold) and Diagnostic Medicine (7.3-fold) all had total costs
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38 100 increasing by five-fold or more in the 10 year period.

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42 101 Similarly, when it comes to average costs per claim, Obstetrics is the costliest by far, with
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44 102 average individual claims increasing in cost from £1.02m to £2.61m (2.5-fold), between
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46 103 2009/2010 and 2018/2019 (**Figure 2C**). Apart from Obstetrics, other specialty categories
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48 104 which saw greater than two-fold rises in costs of individual claims included Primary Care (4.0-
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50 105 fold), ‘Other’ (3.3-fold), Diagnostic Medicine (2.6-fold), medical specialties (2.2-fold) and
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52 106 acute specialties (2.0-fold). Interestingly, the cost of individual medical claims was greater than
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54 107 that of surgical claims at the start (£188,964 vs. £120,340) and end (£430,020 vs. £217,288) of
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3 108 the study period. **Table 3** highlights the individual clinical specialties with highest number of
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5 109 claims, total litigation costs and individual claim values for the 10 year period 2009-2019.
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9 110 **4. Discussion**

11 111 Over the last decade, the overall litigation costs for the NHS have quadrupled to £3.6 billion.
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13 112 While this increase was highest for Obstetrics, a similar trend was seen for surgical, medical
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15 113 and acute specialties. Importantly, we demonstrate that recent articles may have underreported
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17 114 the true burden of litigation in the NHS [3, 4]. These sources have directly quoted data from
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19 115 the NHS Resolutions annual financial report [5], whereas we have analysed raw data of all
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21 116 claims in the past decade, including non-clinical claims. In general, staffing levels, training,
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23 117 leadership and NHS-wide safety improvements have been highlighted as areas for
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25 118 improvement [4]. Below we discuss the findings in a specialty-specific context.
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32 119 *Obstetrics*

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35 120 Over the last 10 years, Obstetrics consistently costs the NHS the highest amount for litigation
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37 121 compared to any other specialty, despite not always having the highest number of claims.
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39 122 Fundamentally, complications during birth can be more permanent than in many other
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41 123 specialties, with damages being commensurate with this. The landmark case of *Montgomery v*
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43 124 *Lanarkshire Health Board* has set a precedent [6]. Data from the NHS Litigation Authority
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45 125 previously showed that the most expensive claims resulted from cerebral palsy and that
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47 126 management of labour accounted for 70% of the total claims [7].
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52 127 *Surgery*

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56 128 Surgical specialties produce the highest number of claims, with Orthopaedic Surgery ranking
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58 129 first, closely followed by General Surgery. Ford and Cooper found that non-technical claims
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3 130 exceeded technical ones, with failure or delay in treatment being the most common cause [8].
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5 131 Operative complications were the second most frequent cause for claims successful claims,
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8 132 which most frequently occurred when there was a delay in recognising such complications [9-
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10 133 12]. Several studies have emphasised the importance of informed consent in reducing litigation,
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12 134 with information leaflets having proven to help [13-16]. Interestingly, a study comparing
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14 135 General and Plastic surgeons' management of the non-malignant breast found that Plastic
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16 136 surgeons were more likely to have claims made against them for poor cosmesis [17]. This
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18 137 suggests that claims may be result of patient expectations, which could be better clarified
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20 138 during the consent process.
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25 139 *Primary Care*

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28 140 In a study conducted from 1985-2008 in the US, 'family practice' claims represented 11.5% of
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30 141 all claims [18]. However in our data, primary care reflects a much smaller proportion of claims
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32 142 (2.5%). This is likely due to the fact that legal cases against GP's are relatively uncommon,
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34 143 with a high proportion being settled before hearing [19]. Another reason could be that training
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36 144 in General Practice better encompasses medico-legal aspects of practice. This may mean that
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38 145 GPs are increasing diagnostic testing, referring to secondary care earlier, increasing follow up
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40 146 and providing more detailed patient explanations and medical records [20].
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45 147 *Emergency Medicine*

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49 148 Studies reviewing negligence claims against Emergency Departments have found that the
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51 149 majority of these claims were for missed diagnosis [21, 22]. In particular, fractures were more
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53 150 likely to be missed, with the majority of doctors involved being Senior House Officers (junior
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55 151 residents), or equivalent [21]. Performing an adequate history and physical examination,
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3 152 ordering and interpreting appropriate diagnostic tests and obtaining timely and necessary
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5 153 reviews, were areas identified with potential for improvement.
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9 154 **Conclusion**
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12 155 NHS litigation claims are increasing in number and cost. Causes have been attributed to higher
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14 156 standards of care expected by patients, a move away from the paternalistic doctor-patient
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16 157 relationship and easier access to legal representation, including “no win, no fee” services. As
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18 158 an organisation, the NHS should endeavour to reduce the number of claims by adequate
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20 159 recruitment, mandatory revalidation As an organisation, the healthcare systems should
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22 160 endeavour to reduce the number of claims by adequate recruitment, mandatory revalidation,
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24 161 and implementation of the national ‘Getting it right first time’ initiative. However, we must
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26 162 ultimately accept that as the population rises and the amount of work in the NHS increases, the
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28 163 burden of litigation is likely to continue increasing. Furthermore, due to their nature, certain
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30 164 specialties will always be more inherently linked with litigation than others.
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For Peer Review

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3 218 **Figure Legends**

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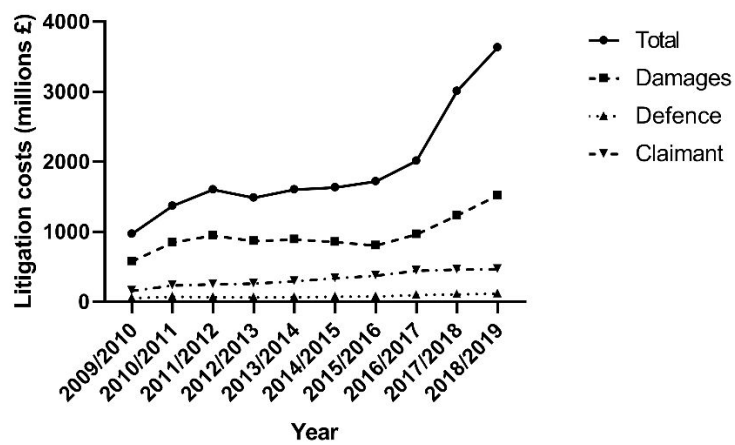
6 220 **Figure 1. Breakdown of litigation costs (2009-2019).** Trend in annual NHS litigation costs
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9 221 between 2009-2010 and 2018-2019 demonstrating total costs and costs broken down into
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11 222 damages, defence and claimant costs. Costs shown in millions of pounds.

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16 224 **Figure 2. Trend in litigation by specialty (2009-2019).** Annual number of claims (A), total
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18 225 costs (B) and average cost per claim (C) for different specialties between 2009-2010 and
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20 226 2018-2019. Specialties are categorised as per Table 1. Costs shown in millions of pounds.

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Figure 1

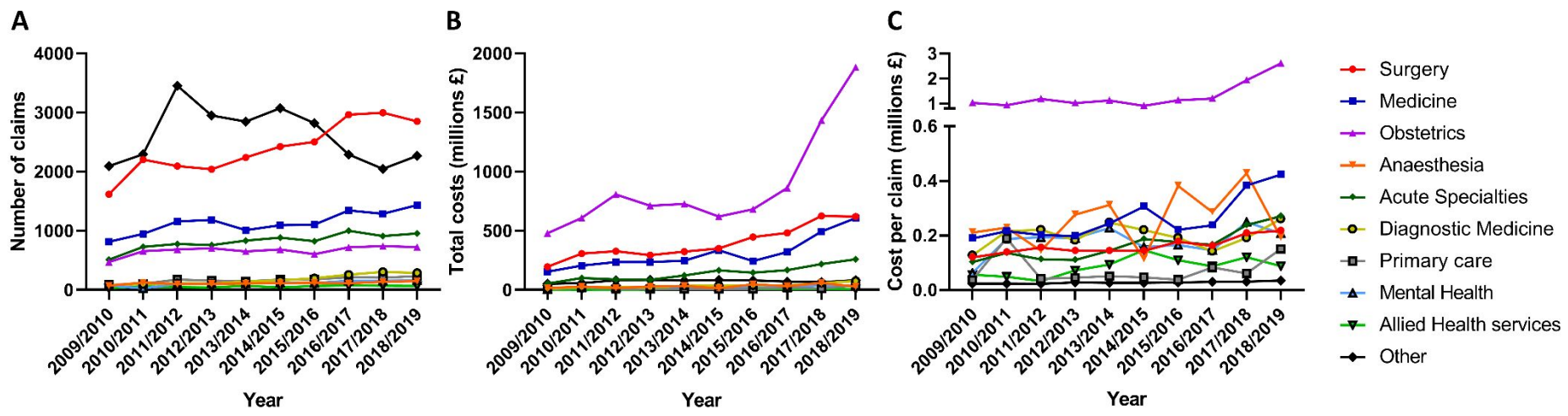


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Peer Review

Figure 2



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view

Surgery	Cardiac Surgery	Medicine	Cardiology
	General Surgery		Dermatology
	Gynaecology		Endocrinology
	Neurosurgery		Gastroenterology
	Oral & Maxillo-Facial Surgery		General Medicine
	Orthopaedic Surgery		Genito-Urinary Medicine
	Otorhinolaryngology/ENT		Geriatric Medicine
	Paediatric Surgery		Haematology
	Plastic Surgery		Infectious Diseases
	Urology		Microbiology/ Virology
	Vascular Surgery		Neurology
	Ophthalmology		Genetics
Obstetrics	Obstetrics		Oncology
Anaesthesia	Anaesthesia		Paediatrics
	Intensive care		Palliative Medicine
Acute Specialities	Ambulance Service		Radiotherapy
	Emergency Medicine		Renal Medicine
Diagnostic Medicine	Histopathology		Respiratory Medicine/ Thoracic Medicine
	Forensic Pathology		Rheumatology
	Chemical Pathology/ Biochemistry		Audiological Medicine
	Radiology	Allied Health Services	Pharmacy
	Nuclear Medicine		Occupational Therapy
Primary care	General Practice		Physiotherapy
	District Nursing		Podiatry
	Community Medicine/Public Health		Psychology
	Dentistry		Rehabilitation
	HM Prison Medical/Dental	Other	Miscellaneous
Mental Health	Community Mental Services		Non-Clinical Staff
	Psychiatry/Mental Health		Blood transfusion

Table 1. Categorisation of specialties/services

Speciality	Number of Claims		Total Costs (millions £)		Average Cost per claim (£)	
	2009/2010	2018/2019	2009/2010	2018/2019	2009/2010	2018/2019
Surgery	1614	2847	194.23	618.62	120,340	217,288
Medicine	811	1431	153.25	605.34	188,964	423,020
Obstetrics	467	722	478.30	1,882.94	1,024,204	2,607,956
Anaesthesia	69	145	14.55	27.97	210,860	192,879
Acute Specialities	508	952	52.28	257.47	102,905	270,454
Diagnostic Medicine	80	286	10.19	74.50	127,314	260,500
Primary care	86	227	3.24	34.26	37,656	150,911
Mental Health	67	162	4.24	33.66	63,309	207,782
Allied Health Services	26	66	1.47	81.46	56,616	88,269
Other	2093	2266	50.70	5.83	24,224	35,951
Overall	5821	9104	962.45	3,622.05	195,639	445,501
<i>P</i> value		0.0020		0.0137		0.0059

Table 1. A comparison of litigation costs between years 2009/2010 and 2018/2019

Top five specialties by number of claims

Orthopaedics
Emergency Medicine
Obstetrics
General Surgery
General Medicine

Top five specialties by total litigation costs

Obstetrics
Paediatrics
Orthopaedic Surgery
Emergency Medicine
General Surgery

Top five specialties by cost per claim

Obstetrics
Paediatrics
Neurosurgery
Neurology
Cardiac Surgery

Table 3. Most litigated specialties by number of claims, total costs and cost per claim from 2009-2019.

For Peer Review

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Figure 1

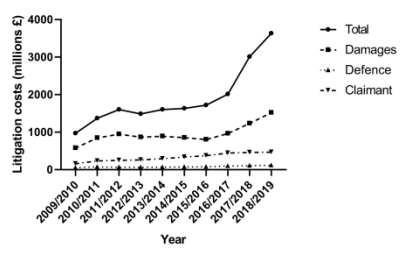


Figure 1. Breakdown of litigation costs (2009-2019). Trend in annual NHS litigation costs between 2009-2010 and 2018-2019 demonstrating total costs and costs broken down into damages, defence and claimant costs.

338x190mm (300 x 300 DPI)

Figure 2

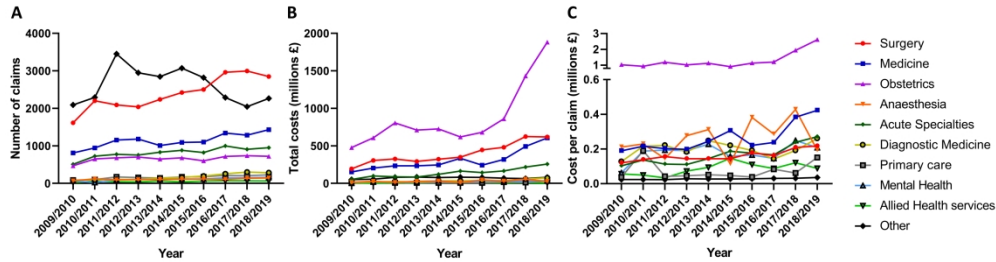


Figure 2. Trend in litigation by specialty (2009-2019). Annual number of claims (A), total costs (B) and average cost per claim (C) for different specialties between 2009-2010 and 2018-2019.

338x190mm (300 x 300 DPI)