



# Deficiencies in UK deafness claims

## Policy summary

### Key findings

The IFoA believes it is important to address deficiencies in the UK deafness claims process as inappropriate claims and expense spend have driven up the cost of insurance for noise induced hearing loss.

Our research suggests that the increase in inappropriate deafness claim notifications is due to:

- **Legislative changes**
- **The impact of unemployment**
- **The influence of claims management companies and claimant solicitors**
- **Process changes**

Regulatory  
Policy

## Background

Following the rise in the number of deafness claims and the extent to which they affected the reserves actuaries determine, the IFoA established a UK Deafness Working Party. The Working Party has made a number of data collections in the past and currently asks insurance companies to provide deafness claims data on a quarterly basis. Each quarter between 9 and 16 companies respond. The Working Party researches trends, and the drivers of those trends, to identify emerging issues in order to:

- Help actuaries be able to determine appropriate reserve estimates for deafness related claims for their clients or companies that they work for.
- Help regulators and legislators determine practices that are encouraging inappropriate claims, which drive up the cost of insurance for consumers.

Insurance Market claims for noise induced hearing loss have been rising. The IFoA's Deafness Working Party data collection, which is estimated to represent over 80% of the Insurance Market, shows that deafness claim notifications rose from 27,600 in 2010 to 85,800 in 2013, as illustrated in table 1. This represents an increase of over 200%.

## Legislative changes

The Legal Aid, Sentencing and Punishment of Offenders Act 2010-12 (LASPO) implemented a number of recommendations from the Jackson Review (2010):

- Success fees are no longer recoverable for most types of claims;
- Personal injury referral fees are banned for regulated companies; and
- Damage based agreements were implemented with solicitors' fees capped at 25 per cent of claimant damages.

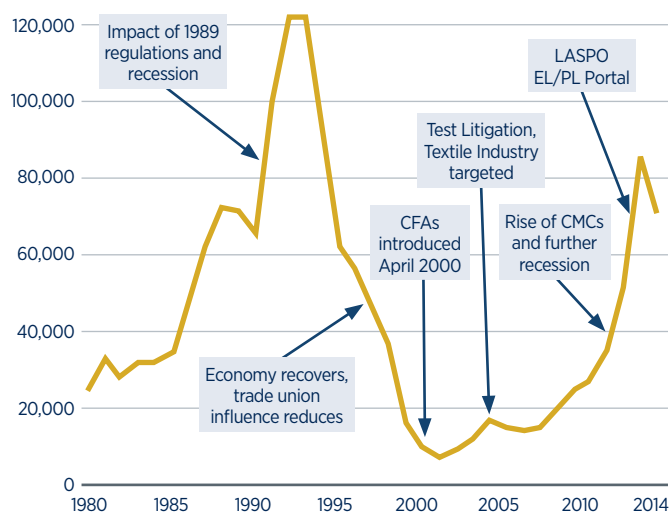
The purpose was to review the rules and principles governing the costs of civil litigation and make recommendations that promote access to justice at proportionate costs, address spiralling legal costs, perceived unnecessary litigation and 'no win, no fee' structures that drive up legal costs.

Table 1 illustrates the change in deafness claims over time, highlighting when key legislative changes were implemented. It shows a sharp increase and then fall post-LASPO which is believed to be due to the way this legislation influenced claimant solicitor behaviour in identifying and notifying potential deafness-related claims.

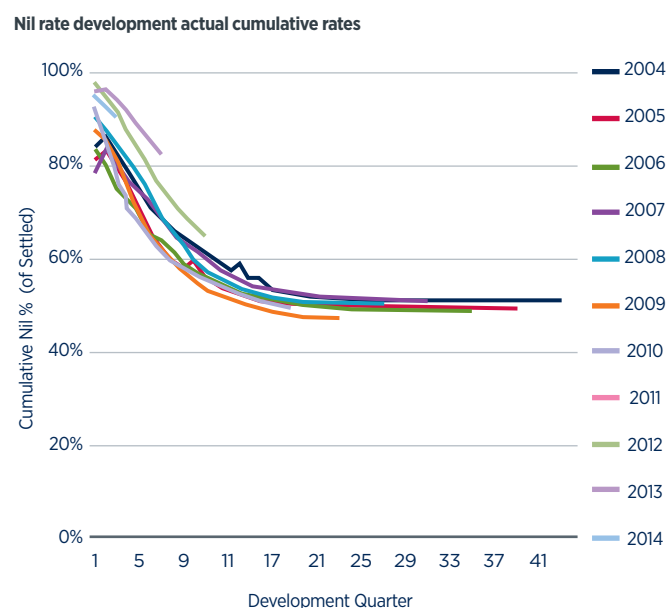
Table 2 shows that since 2011, and the Jackson review, the proportion of settled claims without a pay-out appears to have increased, suggesting the quality of claims has potentially decreased.

“Deafness claim notifications rose from 27,600 in 2010 to 85,800 in 2013. This represents an increase of over 200%.”

**Table1: Number of deafness claims 1980 to 2014 and legislative changes**



**Table 2: Proportion of claims settled without pay-out (nil rate) over time**



## The impact of unemployment

**Table 3: Annual number of deafness claim notifications compared to unemployment rate**

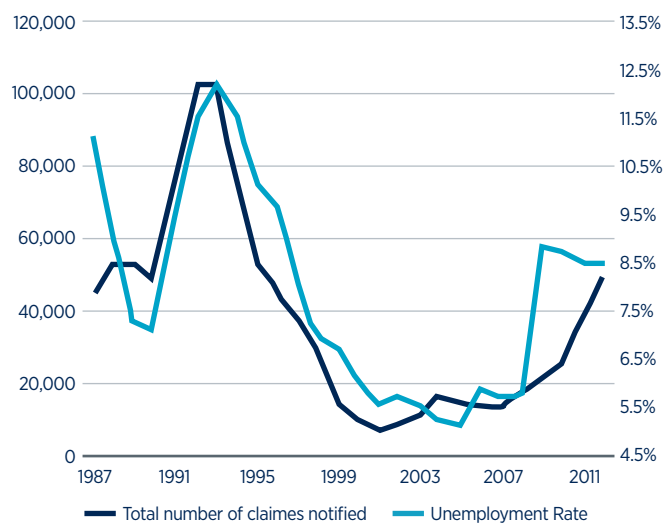


Table 3 shows that between 1992 and 2000 deafness claims notifications and unemployment figures were strongly correlated, although this correlation does weaken in the last five years. This suggests that whilst levels of unemployment may have been a determining factor in the past, we suggest the recent increase is more likely to be strongly correlated with other factors, such as the activity of claims management companies.

## The influence of claims management companies and claimant solicitors

Between 2008 and 2012 the number of claims management companies increased from 1,400 to 2,435<sup>1</sup> and the number of DWP notified claims rose from 20,000 to 52,500.

Data from Aviva reveals that 85 per cent of claims for industrial deafness fail to demonstrate any link to workplace noise induced hearing loss. Aviva has paid more than £1.2m to claimants since 2012, yet £5.5m in legal fees to claimant lawyers in the same period.<sup>2</sup>

The Deafness Working Party estimated, based on market survey data from those entities that were able to provide a relevant split, that around 72 per cent of amounts paid are made up of expenses with only 28 per cent in respect of damages.

The ABI identified the average legal fee that a claimant lawyer received for settling an industrial deafness claim in 2013 was £10,500, compared to £500 for a whiplash claim settled through the Claims Portal. The average compensation award for an industrial deafness claim was £3,100. This means that for every £1 an insurer pays out in compensation to the claimant, it pays just over £3 to the claimants' lawyers.<sup>3</sup>

The above estimates of the proportion of expense that make up a deafness claim are all prior to the implementation of the Jackson Reforms through LASPO and the introduction of the EL Portal. In theory, the frictional costs of presenting deafness claim should now be reduced. However, fixed costs for deafness claims do not usually apply, as the majority of deafness claims will be multi-defendant, and hence, will not be settled through the EL Portal. Claims that are settled outside the EL Portal attract hourly claimant solicitor rates, and such claims appear to be more financially attractive to claimant solicitors compared to other injury claims. Thus, while the costs associated with injury claims are tending to be more proportionate post-LASPO, this is not the case for deafness claims and potentially other multi-defendant claim types.

## Process changes

Deafness claims usually involve multiple defendants, and therefore multiple insurers. This complexity means that these claims can take longer to settle. The current mechanism for settling personal injury claims is the Ministry of Justice's Claims Portal, though most deafness claims will not be settled through the Claims Portal as the Portal is only designed for single defendant cases. It currently takes around 17 months to settle a typical deafness claim.<sup>4</sup>

## Opportunities to improve the process

The Working Party has identified a number of areas for further research to address the deficiencies in the UK deafness claims process:

- A simpler deafness claims process.
- Development and agreement of a standardised test to assess deafness.
- Establish a panel of independent hearing loss experts.
- The potential for the Claims Portal to deal with multi-defendant claims.
- The introduction of fixed legal fees for industrial deafness claims similar to personal injury motor claims.

<sup>1</sup> [www.gov.uk/government/collections/claims-management-regulator-annual-reports](http://www.gov.uk/government/collections/claims-management-regulator-annual-reports) Personal Injury sector is given in Chapter 4 of the annual reports.

<sup>2</sup> Aviva (2015) Aviva calls for clampdown on spurious industrial deafness claims [Article available online: [www.aviva.co.uk/media-centre/story/17459/aviva-calls-for-clampdown-on-spurious-industrial-d/](http://www.aviva.co.uk/media-centre/story/17459/aviva-calls-for-clampdown-on-spurious-industrial-d/) Published: 9 February 2015]

<sup>3</sup> ABI (2014) Industrial deafness – the new cash cow for claimant lawyers and claims management companies [Article available online: [www.abi.org.uk/News/News-updates/2014/09/Industrial-deafness-the-new-cash-cow-for-claimant-lawyers-and-claims-management-companies](http://www.abi.org.uk/News/News-updates/2014/09/Industrial-deafness-the-new-cash-cow-for-claimant-lawyers-and-claims-management-companies) Published: 9 September 2014]

<sup>4</sup> ABI (2014) Fixed legal costs key to getting on top of industrial deafness claims says ABI [Article available online: [www.abi.org.uk/News/News-updates/2014/11/Fixed-legal-costs-key-to-getting-on-top-of-industrial-deafness-claims-says-the-ABI](http://www.abi.org.uk/News/News-updates/2014/11/Fixed-legal-costs-key-to-getting-on-top-of-industrial-deafness-claims-says-the-ABI) Published: 6 November 2014]



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## Contact us

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Alternatively the full report can be found on the IFoA's website:  
**[www.actuaries.org.uk/research-and-resources/documents/uk-deafness-working-party-paper](http://www.actuaries.org.uk/research-and-resources/documents/uk-deafness-working-party-paper)**

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