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## Update from UK asbestos and deafness working parties

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### Agenda

- Update from the UK asbestos working party
  - Background and Introduction
  - Recap on 2009 UK Asbestos Working Party Projections
  - Legal and Other Developments
- Update from the UK deafness working party



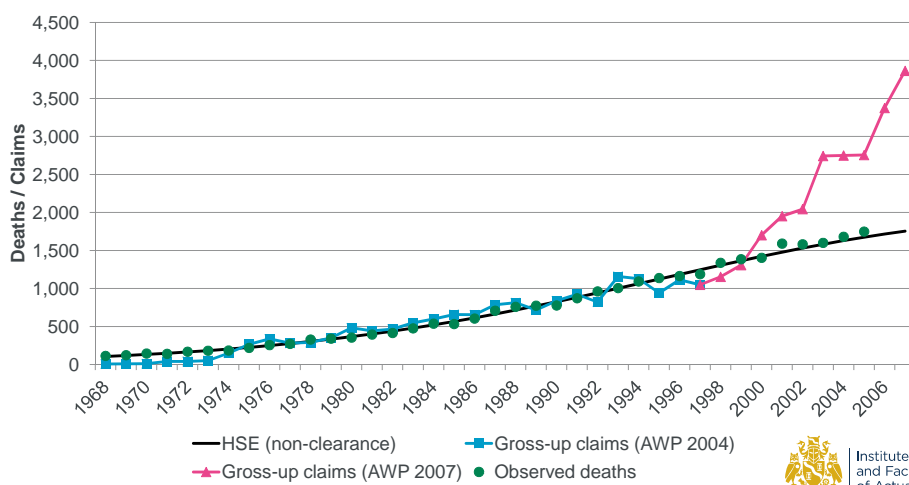
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# UK Asbestos

## Background and Introduction



### Background and Introduction Mesothelioma experience



## Background and Introduction

### What has the Working Party done?

- Since 2009 market estimate - entered working party passive phase
- Continued to collect survey and government data
- Comparing data against estimates
- Maintained contact with HSE and Prof. Peto
- Consultation responses such as Pleural Plaques & ELIB

## UK Asbestos

### Recap on 2009 Projections

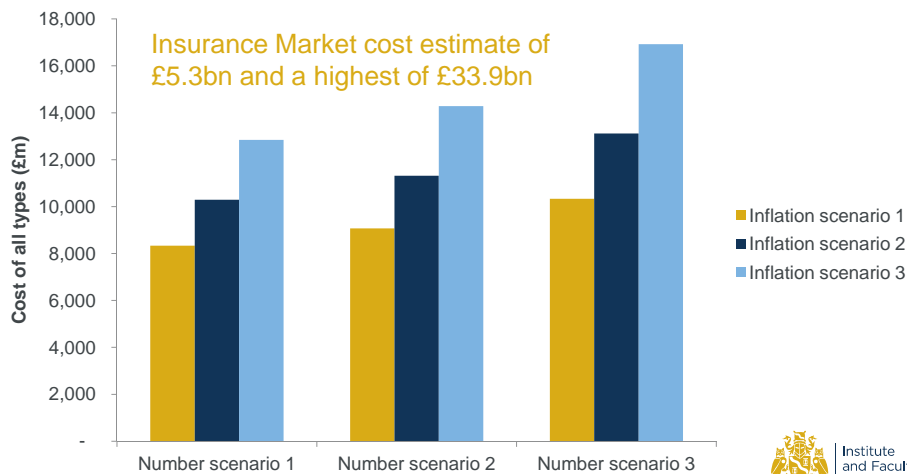
## 2009 UK Asbestos Working Party Estimates Approach

- Data
  - Market survey
  - Sample of claimant settlement costs of mesothelioma claims
  - CRU and IIDB
- Expert judgement based on discussions with
  - Claims handlers
  - NHS / Doctors
  - Legal profession
  - Special interest bodies
- Number of claims
  - Adapted models developed by other
  - Developed own models
  - Judgement
- Average costs (including inflation)
  - Developed own model for mesothelioma
  - Judgement



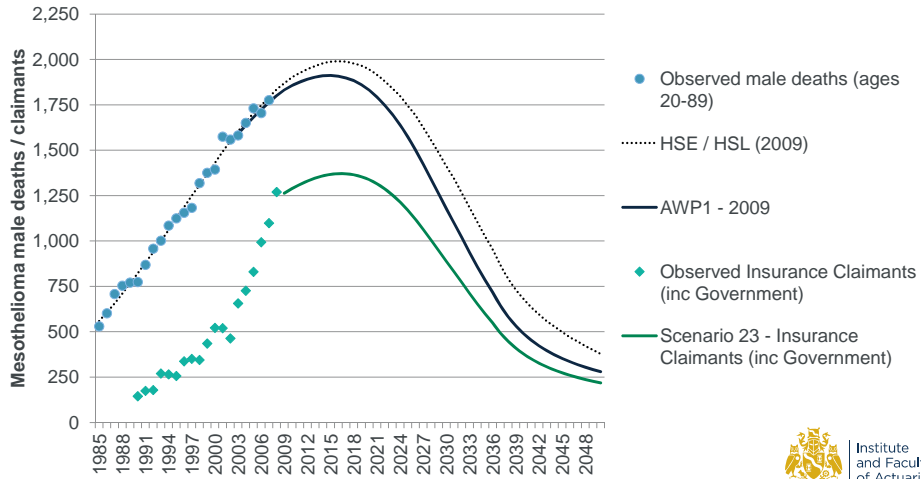
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## 2009 UK Asbestos Working Party Estimates Total Insurance Market Estimates



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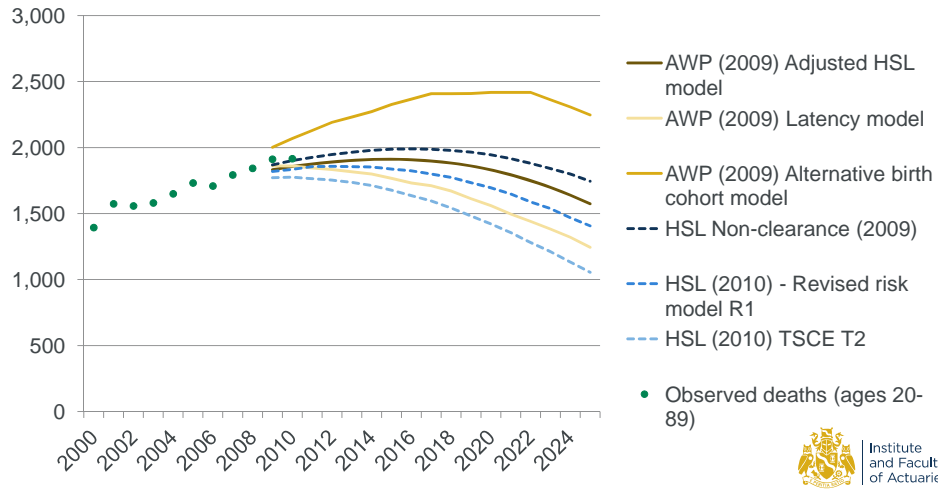
## 2009 UK Asbestos Working Party Estimates Mesothelioma Deaths and Claimants



## UK Asbestos Experience since 2008

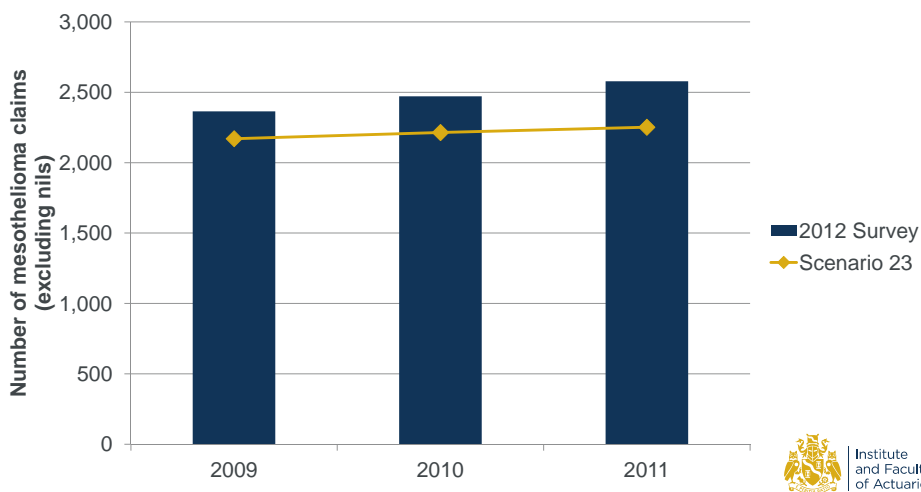


## Actual vs. Projected Experience Mesothelioma deaths



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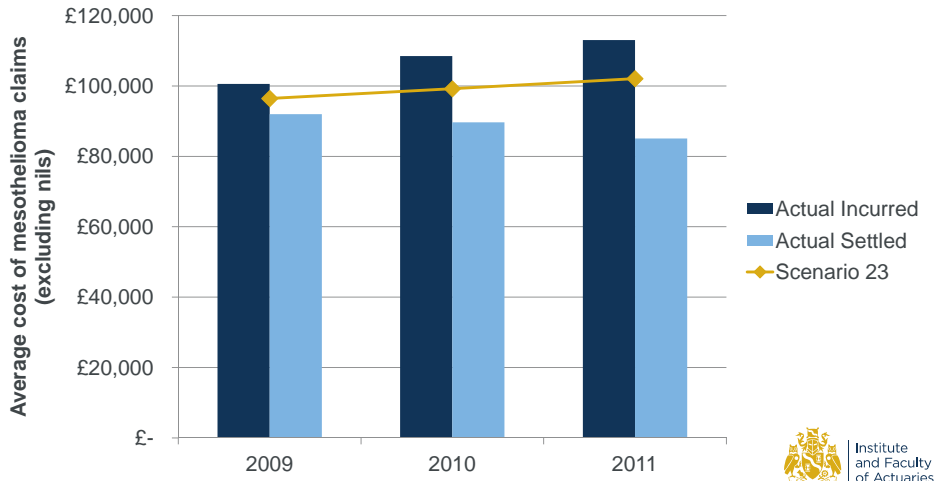
## Actual vs. Projected Experience Mesothelioma: Number of claims



2012 survey data assuming the survey covered 80% and nil rate of 23%

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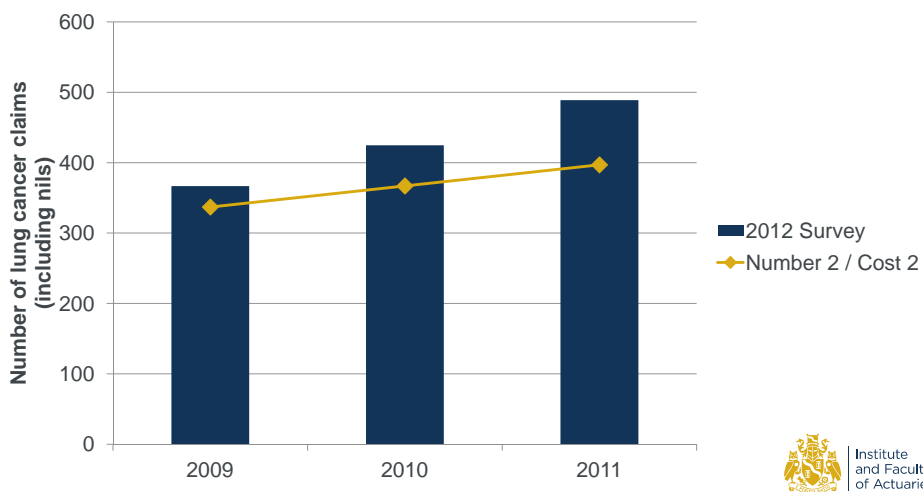
## Actual vs. Projected Experience Mesothelioma: Average cost of claims



2012 survey data assuming a nil rate of 23%

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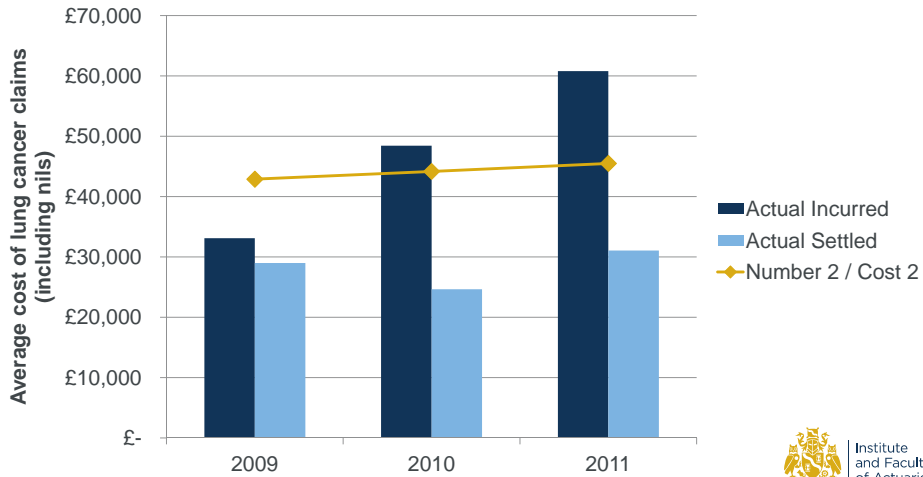
## Actual vs. Projected Experience Lung Cancer: Number of claims



2012 survey data assuming the survey covered 80%

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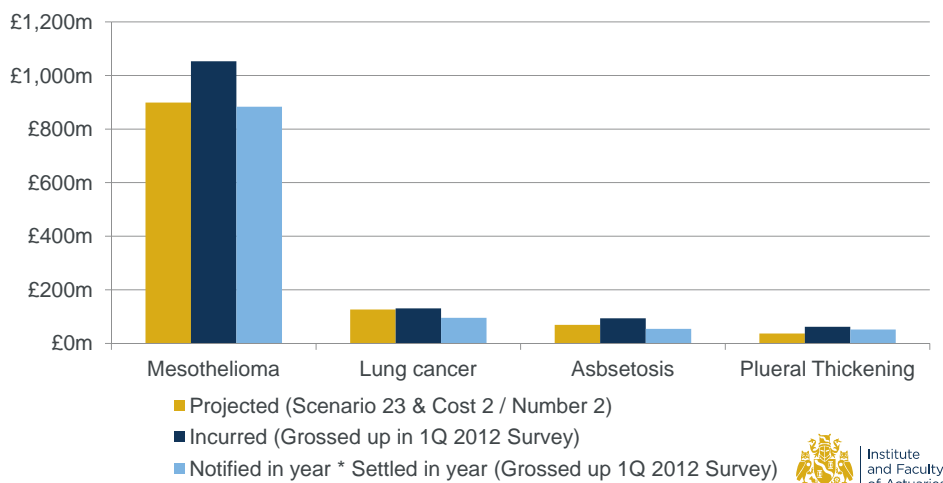
## Actual vs. Projected Experience Lung Cancer: Average cost of claims



2012 survey data assuming a nil rate of 33%

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## Actual vs. Projected Experience Total costs 2009 to 2011



2012 survey data assuming the survey covered 80%

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# UK Asbestos

## Legal and Other Developments



## Legal and Other Developments

- ELTO
- Trigger Litigation
- Jackson
- *International Energy Group Ltd v Zurich Insurance plc [2013]*



## Legal and Other Developments

### Employers' Liability Tracing Office (ELTO)

- Set up to provide access to a database of EL policies (EL Database or ELD)
- ELTO has contract with Tracing Services Ltd, a subsidiary of the Motor Insurers' Bureau (MIB)
- February 2011, new regulations that change the way that insurers and intermediaries record EL policy data
  - From January 2011, all members required to upload new and renewed policies, and old policies with new claims made against them
  - From April 2012, all members required to upload new and renewed policies and also supply subsidiary company information



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## Legal and Other Developments

### Employers' Liability Tracing Office (ELTO)

- 60 members, with around 8 million records
  - Split evenly between new policies and historical policies (post 1990)
- Two searches:
  - Simple - one search function to all users; and
  - Extended - completed once a month where the members are asked to trace records not on the database.
    - If simple search is unsuccessful an extended will be undertaken
- ELTO keeps a list of the individuals using the database and about 65% are Claimants / Solicitors.
- Around 70% of traces are finding an insurer to pursue



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## Legal and Other Developments

### Pleural plaques

House of Lords ruled pleural plaques were not compensable (Oct 2007)

Scotland	England and Wales	Northern Ireland
<ul style="list-style-type: none"> <li>• Scottish Parliament introduced a bill to reverse the House of Lords ruling in Scotland - in force from June 2009</li> <li>• Insurers' appeal was heard in July 2010</li> <li>• 12th October 2011, the Supreme Court rejected the insurers' appeal</li> </ul>	<ul style="list-style-type: none"> <li>• Government announced it will not be legislating to make PP claims compensable</li> <li>• Extra-statutory Payments of £5,000 for unresolved cases</li> </ul>	<ul style="list-style-type: none"> <li>• Consultation paper published by Dept of Finance and Personnel (NI) Oct 2008; recommended claims made compensable</li> <li>• The Damages (Asbestos-related Conditions) Act (Northern Ireland) 2011 came into operation on 14th December 2011</li> </ul>



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## Legal and Other Developments

### Employers' Liability 'Trigger Litigation'

- Seeking to clarify what triggers a policy to pay a claim to victims of mesothelioma
- Bolton Metropolitan Borough Council v MMI and CU
  - Public liability policies
  - "Injury occurring" wording
- Durham v BAI (run-off) and others ("Trigger Litigation")
  - Employers liability policies
  - "Injury 'sustained' or disease contracted" wording



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## Legal and Other Developments

### Trigger Litigation: Court of Appeal Judgement

- Court of Appeal judges took divergent approaches
- Following principles emerge
  - “Sustained” wording – policy responds when tumour starts to develop
  - “Contracted” wording – synonymous with caused, policy responds to exposure
  - Policies post 1972 (when EL became compulsory) will meet mesothelioma claims based on date of inhalation
- Leave to appeal to the Supreme Court was granted
  - Recommended that this appeal be expedited



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## Legal and Other Developments

### Trigger Litigation: Supreme Court

- On the 28th March 2012 the Supreme Court handed down its judgment based on a 4-1 majority:
  - Reflecting the wider commercial purpose of employers' liability cover, that disease is said to have been "sustained" or "contracted" in an employers' liability policy when it is caused and not when the disease manifests itself many years after the exposure
  - Applying the principles established in Fairchild
- Employers' liability policies respond on an exposure basis regardless of wording (unlike public liability policies)
- Return to the basis used prior to the litigation



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## Legal and Other Developments

### Jackson reforms

- A10 year review looking into the costs in civil litigation completed by Lord Justice Jackson in January 2010
- After consultation UK Government published its response in March 2011
- They agreed to implement the majority of reforms within the Jackson review
- Legislation passed in May 2012 - the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)
- LASPO came into force on 1 April 2013



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## Legal and Other Developments

### Jackson reforms

- Success fees payable on CFAs and ATE premiums no longer recoverable from the losing party
  - The winner must therefore pay its lawyers' success fee
  - This could render some claims uneconomic to pursue
- Court of Appeal guidance after *Simmons v Castle [2012]* - General damages in all civil claims 10% higher
- Damages-based agreements or DBAs can be entered with claimants
  - Agree to accept a share of their clients' winnings
  - Maximum cap of 50%



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## Legal and Other Developments

### Jackson reforms

- Additional penalty on unsuccessful defendants under Part 36
  - payable when claimant's reasonable offer rejected
  - Capped on large awards
- File disclosure reports listing potentially relevant documents
- File budgets for approval by the court and other parties
- Exclusion of mesothelioma claims from the reforms
  - After-the-event insurance and success fees still apply
  - Lord Chancellor investigating



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## Legal and Other Developments

### INE v Zurich Insurance plc [2013]

- Claimant died from mesothelioma
- Exposed to asbestos in Guernsey from 1961 to 1988.
- Guernsey law applied: UK Compensation Act 2006 did not apply
- INE settled claim for damages and then sought recovery from the insurer
  - Employers' liability policies provided 1982 to 1988
- Commercial Court ruled insurer's liability under an EL policy limited to period under which the claimant had been insured
- Insured appealed this verdict



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## Legal and Other Developments

### INE v Zurich Insurance plc [2013]

- Court of Appeal ruled in February 2013
- Insurer to provide a complete indemnity
  - On risk for 6 out of the total of 27 years of exposure
  - Basically an “All Sums” verdict
- Followed the approach of the Supreme Court in the Trigger litigation - mesothelioma was "caused" by his exposure
- No contribution by solvent insured to insurer - contrary to the ABI guidelines
- Supreme Court?



## UK Deafness

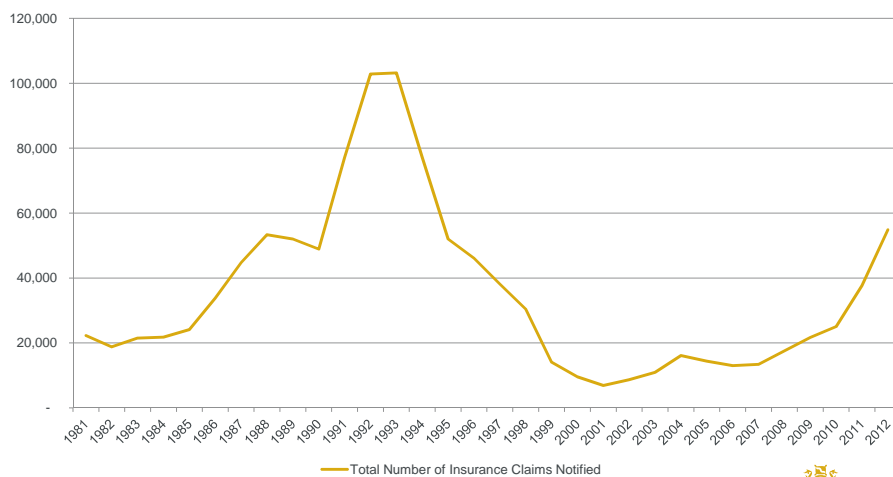


## UK Deafness Introduction

- Why are UK Deafness claims a current issue?
- What are noise induced hearing loss claims?
- A claims history lesson
- What is driving the recent claims experience?
- UK Deafness Working Party GIRO Paper



## Why is it a Current Issue?



Data source: Deafness Working Party Data Survey Sept 2012, with 2012 updated from March 2013 survey. Survey covers 12 market participants in last 10 years, fewer in earlier years, history has been rescaled to be consistent across all years.



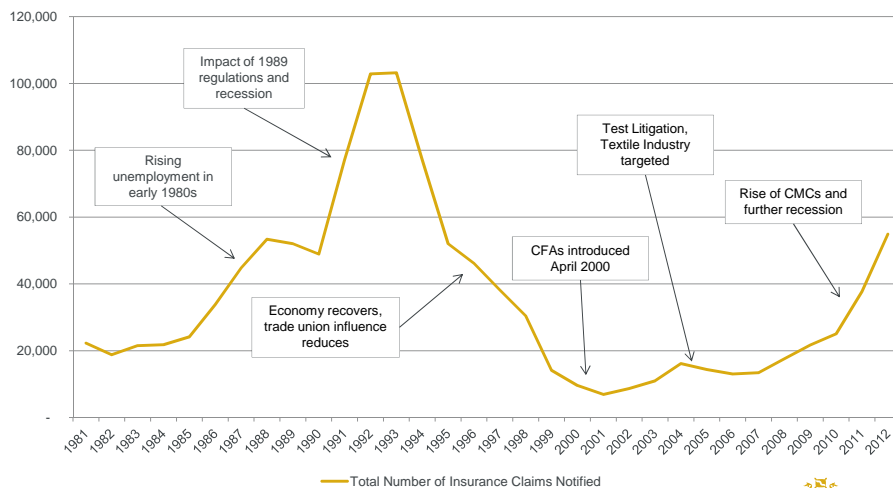


## What are Noise Induced Hearing Loss (NIHL) Claims?

- Hearing loss arising from prolonged exposure to high noise levels almost always in the work place and therefore impact Employers' Liability policies
- Dates employers deemed to be aware vary by industry – key date of knowledge is 1963
- Successive regulations in 1989 and 2005 reduced actionable noise levels and stipulated employer actions (noise surveys, reduction, protection etc.)
- Serious cases involve tinnitus alongside hearing loss
- 'Latency' arises because NIHL becomes apparent around age 60-65 when hearing typically starts to deteriorate through age
- Current claims predominantly from 1970s to 1980s exposures
- UK Insurance industry is currently paying around £50m per year based on working party data
- Major component of claim cost is claimant solicitor fees with damages only representing around one quarter of total spend
- Similar mix of insurer compensators as asbestos



## UK Deafness Claims – History Lesson



Data source: Deafness Working Party Data Survey Sept 2012, with 2012 updated from March 2013 survey. Survey covers 12 market participants in last 10 years, fewer in earlier years, history has been rescaled to be consistent across all years.



## What is Driving Recent Experience?

### Legislation

- The impact of LASPO (April 2013) is likely to have fuelled an increase in claimant solicitor activity

### Claims Management Companies (CMCs)

- Claims Management Companies have increased rapidly from a couple of hundred to a couple of thousand\* over the last five years
- Significant increase in advertising raising awareness in the general population of the potential to make a claim
- After the Event (ATE) insurance allowed solicitors to run a case 'risk-free' if the ATE insurer accepted the case

### Recession

- Impact of recent recession has increased unemployment, albeit mainly at younger ages
- Redundancy has historically been a trigger to make a claim against an employer



\*Source: Motor Third Party Working Party

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## UK Deafness Working Party Paper for GIRO 2013

### Includes

- Background to help interested party understand the emerging deafness claims experience
- Market data collection and survey results
- Analysis of influencing factors
- Key items for the reserving actuary to consider

### Does Not Include

- Insurance Market Projections



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**Questions**

**Comments**

The views expressed in this presentation are those of the presenter

