THE COST OF COMPENSATION CULTURE

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Summary:

This paper considers what is "Compensation Culture". We've reviewed a range of events for which compensation is paid and have estimated what these cost UK plc. The ball-park "cost of compensation" is roughly £10b per year, over 1% of GDP. This cost has been increasing at 15% per year recently and is set to continue rising at over 10% per year. Over a third of the total is legal and administration expenses. This seems a fundamentally inefficient way of delivering compensation.

The paper includes the results of two surveys of the UK actuarial profession and the general public. The average view of practitioners is that Motor personal injury costs have inflated at 15% per year recently and double-digit inflation is set to continue. The continuing high inflation is mainly attributed to an increasingly litigious society and future legal changes. The majority of the "public" believe attitudes to compensation have changed in the last five years and that this is a bad thing. However, most of them would happily make a claim against the NHS or Local Authorities, but were less keen to claim against their employer or neighbour. Interestingly, a quarter of those surveyed didn't know whether their Motor insurance policy included legal expenses or not and the public believes that insurers make a 15% profit on Motor insurance (!).

We've summarized the current legal regime regarding compensation, reviewed how we got here and considered a number of scenarios for the future, drawing on the way compensation regimes have developed overseas. Whilst UK compensation costs have increased a lot in recent years, there are some fundamental differences between the UK and US which we think will stop costs spiralling to the dizzy heights achieved in the US (over 2% of GDP in recent years, but coming down). There are significant uncertainties about how the UK compensation regime will develop. The general view of the Working Party is that the way the current compensation regime is being allowed to develop is deeply unsatisfactory. There is no central focus (and hence control over) within government on the cost of compensation to society or how the compensation regime should work. Rather, the mechanism for Conditional Fee Arrangements, Before and After-the-Event insurance is being determined in an adversarial fashion by a series of test cases. This creates delays and uncertainty for compensators and accident victims and serves the interests of no one.

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1. INTRODUCTION

1.1 Method in the madness

We begin this paper defining what "Compensation Culture" is in section 2 and looking at the different forms of compensation that fall within this definition. Before moving forwards, we take a step back and review how we got to the compensation regime we currently enjoy in section 3. Then we launch forth with a stab at the monetary cost of compensation in section 4, but also review the intangible cost (and benefits) of changed behaviours that Compensation Culture can lead to.

Having looked at the past and the present, we look ahead and around in sections 5 and 6, considering what the future may hold for Compensation Culture in the UK and how we compare to other countries.

Not having managed to put many numbers in the paper so far, we've rectified this with a couple of surveys, described in section 7. In one, we've conducted an e-mail survey of General Insurance actuarial practitioners, seeking their views on how the cost and frequency of compensation claims have affected and will affect the major insurance classes in the UK. In the other we've sought the views of members of the public as to whether they would claim in certain circumstances and how much they think Compensation Culture is already affecting their insurance premiums.

A recurring theme as we pulled together information on different types of compensation was the lack of readily available data / hard facts regarding compensation. To aid interested parties, we've included an extended Bibliography, giving a précis of some of the main publications we have drawn upon.

2. WHAT IS "COMPENSATION CULTURE" ?

2.1 Introduction

The news is full of stories referring to "Compensation Culture", but what is it? Was it here twenty years ago, or is it a new phenomenon? The dictionary definitions of compensation are:

- Payment made as reparation for loss or injury
- The act of making amends for something

A typical payment of an insurance claim comes under this definition of compensation. However, someone making an insurance claim is not the image conjured up by the phrase "Compensation Culture". For the purpose of this paper, the Working Party has defined Compensation Culture as:

"The desire of individuals to sue somebody, having suffered as a result of something which could have been avoided if the sued body had done their job properly."

We believe that a Compensation Culture is developing in the UK. It challenges the stereotypical British attitude of just "putting up" with something. Many cases make headline news as either the magnitude, or the reasons for, an award, seem suprising to many people.

The Working Party had some debate about who are the winners and losers in a more litigious society. Undoubtedly this would be good news for lawyers. It could also be good news for insurance companies as more types of claims being made may lead to more insurance being purchased (any necessary hikes in premiums will be passed on to the consumer). It could also be argued that the compensation is simply a re-distribution exercise, with no overall winners and losers – the balance of power simply being shifted away from big corporations to the individual. Alternatively it was argued by some that the overall effect on society was a negative one, with fearful people no longer prepared to do things (such as take kids on a school trip) to avoid being sued. Generally the Working Party thought that a more litigious society would be a bad thing because the costs to society, both financial and in terms of restricting activities, outweigh the benefits of providing better compensation to accident victims.

2.2 Summary of the main types of compensation

The main types of compensation we could think of, in no particular order, are:

A. Insurance claims on Motor and (Employers' / Public) Liability policies

B. NHS claims (negligence / medical malpractice)

C. Local / Education Authorities (accidents in the street, inappropriate childcare or poor quality teaching, for example)

D. Police / Ministry of Defence / Other Public Services (from policemen, soldiers and so on, either directly for trauma at work, or from members of the public)

E. Criminal Compensation (from the Criminal Injuries Compensation Authority)

F. Ministry of Agriculture (in respect of Foot and Mouth, or BSE, for example)

G. Department of Trade and Industry (for industrial injuries, such as compensation to former British Coal miners for lung disease)

There are types of compensation that either don't fall within our definition or we believe the amounts concerned are relatively small in the scale of things. A decidedly non-trivial type of compensation we haven't included is the practice of granting ill-health or early retirement pensions having suffered an illness or accident at work. On a related theme, we haven't included compensation for redundancy, nor have we considered amounts changing hands on divorce. Slander and libel would fit within our definition but probably aren't a major drain on the nation's resources.

There are other types of compensation we haven't included but with a slightly different definition might have been caught within our net. For example we have not considered the Departments of Social Security and Transport, who respectively compensate people for becoming unemployed or having a new road built through their back-garden. Neither have we included EC subsidies, that might be thought of as compensation for an imperfect market. There are some types of compensation that we probably should have included but, heck, we couldn't include everything: compensation paid via Industrial Tribunals for example. Finally, whilst we have included asbestos-related diseases in sections A and G, we have not dwelt on these types of claim, though we could have done and a review of asbestos-related disease claims would warrant a paper in itself.

In the sections that follow we give a bit more background about these various types of compensation, particularly for those categories for which the details might not be as well known to actuaries.

2.3 Details of the main types of compensation

A. Insurance Claims

Perhaps the most obvious type of compensation (at least to actuaries) is insurance. The main potential impact of Compensation Culture on insurance claims is for those types of insurance providing cover against liability for injury to third parties, most notably Motor, Employers' Liability and Public Liability. The concept of Compensation Culture can also be applied to professional indemnity cover, where the damage caused might be financial rather than physical.

There are two types of claim that can be thought of as pseudo-insurance claims because by rights they should be insurance claims (and the insurance industry is paying them indirectly anyway). The first type of pseudo-insurance claim are claims paid by the Motor Insurers' Bureau ("MIB"), which settles claims where a third party either did not have insurance or cannot be found. The second type is claims paid by the Financial Services Compensation Scheme ("FSCS", which superseded the Policyholder's Protection Board and pays 90% of all personal claims in respect of insolvent insurance companies). Both these schemes are funded by levies on insurance companies, so are effectively "insurance" claims by another route. We have included an estimate of the compensation amounts included with the MIB and FSCS levies in our estimates of costs given in section 4.

B. NHS claims

This is one area where Compensation Culture seems to have taken root. As we see in section 4, increasing numbers of people are suing the NHS for negligently performing operations or for additional illnesses succumbed to whilst in hospital. Overall, this has increased the burden on the taxpayer – as most people rely on the NHS, which self-insures, for their healthcare needs. The private sector is also affected by the increase in compensation claims. As well as the actual financial cost to society, there are other consequences, for example an increase in defensive medicine such as medical tests and other procedures which are mainly carried out to ensure that "all angles are covered" in defence of potential future claims. We have also seen the withdrawal of care providers from certain fields due to the high risk of claims and correspondingly high insurance premiums.

Each NHS Trust is a separate legal entity and is therefore responsible for claims brought against it. In 1995 the NHS Litigation Authority ("NHSLA"), a special health authority, was set up to provide central administration for the various schemes providing funding arrangements for NHS clinical negligence. The various schemes are:

Clinical Negligence Scheme for Trusts (CNST).

This is a pooling arrangement covering claims for Trusts which occurred after March 1995. Trusts were free to choose from a range of excess levels. The scheme operates on a "pay as you go" basis.

Existing Liabilities Scheme ("ELS")

This covers all NHS bodies' liabilities for claims for incidents that occurred before April 1995, where the estimated cost were above £10,000. In April 2000, the NHSLA became directly responsible for the management and financial control of all ELS claims still open against the NHS.

Ex-RHA Scheme

This scheme covered claims against the former Regional Heath Authorities. The claims mainly arose from the activities of postgraduate teaching hospitals.

Liability to Third Parties Scheme ("LTPS")

In 1998 the government decided that NHS Trusts should no longer insure commercially for non-clinical risks, the principal risks being Employers' Liability, public liability, buildings and property. Motor vehicles and other defined areas (eg PFI schemes) continue to be insured with commercial companies. The LTPS was introduced in 1999 and is administered by the NHSLA.

Of course, increasing numbers of claims against the NHS might not be a symptom of the Compensation Culture: it could just be that the level of care offered by the NHS has deteriorated and there are more accidents happening in hospitals. Whilst some might argue that NHS resources have been stretched to the limit, and that this may have contributed to increased claims, we think the underlying driver of more claims is the propensity to claim rather than the propensity to have an accident. With the huge advances in medical science, as witnessed by the recent improvements in mortality of the population at large, it's hard to believe that hospitals provide lower levels of care now than they did 10/20 years ago.

C. Local / Education Authorities

Many of the accidents that happen in the UK happen in the street, shopping centres or other public areas, giving rise to claims against local authorities. Local authorities have responded by introducing inspection systems to monitor the condition of highways and shopping centres. Local authorities are using the existence of such systems as a defence against compensation claims (as well as a way of preventing accidents!).

A recent legal ruling gave some respite to local authorities. A House of Lords ruling in June 2000 in the Goodes v. East Sussex County Council case established that the legal duty to maintain the highway does not extend to removing or preventing the formation of snow and ice. So at least local authorities aren't responsible for the weather. The case itself was very sad. In November 1991 Mr Goode's vehicle skidded on patch of black ice and he lost control, crashing into a bridge parapet, leaving Mr Goodes paralysed. He claimed that Sussex County Council were "in breach of their statutory duty to maintain the highway". The Council followed a code of practice for its gritting procedures stating that all roads should be gritted by 7:30am; however the accident happened at 5:30am. The case shows that there are boundaries to the duties of care local authorities are expected to have. Though clearly, having gone to the House of Lords, there was a certain body of opinion in the legal community that felt in some way those responsible for the roads were at fault if someone skids on icy roads. The case also highlights the sometimes tortuous nature of the legal process – with nearly a decade elapsing between the accident and the final decision.

Within schools, local education authorities have increasingly been sued for stress-related injuries. For example in the case of Mr A v. Unnamed school in May 2000, record compensation of £300,000 was awarded. Mr A was pushed down some stairs during a disciplinary disturbance at a school in Shropshire. Whilst he was physically uninjured, he became irrational and started suffering from delusions and has been unable to work ever since.

In other areas in schools, there have been recent cases of students suing exam boards for the detrimental effects on their education/career as a result of errors made in exam marking. School trips are now becoming increasingly expensive due to insurance premiums for cover taken out by education authorities against claims from parents and pupils. Recent high-profile incidents of tragic deaths of students while on overseas school trips have accelerated this trend.

Whilst one might argue that if the desire to avoid being sued leads to more stringent controls over school trips and improved safety, particularly "adventure activities", this is a good thing. However, there have been claims which have stretched the defintion of "proximity" and "forseeability" and risk curtailing almost any activity. For example the case of Dowling v. London Borough of Barnet and Bowman's Farm in January 2000. In this case the Borough of Barnet was found liable for multi-million pound damages after a pupil contracted E-Coli on a school trip to a farm (suffering brain damage and paralysis). Whilst terribly sad for the individual concerned, there are many people who would argue that it's not reasonable for a school to be liable for a disease one of their pupils catches whilst visiting a farm, park or other outdoor area.

The National Association of Head Teachers ("NAHT") warned of a worrying rise in legal actions against schools recently. The NAHT professional advice head, Kathryn James, is adamant that the Accident Management companies are to blame. She says the NAHT "have evidence of solicitors' firms with advertisements such as "are your children having problems at school" and "are your children's special needs being met?" She adds that schools are seeing "an increasing number of parents being supported by solicitors or even barristers at exclusion meetings". James says that the NAHT will investigate the efficiency of current methods of dealing with complaints against schools in a bid to diffuse the problem. The teaching profession has also approached the government about the regulation of Accident Management companies.

D. Police / Ministry of Defence

Awards for Post Traumatic Stress Disorder ("PTSD") in the armed and police services have increased considerably recently. For example, police officers are seeking damages for the trauma they claim to have suffered in the Bradford riots in 2001. Ex-armed service personnel are suing the MoD for PTSD for service since the 1970s in Northern Ireland, Bosnia, Falklands war and the Gulf war.

By way of illustration of the amounts involved, a former police sergeant, who developed symptoms of PTSD nine years after the Hillsborough disaster in 1989, was awarded over £300,000. In 1996, 14 police officers accepted a settlement for £1.2m. A soldier recently received £377,000 after alleging that the army failed to protect him from frostbite whilst on exercises in Canada. Another received £387,000 for "negligent treatment of warts".

Many of the issues affecting employers, such as harassment, discrimination legislation, and so on also affect the army and police services. However, claims have now been made concerning issues that were traditionally seen as part of the norm in the "line of duty". For example, the army has been sued by a soldier who has claimed for the stress of seeing his colleague killed on duty.

PTSD has also led to claims from members of the public in combat and war zones. These claims are most likely to increase further as the armed forces' profile in trouble spots around the world has increased.

E. Criminal Injuries Compensation Authority

In 1996 the government established the Criminal Injuries Compensation Authority ("CICA") to administer a tarrif-based scheme, which came into effect in April of that year. The objective of this non-departmental body is to administer compensation throughout Britain on the basis of common law damages to victims of a crime of violence. Payment of compensation for injury as a result of a crime of violence is intended to be an expression of public sympathy and support for innocent victims. As from April 2001, all applications for compensation are considered under the new Criminal Injuries Compensation Scheme 2001.

As a general rule anybody in the UK that has suffered physical or mental injury as the result of a criminal action or criminal negligence will be entitled to receive compensation from the CICA. However, applications for compensation must be made within two years of the incident. Compensation may be reduced or withheld if the applicant has in the past been responsible for criminal injuries to others. Compensation will not be awarded for shock or distress caused by theft, but only for physical or mental injury. Injuries resulting from an accident are not encompassed by the Scheme.

In general, it is the only injured party who can make claims. However, if the victim dies as a result of their injuries or for any reason is incapable of making a claim, then the victim's relatives may make the claim. If the injuries are very serious, or even fatal, and a considerable amount of money could be involved, claimants are advised to contact a specialist solicitor.

There is a standard scale of compensation amounts, headline details of which are shown below:

- Paralysis of all limbs £250,000
- Loss of ear £10,000
- Loss of sight in one eye £20,000
- Dislocated Jaw £2,000
- Fractured thigh bone with full recovery £3,000
- Loss of one front tooth £1,500
- Facial scarring with serious disfigurement £7,500

If the injury results in loss of wages for over 28 weeks a claimant may also seek compensation for loss of earnings. Furthermore, there may be an entitlement to extra compensation to cover any expenses for medical, dental or optical treatment.

Generally the compensation amounts from CICA are less than the corresponding amounts one would receive as part of a civil claim. The Judicial Studies Board first set up a Working Party to prepare "Guidelines for assessment of general damages in Personal Injury cases" in 1992. The Working Party report aims to distil the conventional wisdom as to sensible amounts for General Damages and provide a reference point judges considering the level of damages for pain, suffering or loss of the amenities of life. The guidelines have been updated periodically, the last update (at the time of writing), being the fifth (2000) edition, triggered by the Heil v. Rankin case, which suggested a step change in the amounts for General Damages, following a period of consultation.

The CICA Compensation amounts are compared to the JSB Guidelines in Appendix II. For very serious injury the amounts are similar. For lesser injuries, the CICA amounts tend to be at the lower end or below the JSB range. Appendix II also shows the amount of inflation of General Damage amounts from the JSB Guidelines – broadly 4-6% over the 1990's. Of course General Damages are only one component of the cost of compensation and Special Damages – for loss of income and the cost of future medical care, have increased considerably over the period. Studies of Motor Personal injury costs, for example the IUA/ABI survey (see Appendix I), also note that costs have increased because of the frequency of claims increasing (as well as the average cost). It's generally accepted that there have been increasing numbers of smaller Motor Personal Injury claims and an increasing range of claim types.

F. Ministry of Agriculture (CJD, BSE)

A number of major outbreaks of disease among UK livestock have led to headline news over recent years. In particular, the outbreak of BSE, together with the potential link to CJD, as well as the more recent Foot and Mouth outbreak, have led to significant compensation payments.

BSE

The Ministry of Agriculture, Fisheries and Food ("MAFF"), which has subsequently been incorporated within The Department for Environment, Food & Rural Affairs ("DEFRA"), has paid out significant amounts in compensation to farmers. The source of information within this section was the BSE Inquiry which was announced in Parliament on 22 December 1997, and set up on 12 January 1998. The Inquiry aimed to establish and review the history of the emergence and identification of BSE and new variant CJD ("vCJD") in the UK and the action taken in response to it up to 20 March 1996.

Compensation schemes were designed to reimburse farmers for the losses they incurred when animals were slaughtered as suspected BSE cases. These payments were determined by reference to the "sound market value" of the animal - that is, its value if it had not been sick. Payments in England, Scotland and Wales were funded by MAFF as described below. Separate arrangements were put in place in Northern Ireland.

Between 1988 and 1996 three successive schemes were developed to compensate farmers in England, Scotland and Wales. These schemes were funded by MAFF (ie the taxpayer).

Under the first scheme, which was in effect from August 1988 to February 1990, compensation was paid to a farmer for an animal affected with, or suspected of having, BSE at an amount equal to 50 per cent of the market value of the animal or of an adjusted average market price for all cattle sold in the month occuring two months before the animal in question was slaughtered, whichever was less. For an animal that turned out, on post-mortem examination, not to be infected with BSE, compensation was 100 per cent of the above.

Under the second scheme, which took effect from 14 February 1990, compensation for an animal affected with BSE was paid at an amount equal to 100 per cent of either the market value of the animal or of the average market price for all cattle sold in the month two months before the animal in question was slaughtered, whichever was less. For an animal subsequently confirmed as not affected with BSE, compensation was an amount equal to either the market value of the animal or 125 per cent of the average market price for all cattle sold in the month occuring two months before the animal in question was slaughtered, whichever was less.

The third scheme was introduced from 1 April 1994. The main change was replacement of the average price with an "indicative" market price. This was essentially a weighted average that distinguished between cattle less than seven years old when valued for slaughter as BSE suspects, and those aged seven years or more when valued. It was calculated using data in Great Britain relating to the month occurring two months before the date on which the market value was determined.

CJD

Until fairly recently, the Government had not agreed to pay any compensation to vCJD victims. However, on 1st October 2001 the Secretary of State for Health announced details of the full compensation scheme that has been developed to make payments to each of those who have been diagnosed with vCJD and their families.

The compensation scheme for UK victims of vCJD has been developed by the Government in consultation with representatives of families affected by vCJD. A new vCJD Trust will administer the compensation fund. An interim Trust fund was set up on 12 April 2001 and interim payments of £25,000 have already been made to most of the families.

Foot and Mouth

The Foot and Mouth outbreak in the UK during 2001 has resulted in significant amounts of compensation being paid by the Government to farmers. No other group of people (for example hotel owners) have or are likely to receive any compensation from the Government as the Government has ruled out paying compensation for "consequential losses" as an indirect result of the disease.

G. Department of Trade and Industry (Industrial Injuries)

Employees of British Coal were exposed to coal / rock dust from mining activities underground. Diseases that arise from such exposure include:

- **Emphysema** - Abnormal permanent increase in size of respiratory portion of lung distal to terminal bronchioles (i.e. respiratory bronchioles, alveolar duct and alveolar sac)

- **Chronic Bronchitis** - the presence of chronic bronchial secretions, enough to cause expectoration, occurring on most days for a minimum of 3 months of the year for 2 consecutive years

- **COAD – Chronic Obstructive Airways Disease**. This is actually two related diseases, chronic bronchitis and emphysema, one rarely occurring without a degree of the other, though one may be more prominent. A recognized definition of COAD is a disorder that is characterized by reduced maximal expiratory flow and slow forced emptying of the lungs; features that do not change markedly over several months.

- **Asthma** – a respiratory disease characterized by a reversible narrowing of the airways that results in periodic symptoms of shortness of breath.

Many miners suffered from some / all of the above (the majority suffering from COAD), and they brought compensation claims against British Coal. In 1997, British Coal allowed a series of test cases to proceed to a trial, which lasted three months, to determine if they were liable to pay compensation to the miners in respect of these diseases. On 23rd January 1998, Justice Turner ruled in favour of the miners.

Following the break up of British Coal, their liabilities were transferred to the Department of Trade and Industry (DTI) on the 1st January 1998, under the terms of the Coal Industry Act 1994. Hence the majority of the compensation will be paid by the Government (ie the taxpayer). A compensation scheme has been established to handle all such compensation claims. The detailed schemes, known as Handling Agreements, try to mirror English Common law and set out how liability is established and compensation paid. This is preferable to many thousands of cases clogging up the courts for many years. The judgement only related to England and Wales, but similar arrangements were negotiated to allow Scottish claims to be processed.

One complication is that not all miners who worked underground were British Coal employees. British Coal employed mining contractors from the private sector and therefore the insurance industry has a potential exposure through Employers' Liability insurance of the contractors involved. However, this liability is not clear-cut. British Coal would argue that the mining contractors had a non-delegable duty towards their employees and that in respect of development work the contractors were in sole control of the environment. The contractors would argue that whilst they accept a duty to their employees, it is British Coal that owned the statutory duty and its course of dealing showed that it accepted this duty. For example British Coal governed the working practices, it appointed the pit deputies and so on. Even on development work it had a supervisory presence underground and therefore had some form of effective control. The DTI is currently in negotiation with the relevant insurers to determine how much it contributes to the liability of such cases.

3. HOW DID WE GET HERE ?

3.1 A Brief History of compensation: before After-the-Event Insurance

The 1999 GIRO paper on Motor Bodily Injury claims gave some background to the UK legal framework that the interested reader may find of use. The dusty corner of the (english) legal framework that relates to compensation is the law of negligence. The law of negligence has as its basic premiss that we owe each other a "duty of care", even if there are no contractual liabilities between two parties. To succeed, a negligence claim needs to show proximity, forseeability and fault. Proximity means that the claimant and defendant had a sufficiently close relationship that the latter could forsee the impact of their actions on the former. This is clearly closely linked to forseeability, namely that the defendant could reasonably have forseen that their actions would cause harm. Finally, it must be shown that any harm was the fault of the defendant.

The legal principles defining "duty of care" evolved through case law over generations but were most famously defined in a landmark case by Lord Atkin, Donaghue v. Stevenson, in 1932. The "duty of care" was further refined by Lord Wilberforce in Anns v. Merton in 1978, which introduced a "two-stage" test, the first stage considering proximity/forseeability, the second stage considering whether there are wider considerations that might limit or reduce the duties owed by one party to another. After a series of test cases in the 1980's, the law of negligence developed a three-stage test, tacking on whether it is "fair, just and reasonable" for a duty of care to be owed.

As can be seen above, the legal definitions of negligence move (albeit sometimes slowly) with the times, as case law tests the boundaries of situations in which duties of care are owed. So, have there been any sudden changes in the legal framework that have prompted the sudden development of new classes of compensation? Maybe. As we will come onto in the next section, there have been a number of changes that have increased the awareness of the right to compensation as well as the ease with which claims can be brought. These may have helped fuel the growing range of claims that are brought.

There has undoubtedly been a growth in the types of claim over recent decades. For example, claims for psychological damage were almost unheard of only a decade ago. In part this follows the growth of recognised medical conditions. Developments in the UK also mirror to some extent changes overseas. It was only in the 1980's that the medical condition "post-traumatic stress disorder" was defined in the US. Both the medical and the legal professions in the UK have followed suit by recognising this as a medical condition and a possible Head of Damage.

So within a generation, barely a decade in fact, a new medical condition ("PTSD") has developed for situations that have in fact always arisen and this has become a standard part of many UK claims. Sixty years ago, soldiers in the second world war were treated for "shell shock" and told to pull themselves together. Today they are diagnosed as suffering from PTSD and sue the Ministry of Defence. Nearly 40 years ago, the world was horrified by the Aberfan disaster, but there was little focus on compensating the families of victims or rescue workers. Today it is very likely that such a tragedy would lead to banner headlines about compensation costs and a huge class action.

As well as developments in medical and international arenas, there have been other factors leading to the proliferation (or impression of proliferation) of compensation claims. In the 1990's the law around advertising of legal firms was relaxed, making it easier for legal firms to seek out potential claimants and assisting the development of "class actions" involving large groups of people.

One of the biggest factors that may be fuelling compensation claims is the abolition of the Legal Aid system for personal injury claims and its replacement with "after-the-event" insurance. This is such a significant topic that we have given it a section all of its own…..

3.2 The death of Legal Aid and the introduction of a new Conditional Fee regime

The British Legal Aid scheme was established in 1948, recognising that the cost of hiring lawyers was beyond the means of most members of the public. The scheme did not actually cost the public purse a great deal. Effectively the scheme lent lawyers money to pursue cases: if the case was successful their costs were largely recovered from the losing party. Individuals wishing to use the scheme were means tested and had an initial assessment whether it was reasonable for the case to proceed. Over the years the means testing became stricter and stricter, so at the death, the vast majority of ordinary citizens effectively did not have access to the legal system without considerable financial risk to themselves.

Some attempts to widen access to justice were made in the mid-1990's, when Conditional Fee Arrangements were introduced (1995). These allowed lawyers to take on cases on a "no win, no fee" basis, so the claimant could take on a case knowing that if the case was lost, no legal fees need be payable. Lawyers could charge a "success fee", uplifting their normal level of fees if they won, to compensate them for the cases they took on and lost (and received no fee). To cover themselves against the risk of losing and becoming liable for the defendant's legal costs, lawyers could take out "after the event" ("ATE") insurance. These policies could also cover the expenses of the claimant's solicitor. However, in the event of winning the case, neither the success fee nor any ATE insurance premium were recoverable from the losing party – they were recoverable from the claimant's damages. So whilst the claimant could not lose money by bringing the case to Court, the amount of damages could be considerably reduced. The lack of recoverability of the ATE premium and success fee from the losing side reduced the appeal of the system, and the number of cases on this basis never took off.

With half an eye on the cost of the Legal Aid scheme (some might say) and half an eye on the increasingly poor access to the justice system, a new regime was introduced. Following a period of consultation, the Lord Chancellor's Department published a report detailing its conclusions (Conditional Fees: Sharing the Risks of Litigation). Legal Aid for most personal injury cases was abolished from 1 April 2000 (it remains for other claim types, for example medical malpractice) and new measures were introduced to ensure "more effective means of achieving access to justice".

The significant change introduced was that both success fees and any ATE premium could be recovered from the losing side. Here then was truly a "no risk" legal regime for claimants. If they lost, they paid no fee. If they won, their legal fees, plus any success fee uplift, plus any insurance premium, were recoverable from the losing side. Someone making a claim on this basis literally can't lose financially.

The government targeted CFAs at individuals seeking compensation for personal injury but they are not to be restricted to this class of claim. Some legal firms, for example, are accepting taxation work on a CFA basis and some commercial litigants may choose to use them to provide their solicitors an additional incentive by giving them a stake in the success of the case.

A Practice Direction describing the procedures around CFAs came into effect from 3 July 2000. However, much of the detail of how the new scheme should operate has been left to be established by test cases. For example, at what point in legal proceedings is it reasonable to pursue a case on a "no win no fee" basis? If the party being sued agrees straight away that he is liable and happy to pay damages, is it fair that they then have to pay a success fee uplift and the cost of an ATE premium? What is a fair level of success fee? 5%, 10%, 50%? If the vast majority of all cases that go to court are successful (in fact about 95%+ are), should the level of success fee somehow be moderated so as to not simply increase the fees received in aggregate by the legal profession? (if 95% of Personal Injury cases are successful, the equitable level of success fee is about 5% - in fact the typical rate is far higher than this). There have been some landmark cases regarding the recoverability of ATE premiums (Sarwar v. Alam) and the level of success fee (Callery v. Gray). These are described further in section 3.5.

As well as common-or-garden CFAs, further "Collective CFA" regulations came into effect on 30 November 2000. These enable bulk legal service providers to enter into one CFA with a large group of claimants, rather than a series of individual CFAs. This makes collective legal action much more accessible by, for example, Trade Unions, who can collectively launch legal action without incurring any legal costs and with no reduction in the damages their members might receive. For example the TUC has launched a helpline for call centre staff to register if they might have suffered from acoustic shock and be entitled to compensation.

3.3 Woolf reforms

On 26 April 1999 the civil justice system in England and Wales underwent a radical change. New Civil Procedure Rules were introduced by Lord Woolf aimed at tackling the problems of cost, delay and complexity in litigation brought about by excessive adversarialism.

Three years after the introduction of these changes, the Law Society published a study considering how the new rules are working ("More Civil Justice? The impact of the Woolf reforms on pre-action behaviour", April 2002). In particular the study tried to assess the extent to which the reforms have achieved the goals stated above.

Has Woolf speeded up the process of settlement? Many respondents to the study certainly felt that it had, but by looking at actual cases the study found the average time to settlement was largely unchanged; the shortening of the delay from receiving a medical report to settling the case being cancelled out by the increase in the time for claimant solicitors to make their first contact with defendants and to instruct a medical expert.

Has Woolf reduced costs? Again the evidence is inconclusive. For every saving made in one part of the process there appears to be an additional cost somewhere else that offsets the saving. Whilst the evidence is that personal injury claims costs have continued to rise faster than retail inflation it is by no means clear how much of this, if any, is due to a failure of the Woolf reforms.

Has Woolf simplified matters? It is virtually impossible to isolate the impact of Woolf from the abolition of legal aid for most personal injury litigation and the growing use of CFA's, referred to in section 3.2. Several surveys, including this latest one, have shown that the Woolf Reforms are seen as making the litigation culture less adversarial, although all involved in the Law Society study said that far too much time is now spent arguing about costs. There is a view held by many within the legal profession and elsewhere, that the positive benefits of the Woolf regime have been undermined and possibly negated by the growing use of CFA's and continued uncertainty over the workings of the CFA regime.

3.4 The birth of Accident Management companies

As expected, the move to CFAs has led to the volume of cases and thus the frequency of claims increasing. Furthermore, Personal Injury lawyers and "Accident Management" companies are advertising their services and actively encouraging individuals to pursue compensation claims. Examples of organisations active in this area include "Claims Direct" (now in receivership), "National Accident Helpline" and the "Accident Advice Bureau".

These organisations seek to guide a claimant through the process of obtaining compensation by organising solicitors, medical experts and expert witnesses. They also offer a service to solicitors to provide funding for the initial expenses incurred in pursuing a claim.

Insurers are increasingly finding that they are paying claims on a CFA basis – hence paying a success fee and an ATE premium on top of the amount they would otherwise have paid. Whilst it is hard to quantify, the growing number of Accident Management companies is no doubt causing additional numbers of claims to be made. Clearly this has a knock-on effect on the premiums charged for Motor, Employers' Liability and Public Liability policies. Even if insurers settle as soon as they learn of a claim, they are still expected to pay a success fee and an ATE premium, a point that has been contested in court in the Callery case – see section 3.5.

Success fees and ATE premiums are not recoverable in most cases where the claimant has "before-the-event" (i.e. traditional) legal expenses cover. Moreover, solicitors are obliged to check with their client whether they have before-the-event ("BTE") cover before accepting them as a client on a CFA basis – this is one of the points that was tested in the Sarwar case – see section 3.5 again. So where there is BTE cover in place, solicitors will not be allowed to charge success fees and the additional costs described above do not arise. Thus it may be to the advantage of insurers to provide as much traditional legal expense insurance as possible. The increased profile of legal activity may also raise the profile of traditional legal expense cover which could further increase its penetration in the market.

As well as the cost to the insurance industry of paying compensation claims brought under CFAs and the consequently higher cost to society at large in terms of higher insurance premiums, the insurance industry has started to respond to the opportunities offered by the sale of ATE policies. For example, "delegated authority" facilities are now available to firms managing a sufficiently large number of cases each month. This allows the solicitor to extend cover to the claimant, on behalf of the insurer, on the basis of criteria arranged in advance between the solicitor and the insurer.

The firm of solicitors is normally required to offer cover before settlement negotiations have failed in order to protect the insurance company from the danger of being left only with the riskiest of cases. Loans are also being offered to the claimant to cover expenses (for example medical reports or expert witness costs) which have to be paid if a claim is pursued. The loan and interest is recoverable from the defendant in the event of success and from the insurer in the event of failure. Rating and underwriting these types of policies can prove difficult. Abbey Legal Protection Ltd. who have been running the Law Society's "Accident Line Protect Policy", recently had to double premium rates in the face of losses made since the inception of the scheme in 1995. Assuming this business can be rated profitably going forward, the diversion of economic resources to cover insurers' profits for this new class of business could be considered a further cost to society of the Compensation Culture.

To put the impact of Accident Management companies into perspective, the Datamonitor Personal Injury Litigation Survey (see Appendix I) estimates that about 60,000 cases per month are being taken on by Accident Management companies. The market leader is The Accident Group with 9,000 cases per month and 14.3% share of the market. Trade Unions come second with 7.9% of the market. Claims Direct is next with 4.0% and Thompsons, the solicitors with close contacts to the Trade Union movement has 3.5%. The remaining players have less than 2.5% each.

The split of type of claim for The Accident Group is 45% General Liability, 36% Employers' Liability and 19% Road Traffic Accidents ("RTA"). For Claims Direct, the split is 35% EL, 35% GL, 20% RTA and 10% Criminal Injury. Claimline is the smallest market player with 0.8% market share. Its business is split 35% RTA, 35% EL, 20% GL, 5% Medical Negligence and 5% "other".

If the figures from the Datamonitor report are truly representative, it means that potentially 700,000 claims per year are being handled by Accident Management companies, about 150,000 per year relating to road traffic accidents. This would mean about half of all Motor accident claims would involve an Accident Management company (and hence, usually, a CFA and ATE premium); additionally there would be cases not dealt with by an Accident Management company dealt with on a CFA/ATE basis. This does not stack up with our practitioner survey in section 7 - in which about 15% of Motor personal injury claims involve a CFA.

It is worth noting that the underlying trend in road traffic accidents is generally stable or decreasing. For example the number of road traffic accidents has generally decreased, and greater emphasis on speeding and safety may see this trend continue. So this may mitigate against increased numbers of claims fuelled by CFAs. The same applies for injuries in the workplace.

3.5 Current and future developments

The workings of claims made using BTE and ATE insurance have been and still are being resolved in a series of test cases, some of which are described below.

Two recent legal rulings have impacted the way in which cases brought under conditional fee agreements will operate. The first, Callery v. Gray considered the level of success fee (and ATE premium) that it is reasonable to claim. The second, Sarwar v. Alam, considered the recoverability of ATE premiums, particularly when BTE insurance was in place.

Callery v. Gray

In this case, the insurer was notified of a straightforward case (minor whiplash injury of a back-seat passenger, Mr Gray) and admitted liability straight away. They were then asked to pay a 40% success fee and a £350 ATE insurance premium. This seemed unreasonable – but there are no guidelines as to what reasonable success fees (or ATE premiums) are, so the insurer used this as a test case to help determine what reasonable success fees and ATE premiums might be.

As noted above, given that roughly 95% of all Personal Injury cases are in fact successful, an economically equitable/neutral success fee would be about 5% (in fact the Fennel report on the funding of Personal Injury litigation showed a win probability of 98% over all cases). The Law Society recommends a maximum success fee of 25% - but many Personal Injury cases are not dealt with by people who are regulated by the Law Society. In a report by Stella Yarrow, of the University of Westminster, the average success fee for Personal Injury cases was 40% (the maximum is 100%).

Whilst the purely statistical case for success fees of 40% being unreasonable (unless only about 70% - 1/1.4 - of case are successful) is clear-cut, it is less clear how one might determine reasonable ATE premiums. Some ATE premiums reach £1,000 or more, which is a considerable extra cost when legal costs for Personal Injury claims are typically only a few thousand pounds. Part of the rationale for objecting to seemingly very high ATE premiums is that they are in large part trying to recoup the considerable advertising costs that Accident Management companies spend trying to drum up business. So effectively insurers (and ultimately the consumer through higher premiums) are paying for third parties to engage in mass advertising campaigns to encourage compensation claims (!!).

In the Callery case, the County Court originally allowed the 40% success fee and the ATE premium in November 2000. The case then went on to Appeal at the Court of Appeal in June 2001. Rather unusually, but reflecting the significance of the case, the Court of Appeal asked for further written submissions after the initial hearing (to allow for some of the interested industry-wide bodies to express their opinion). The judgement emerged in two parts. On 17 July 2001 the Court ruled that the success fee should be limited to 20% except in unusual circumstances. On 31 July 2001 they ruled that £350 was reasonable – but didn't give any indication of the "reasonableness" of ATE premiums generally. Seeking further clarification, the insurer took the case to the House of Lords, which delivered its judgement in June 2002, upholding the Court of Appeal judgement. Whilst the judgement was upheld, the decision was couched in quite apologetic terms, recognising the unsatisfactory nature of the current regime.

One reason that has been cited for the sometimes unreasonable-seeming size of success fees and ATE insurance premiums is the lack of competitive pressure in the market, since the client who agrees the fee will never have to pay it. To quote Lord Hoffmann, from his judgement in the Callery v Gray case:

"The difficulty is that … it is extremely difficult to say whether the actual 'premium' paid by the client was reasonable or not. This is because the client does not pay the 'premium', whether the success fee is agreed at an earlier or later stage. The transaction therefore lacks the features of a normal insurance, in which the transaction takes place against the background of an insurance market in which the economically rational client or his broker will choose the cheapest insurance suited to his needs. Since the client will in no event be paying the success fee out of his pocket or his damages, he is not concerned with economic rationality. He has no interest in what the fee is. The only persons who have such an interest are the solicitor on the one hand and the liability insurer who will be called upon to pay it on the other. And their interest centres entirely upon whether the agreed success fee will or will not exceed what the costs judge is willing to allow."

and later:

"ATE insurers do not compete for claimants, still less do they compete on premiums charged. They compete for solicitors who will sell or recommend their product. And they compete by offering solicitors the most profitable arrangements to enable them to attract profitable work. There is only one restraining force on the premium charged and that is how much the costs judge will allow on an assessment against the liability insurer."

Sarwar v. Alam

This case was brought to the Court of Appeal on 19 September 2001 to rule on the recoverability of CFA success fees and ATE insurance premiums when the claimant is already in possession of BTE insurance cover.

Sarwar was a passenger in a car driven by Alam and suffered slight injuries in an accident. Alam admitted liability and Sarwar's solicitors sought to recover the ATE premium and a success fee. At the costs hearing it was discovered, however, that Alam's motor policy provided BTE cover for both driver and passenger (but that Alam was unaware of this!). This strikes a chord with our public survey in section 7, in which a quarter of the respondents did not know whether their cover included legal expenses or not. The original ruling was that Mr. Sarwar should not have been sold ATE insurance because he already had BTE insurance. The Court of Appeal over-turned this ruling. However, that was only in the particular circumstances of this case and the Court made some helpful more general rulings, that generally ATE insurance should not be sold if BTE insurance was in place.

The Court of Appeal established that:

- The solicitor should ask the client at first interview to bring along any motor policy, household policy and any stand alone BTE policy to establish the existence of any relevant policy. Policies belonging to the client's spouse or partner should also be requested.
- Where practical, the solicitor should also ask a client passenger to bring a copy of the driver's motor insurance policy as BTE cover may be available to the passenger from this source. If driver consent is necessary to use this BTE cover, the solicitor should tell the client to obtain this consent. Nothing should be done by the solicitor to induce the driver to withhold such consent.
- Sarwar was not obliged to use the driver's BTE cover because the issuer of the driver's motor policy (CIS) had delegated to another insurer, DAS, control over the BTE cover. This gave DAS the right to appoint its own legal representative. The relationship between DAS and CIS was not considered transparent and so it was determined to be unreasonable to insist that Sarwar use this BTE cover.
- The Court also commented that if the BTE insurance financed some transparently independent organisation to handle such claims and if this was made clear in the policy, "the position might be different".
- The Court rejected the idea that a claimant had a Common Law right of choice of solicitor and ruled that if the cost of instructing a solicitor on the basis of a CFA and ATE insurance was disproportionate to the value of a claim and suitable BTE cover was available, the BTE cover had to be used.

Strictly speaking the Court's guidelines relate only to claims under £5,000 (which in fact covers many claims) but the principle applies to other claims until such time as the value of the case, the complexity involved or the skill required of the solicitor predominates over the BTE service and funds available. At this point the claimant can choose to go down the CFA/ATE route despite the existence of BTE cover.

There are a number of other test cases relating to CFA's and BTE/ATE insurance coming up at the time this paper is going to press. A Claims Direct test case is described below.

<u>Other ATE/BTE-related court cases</u>

Claims Direct brought a number of test cases about the level of ATE premium it could recover. They were ruled on in July 2002, with Senior Costs Judge Hurst ruling that Claims Direct claimants can recover half (£621) of their ATE premiums (of £1,312) from liability insurers. The test case involved a number of general insurers including Zurich, Royal Sun Alliance and Norwich Union.

The July ruling was in respect of the first tranche of test cases - at the time of writing, it is not clear if the second tranche will go ahead (due to Claims Direct's financial position). Of note for liability insurers was the Judge's decision that no ATE premiums will normally be allowed where liability has been admitted by the insurer before the policy was taken out. It is not known if the claimants will take the decision to the Court of Appeal.

Fairchild

A further case that may have some more general ramifications for the compensation regime is the so-called Fairchild case. This was in fact a bundle of test cases relating to mesothelioma claims, heard in the House of Lords. Mesothelioma is a particularly unpleasant cancer generally thought to be caused by exposure to just one fibre of asbestos. The latency period between exposure and manifestation can be 40 years or more. Victims will often have worked for a number of employers dealing with asbestos, any of whom might have been the one employer whose period of work lead to the disease being triggered. This gave the Courts some difficulty; it was accepted that it was impossible to know which employer was responsible for causing the disease, so to share liability would be unjust – as an "innocent" employer would be found "guilty". Caught by this dilemma, the Court of Appeal had found neither employer liable for damages.

The House of Lords overturned this decision on 16 May 2002, giving their detailed ruling on 20 June 2002. The ruling made it clear that an employee can claim from any former employer, without having to prove which one caused the disease. The House of Lords deliberately side-stepped the issue of how a number of employers might sensibly share liability for a given case and effectively threw this issue back at the insurance industry to resolve. The decision makes little difference to the total amount of compensation paid to mesothelioma victims (although it may lead to the share of costs changing between solvent and insolvent employers and their insurers) compared to the situation before the Court of Appeal decision in December 2001. However, it marks a change in attitude of the Courts and a change in approach to proof of causation. These changes may have wider ramifications in future for compensation claims. For example for other types of disease claim, perhaps ones not currently known about, future claimants may find it easier to claim against anyone who might have been partially responsible, without having to prove who was actually responsible.

The demise of Accident Management companies ?

A number of Accident Management companies have struggled to make profits as the number of cases has been less than they expected. Legal delays, due to the uncertainty of recovery of ATE premiums have caused them cash-flow problems. Claims Direct came in for particular scrutiny, including banner headlines about "Shames Direct" as large proportions of claimants damages were consumed by their fees.

In July 2002, Claims Direct went into receivership, abandoning attempts to call in Administrators. The company was floated with a share price of 180p but their shares were suspended at 2p. They made a loss of £20m in 2001 and were expected to lose even move in the year to March 2002.

Whilst Claims Direct seemed to be singled out for bad publicity, lack of cases and cash-flow problems (whilst the ATE regime is tested in Court) may lead to difficulties for similar companies. Ironically, one of the test cases Claims Direct were contesting regarding ATE premiums finished the week after Claims Direct went into receivership (see details earlier in section 3.5).

Oft XXXX

A recent change in society has been the growth in the number of ombudsmen / "consumer regulators". Virtually every walk of life has an Oft Somebody available to field consumer complaints. This is a further tilting of the consumer protection environment towards individuals and further embeds the right to "compensation" in the national psyche.

4. WHAT IS THE "COST" OF COMPENSATION CULTURE ?

4.1 Introduction

In this section we estimate the cost of Compensation Culture. Section 4.2 summarises the cost, what the trend in costs has been and will be and how much of the total actually makes its way into the hands of the claimant. The costs are by no means precise and in places rely on some heroic assumptions. However they are intended to give a feel for the overall order of magnitude and we do not think the figures are wildly unrealistic.

Section 4.3 gives more of a breakdown of how we have arrived at our figures and the extent of our heroic assumptions. Sections 4.4 and 4.5 then consider the non-financial costs and benefits (respectively) of Compensation Culture.

4.2 Summary of the cost of Compensation Culture

We have estimated the amount of compensation in 2001 under each of our categories A-G (from section 2). The amounts from categories A-E and G are indicative of the ongoing annual costs. The amount for F is effectively one-offs - although BSE/CJD or similar costs may grow and continue for some time. It's also worth making the point that the section F costs are "the odd one out" in this list, as all the others relate to compensation for a type of personal injury.

	Type of Compensation	Estimated 2001 Total Cost (£m)	Estimated Inflation p/y 97-01	Estimated Inflation p/y 01-06	Estimated Proportion of legal costs / expenses
A.	Insurance	£7,100m	15%	11%	40%
B.	NHS	£900m	15%	10%	33%
C.	Local/Education Authorities	£200m	15%	15%	20%
D.	Police / MoD	£800m	16%	15%	33%
E.	CICA	£375m	N/A	10%	5%
F.	Ministry of Agriculture	£500m	N/A	10%	5%
G.	DTI	£300m	10%	10%	5%
	Total	£10,175m	15%	11%	35%

So, according to our definition and calculations / estimates, roughly £10b per year is currently paid in compensation - just over 1% of GDP. The total cost above includes damages and expenses. Over a third of the total gets swallowed up in legal expenses and administration costs - leaving about 65% for claimants. This is better than the situation in the US however, where only about 40% of the total compensation cost goes to claimants (see section 6.4). As noted in section 2, there are a number of other types of compensation not included in our definition, which would increase the total considerably.

As noted in the summary, the legal/administration cost seems a fundamentally inefficient way of delivering compensation. For example, there are other European countries which provide a greater proportion (than UK or Ireland) of compensation for workplace injury through social insurance rather than liability insurance (see section 6.3). We do not believe the scale of the total cost of compensation in the UK has any visibility - which in part has probably contributed to the recent considerable increases in this amount.

4.3 Details of the (Financial) cost of Compensation Culture

A. Insurance claims

The incurred cost (from FSA returns), as at the end of 2000, of claims occurring in 2000 in the UK company market was £0.7b for Employers' Liability insurance, £0.4b for General Liability and £6.8b for Motor claims. If we assume that 50% of General Liability claims, 35% of comprehensive motor claims and 50% of non-comprehensive motor claims cost relates to personal injury, this brings our estimate of the total cost to £3.5b. Making additional allowance for the Lloyd's market would increase the cost to around £4.1b. To this we could add about £100m for the cost of PI claims for professional negligence making £4.2b in total. Included in this amount is an estimated £1.4b in legal costs. We estimate that the equivalent total cost five years earlier was around £3.2b. In addition, the Motor Insurers' Bureau levied £225m in 2000 (compared with just £11m in 1988). Updating these figures to 2001 values assuming 10% inflation yields £4.6b insurance cost and £0.25b MIB cost. We have added a further £150m for the cost of the Financial Services Compensation Scheme, to make a total of £5.0b

As well as the claims costs paid by insurers, there is the expense costs of insurers in writing Motor/Liability business (which gets passed on to the public as it is reflected in premiums). Adding 30% of claims costs to the Motor/Liability claims costs brings the total up to £6.5b. Finally, there is the retained/self-insured costs of claims. Work in the Tillinghast Tort study (see section 6.4) assumed factors of 5% and 25% for Motor and Liability business respectively, so we have further increased our estimates to allow for this too, making a grand total of £7.1b. Whilst some of this insured/retained General Liability costs will include Local Authority claims, we believe there is an extra cost for Local Authorities over and above this general factor, through this is very hard to quantify - see section C below.

The average view of "experienced" GI practitioners from our survey (see section 7) of future Motor PI inflation was 11%, which we have taken as the rate of inflation going forwards.

B. NHS Claims

According to the NHS 2000-01 Accounts, their discounted provisions for compensation claims, including IBNR, were £4.4b as at 31 March 2002. This includes small amount of non-clinical risks, for example Employers' Liability. The claims costs include both sides' legal costs. The expected payments in the 2001/2002 financial year are £630m (excluding payments in respect of claims reported in that year, which will be very small). Claims "arising" during the year 2000/2001 (that is new claims) amounted to £805m.

The NHS Litigation Authority Accounts indiciate annual administration costs of NHSLA in 2000/2001 of £8.5m.
We haven't readily got to hand details of how the amount paid or incurred per year differ to those from five years or so ago, but the corresponding reserve figure from 31 March 1998 was £2.3b - so an increase of 24% per year compound since then. More robust reporting and estimating have driven a large part of this increase, so 24% is probably not the underlying trend. More reasonable would be to take the last two years increases as the underlying trend (the 1999 and 2000 figures were £3.2b and £3.9b respectively) making a trend in the recent past of 17% per year. This compares sensibly with a rule of thumb for UK medical malpractice costs doubling every five years – which equates to about 15% per year. Given historic trends, it seems reasonable to expect these figure to increase by at least 10% per year for the foreseeable future. At this rate the 2001 claims arising cost of £805m increases to £885m, roughly £900m including administration expenses.

Legal costs

The NHS accounts don't split out how much of the compensation relates to legal expenses. However, the NAO report "Handling clinical negligence claims in England" (30 April 2001) gave data based on the Existing Liabilities Scheme. This is a mature scheme and claims settled in 1999/2000 were analysed.

Overall the average claim size (excluding brain damage and cerebral palsy claims) was £87,000 broken down as follows:

Claimant's Damages:	£59,000
Claimant's Costs:	£19,000
Defence Costs:	£9,000
Total	£87,000

So as a percentage of damages "legal" costs are 47% - suggesting a rule of thumb of 50%. As a percentage of total costs, "legal" costs are 32%, suggesting a rule of thumb of 33%. So of the £900m of NHS "compensation" payments arising in 2001/02, roughly £300m goes to the legal profession.

C. Local Authorities

According to the June 2001 Datamonitor Survey (see Appendix I), the DTI recorded 3.1m accidents to the general public in 1999, excluding work place or road traffic injuries. About 10% of these involved pavement or road surface accidents which might be expected to give rise to claims against local authorities rather than any other third party. A further 26% involved shopping centres which also led to claims against local authorities.

A quick bit of arithmetic yields of the order of 1m claims per year against Local Authorities. This feels a bit high - although it does tally with some of the scare stories about crippling costs of compensation claims in some boroughs.

We tried approaching some boroughs but they were a big cagey about releasing information. Some of the guestimated costs indicated total amounts of the order of hundreds of millions of pounds. Say the actual number of claims is 500,000. Say half of these are claimed on insurance (and included in the amounts in section A above). Of the other half, a third is caught by the retention assumption in A above. With an average cost of £1,000, this leaves an additional cost, including expenses, of the order of £200m for Local Authorities.

D. Police / MOD

In 1997, the police service paid out £210m in sickness claims (according to the. HM Chief Inspector of Constabulary, "Lost Time" Thematic Inspection report). Assuming compensation claims from work-related injuries, stress, and so on were equivalent to 75% of the overall sickness bill, compensation claims would have been around £160m. The compensation bill in 2000 could be over double the amount in 1997, at around £330m, assuming an annual increase of 16% per year, which is the rate of increase of compensation in the armed services over the last ten years. A compensation bill of around £330m represents 7% of the total police payroll (according to the Chartered Institute of Public Finance and Accountancy, Police Statistics Estimates, 2001-02).

Compensation claims paid by the armed services to service personnel reached £88m in 2000/1 and are expected to reach £100m in 2001/2. In 1992, payouts were £23m, representing an annual increase of 16% per year. The latest estimates show that 1 in every 220 soldiers has made a claim. Estimates for "Gulf War" syndrome claims could be an additional £100m.

Assuming the rate of increase in compensation claims in the police and armed services continues at the same rate in the next five years, future inflation would be at a rate of about 15% per year.

From the results of our survey in section 7, legal expenses could be around half of overall the amount of compensation, or a third of the total. The sources of the figures quoted above do not indicate whether legal expenses are included within the estimates. Assuming that they are in addition, the total cost would be about £800m.

E. Criminal Injuries Compensation Authority

In their Green Paper "Compensation to Crime victims", the European Commission included estimates of the (2000) costs across member states of state Criminal compensation schemes. The estimated UK cost was £341m, paid to over 75,000 victims. This is more, by number and amount, than all the other Member states combined (!) - see Appendix III for further details. The 2001 cost is estimated to be £375m (10% higher). The inflation rate for the future is assumed to be 10% (past amounts were not readily available). There is scope for the amount to increase considerably, as crime is strongly linked to economic conditions. Theft/crime generally has tended to fall as unemployment has fallen over the 1990's. If unemployment starts to increase, there is scope for the number of claims to increase considerably, as well as the average cost.

F. Ministry of Agriculture

BSE

Total expenditure on compensation payments for 1986-96 tracked the curve of the epidemic, growing significantly from 1988 and reaching peak levels in 1993/94 at around £36m in the financial year (a year after the peak of the epidemic in England and Wales). Between 1994 and 1996 payments fell substantially. Total expenditure on compensation and *ex gratia* payments over the entire period from 1988 to 1996 was £135 million.

CJD

There had been 101 deaths from vCJD as at 15th November 2001 (from the doh.gov.uk website). The compensation scheme will provide for payments to be made in respect of 250 cases up to a maximum of £55m. If the number of cases exceeds 250 an updated scheme would then be put in place. As there is great uncertainty over the likely total number of victims, the terms of the scheme will be reviewed. If there are much larger numbers of cases, future payments would be reviewed.

On top of the £55m trust fund, in recognition of the exceptional circumstances, the Government will pay an additional £50,000 to each victim or their family. The Government is making this further commitment to a maximum of 250 cases. It is made to take account of the legal and other difficulties the first families have had to encounter and the additional pressures they have had to bear. Future claimants beyond the first 250 cases will not be entitled to this additional payment.

Trustees will be appointed shortly to ensure a fair and even-handed assessment of claims. They will be provided by Government with the means to meet reasonable claims. Additionally, within the overall scheme, there will be a discretionary fund capped at £5million.

Foot and Mouth

According to www.defra.gov.uk, as of 26 April 2002 the estimated compensation costs are £1,080m, of which £1,051m has been paid to farmers.

This may not be the end of the Foot and Mouth compensation story for the Government. Recent news articles suggest that a £7b claim is to be launched against DEFRA by Class Law on behalf of claimants ranging from coffee shops to manufacturers of hiking socks from areas like Cumbria, North Yorkshire, the Midlands, Scotland and the West Country.

For the total 2001 cost under this heading, we have 40% of the Foot and Mouth amount plus £50m for CJD, to give an indicative £500m cost.

G. Department of Trade and Industry

It is anticipated that 220,000 claims will have been processed through the Miners scheme. The anticipated average cost is much more uncertain, but is likely to be in the range of £5,000 to £15,000. Assuming an average cost of £10,000, then the total estimated cost of compensation claims to miners for respiratory diseases is about £2.2b.

Unlike some of the other types of compensation, these are not claims being "caused" in recent years, as many of them relate to exposure to dust and other substances 20/30/40 years ago or more. But some of this total cost has been paid per year in recent years and will be in the near future, so it makes sense to consider this as part of the current cost of compensation. A rough estimate of the annual cost to the DOT is about £300m per year, with minimal administration/legal expenses.

4.4 Details of the (Non-Financial) cost of Compensation Culture

We believe that Compensation Culture has been causing changes in most walks of life, some good, some arguably not. As well as just an increased number of claims and higher insurance premiums, the social consequences include:

- An increase in defensive procedures
- Loss of management time in managing the risks
- Diversion of resources away from intended purposes towards paying compensation
- Possible worse care / safety procedures, as concerns over being sued cause people to be reluctant to admit liability, or point out possibly unsafe practices

Of course the list above is just the gloomy side of the picture and the next section spells out some of the benefits as well. The following sections consider some of the potential non-financial consequences of Compensation Culture in a number of areas.

Sports and leisure

Every major sport has seen the risk of claims for some form of negligence increase. This has the effect of increasing insurance premiums to a point where it may be uneconomical for certain activities to continue. There have been many cases of claims against golfers striking other players with golf balls. For major football clubs and leading teams of other sports, the increased costs, although high, are bearable.

A more crippling impact could be on small clubs in amateur leagues, where the insurance premiums could be unaffordable. If the small sport and leisure organisations do not take out adequate insurance, they run the risk of financial ruin from even one successful personal injury claim.

The cost of public liability insurance for street parties for the Queen's Golden Jubilee celebrations was one reason cited for the smaller number compared to the Silver Jubilee. The high cost of the insurance premiums has been blamed on the Compensation Culture.

Healthcare

Increased litigation can lead to a higher proportion of time, cost and resources being taken up by "defensive medicine" (caesarian births for example) increasing the pressure on positive healthcare even further. The fear and cost of litigation may also mean that in fact there are delays in making changes to procedures, as people fear that discussing or suggesting inadequacies may itself lead to claims for compensation.

Public services

Many services are being scaled back or closed altogether because of the risk of claims and time taken up by already over-stretched staff in defending these claims. This has taken the form of reduced access to swimming pools, closure of children's play areas in public parks, and so on. Close to the Chairman's home, Norwich City Council were lambasted in the not too distant past for the decision to cut down all chestnut trees, because of the fear of liability should conkers drop on people's heads (!). Public ridicule ensured that the decision was reversed.

Spending by local authorities on public areas where there is a risk of public liability has gone up. Examples are warning signs, extra road gritting, extra repairs to roads and pavements and so on. Whilst in itself a good thing if this stops accidents, there is a risk that this diverts resource from other areas.

Employment and the workplace

The cost to employers of claims from existing or potential employees has increased considerably over the last five years. Ultimately, this has an impact on shareholders through lower profits. There is also the cost of key management staff tied up in defending claims, successful or not.

Apart from the costs of physical injury from traditional Employers' Liability claims are claims due to stress, harassment, flawed reference letters and discrimination. In June 2002, a record payout of £1.4m was made in compensation for sex discrimination (to a college friend of the Working Party Chairman, who he wishes he had remained more friendly with). The cost to employers of involvement in employment tribunals has increased by 50% over two years to 2000.

Culture more generally

As well as some of the specific areas of activity that may be affected by a Compensation Culture described above, there is the more insidious change to our view of personal versus corporate/state responsibility. One of the non-financial costs of moving towards a Compensation Culture is just that – a change in culture. We might move from a country reknowned for it's "stiff upper lip", where misfortune is greeted with gritty stoicism, to a country where every mishap leads to a complaint. Rather than resolve problems and differences by mediation or compromise, every nuisance or irritation might prompt an attempt to use the law to settle disputes. This might in fact reduce personal responsibility: if a child plays truant, the parent sues the school for not doing enough to ensure attendance (rather than accept responsibility for this oneself). If someone cuts their finger opening a can, the manufacturer is sued for not making warnings sufficiently clear (as opposed to remembering not to be so clumsy next time) and so on.

There is also the impact on work-culture. Humour and banter between colleagues at workplaces has changed over the last twenty years. Employee references are often bland and non-opinionated. A potential consequence of Compensation Culture is that the rich tapestry of life gets dumbed down and reduced to bland, humourless interactions, which is not what we fought a war for.

Other areas

In section 5 we look at some of the developments in the US. This includes a number of other areas where Compensation Culture is or might be having an alarming effect on society. These include:

- Pharmaceuticals: stopping developing new drugs for fear of litigation
- Corporate affairs: lack of people willing to be directors of companies
- Construction: unable to engage in construction due to spiralling claims costs

4.5 But what are the benefits of Compensation Culture?

Of course there are two sides to every argument. Whilst an increasing propensity to claim has lead to higher costs to society and some detrimental changes in various walks of life, there have of course been many beneficial effects. There are some who would argue that the shift in emphasis towards an individual's right to compensation has forced big businesses and public authorities to behave more responsibly and they will only be sued if they have done something wrong. Some of the benefits, for each of the areas described in the previous section, are described below.

Sport and Leisure

Whilst no one would want to see amateur local sporting events and leisure activities curtailed due to the cost of compensation, if the possibility of being sued leads to more robust safety procedures being put in place, then that can only be a good thing. More first aid equipment, better trained medical staff on hand and so on, are things most people would accept as fundamentally beneficial. Some activities are intrinsically dangerous and there will always be some accidents (for example playing rugby, mountaineering, and so on) and there is only so much one can do to render such activities "safe". In these areas too though, there may be benefits – for example by making sure participants explicitly recognise the inherent dangers some activities entail, at least no one can argue that they went into an activity unaware of the potential hazards.

Healthcare

As we have seen in sections 4.2 and 4.3, the compensation amounts claimed against the NHS have grown at an astonishing rate. But if people are only being compensated when something has gone wrong due to negligence, then rightly so. If increased costs of compensation have lead to greater monitoring of doctors and tighter safety checks, all well and good. Of course, much surgery causes inherent risks. By definition, people who see doctors for treatment are usually ill. So however perfect the regime, there will always be fatalities, accidents or mistakes - doctors are human. Perhaps like the sporting example above, even if procedures cannot be made "safe", it is no bad thing in itself if a Compensation Culture leads to greater and more explicit understanding of risk.

Public Services

Local authorities making sure they repair cracked pavements and have robust procedures to check the safety of public buildings is of course a good thing. Quite how rigorous the standards of care they should employ is of course a matter of balance. But certainly any public body that skimps on safety measures and does not assess and manage the risks to the public, deserves to be penalised, similarly any victims of accidents due to mishaps in the street deserve compensation.

Employment and the workplace

Employers who expose their employees to unnecessary risks should compensate those they harm. Most people would agree that anyone who is seriously injured at work deserves compensation. No doubt Health & Safety Standards at work have increased in recent years, and if fear of compensation claims has accelerated this, many would say that is all to the good. For example the Oil industry, whilst still inherently dangerous, has no doubt considerably improved its safety record in recent decades.

Compensation claims has caused employers to improve their monitoring of discrimination and the widespread publicity over discrimination compensation means many more people are likely to seek damages, when previously they would not have done so.

5. WHERE ARE WE GOING ?

5.1 Future Scenarios – what is happening / might happen in the US?

The US is often seen to be leading the way in terms of how compensation may develop in other countries. So when thinking about how the UK compensation regime might develop, it's salutory to look across the Atlantic and see what is happening and what pundits predict might happen in the US. The gloomiest predictions imply US tort costs could increase twice as fast as the economy, possibly rising to 2.4% of GDP by 2005, from around 1.8% in 2000. This potential increase is fuelled by increasing abestos-related claims, increasing medical costs (which in turn increase the cost of personal injury claims) and additional claims following September 11th.

Weighing against this possiblity is the growing body of "tort reformists", who are clammering for reform, suggesting that the compensation regime in the US has tilted too far towards the individual, with an ultimately detrimental effect on the US's ability to compete economically with other nations. Some sections of Congress are seeking reform of the way class actions work in the US. Reformists argue that class actions often benefit lawyers at the expense of claimants and are used as a means of forcing defendants into settlements. There have been some previous attempts at tort reform that have been successful. A vaccine shortage in the 1980s prompted Congress to create a no-fault compensation for people injured by childhood vaccines, and production quickly increased. Some US states capped pain and suffering damages in medical malpractice cases, resulting in lower average insurance premium rates and allowing medical centres to more easily recruit good doctors.

Some of the areas of US life that are currently being affected by increasing compensation claims are described below.

<u>Healthcare and Health</u>

There is a risk going forwards of shortage of medical personnel, especially in high-risk fields such as neurosurgery and obstetrics, as medical practitioners simply don't want to work in areas where a slip of the hand can cost them their life savings. In 2001, the second-largest US medical malpractice insurer, St. Paul, withdrew from this market after running up a loss ratio of nearly 200%.

As premium rates become prohibitive or coverage is reduced, the supply of doctors could decrease and the pressure on the remaining doctors could increase considerably, leading to a fall in the standards of healthcare. Ironically, increased medical malpractice costs has a double-whammy effect on compensation costs. Because the cost of medical care increases as a result (as the cost is passed on to patients), personal injury costs for those involved in accidents increases, as their medical care after an accident is more costly.

At the risk of being sued, America is "fat" and we have the statistics to prove it. They are officially the most obese nation in the world. As growing numbers of US children, teenagers and adults suffer health problems, millions of Americans are looking for someone to blame – and it's all McDonald's fault. Well, not entirely. Other manufacturers of convenience food and food generally are in the firing line too. There are a number of class actions against big food and drink companies, seeking compensation for the adverse effect on the claimants health of eating and drinking too many burgers and fizzy drinks…...

Corporate Affairs

The risk of expensive lawsuits against directors on companies' Boards may make it increasingly difficult for many companies to find suitable candidates. Directors and Officers' insurance cover may not be enough to give people the comfort they need to take on positions of responsibility.

Enron's policy limit on its D&O policy was reportedly less than $500m, significantly lower than the amounts lost by shareholders. Shareholders' lawsuits are for billions of dollars. With directors' personal assets and reputations at risk, many would think twice before taking a seat on a company's Board in the US.

Pharmaceutical industry

The amounts of compensation for this type of claim have increased considerably. In 1994, the average US payout on a wrongful death claim was $1m. This increased to $5.7m in 2000. At a rate of $6m per life, if a drug accidentially loses one life for every 100,000 it saves, the pharmaceutical company would have to charge nearly $60 for every dose, just to cover the cost of compensating victims of tragically unintended side-effects. This could adversely affect the development of new drugs and mean potential advances in medical care are hindered by concerns about possible, but extremely remote, possiblities of problems with drugs.

There have been indications that research into new drugs in the areas of AIDS and contraception has been curtailed because of fears of liability claims. There could also be a secondary impact of patients being scared of using potentially beneficial drugs because of adverse publicity, even if pharmaceutical companies win liability court cases.

Building industry

There has been a plethora of lawsuits against the US construction industry, alleging mould damage. Many insurers' responses have been reduction in coverage and specific exclusion clauses. Insurance premiums have increased by up to three times whilst at the same time increasing deductibles.

The increasing trend of lawsuits is likely to lead to construction companies absorbing the additional costs, charging more to customers or stopping construction activity altogether. It is more or less accepted in the US that every major construction project will end up in some sort of lawsuit.

Asbestos

Although asbestos claims and litigation has been around for a number of years, the targets of litigants recently have been companies with the most tenuous connection to asbestos-affected products. Companies such as Ford, General Motors and Kimberley-Clark have been named in lawsuits. The subject of US litigation regarding asbestos could be the subject of a paper in itself (and has been many times), so we will not dwell on the details here.

The particular developments of concern are the widening of the net to include companies who had only the most tenuous connection with asbestos products, and the increase in claims for less serious, or indirect, consequences of exposure to asbestos. For example some people have been suing for the stress/worry of the possibility of contracting cancer, even when they are in fact perfectly healthy. There have also been claims for the stress of seeing former colleagues suffering from asbestos-related disease. US lawyers and Accident Management groups have been actively advertising on TV/radio/the Internet to see potential claimants and making door to door enquiries in areas which used to employ people in heavy industries. The growing number and range of claims has lead to a number of high profile bankruptcies. There are increasing concerns that indirect / less serious claims (which now form a significant proportion of all US asbestos-related claims) may in fact exhaust any available funds for more serious claims that may emerge in years to come.

Savings and Investment

Obviously many people have lost considerable amounts of money following the poor stockmarket performance of recent years, made worse by the loss in market confidence following the tragic events of 11th September and a series of corporate failures in the US (Enron, Worldcom and so on). It's no surprise that disaffected investors in the US are suing their investment advisers and providers for the losses they have suffered.

Human Relations

Civil liberties' and other organisations are likely to be increasingly lobbying in the US for reparations for slavery in the 19th century and suffering during the Holocaust. Amounts, if successful, could be in the hundreds of billions of dollars. Clearly the compensation debate of perceived wrongs from the past can affect relations between different communities in the present.

5.2 Future Scenarios – what might happen in the UK?

There are a number of ways that UK compensation might develop, some of which we've described below.

The run away gravy train ?

Much of what has happened and is happening in the US could happen in the UK. However, because of some notable differences in the legal system and process between the US and the UK, the scale of awards is likely to be lower in the UK, though the number and range of claims may increase. One of the main reasons is the fact that civil actions in the UK are tried by a judge rather than a jury, with a much less aggressive mentality towards pursuing large damage amounts. Also the UK does not suffer the delights of punitive damages, where individuals can claim amounts hundreds of times bigger than the true economic compensation for loss or injury, because they are claiming from a company with large financial resources. A comparison of the US and UK legal systems is given in section 6 – and some examples of some of the more bizarre US claims are shown in Appendix IV.

The main conclusion from the comparison of the US and UK systems is that the UK is unlikely to develop in quite such an extreme fashion as the US, for some of the reasons mentioned above. However there is some concern that if After-the-Event insurance takes off, that may push us more towards the US system (as has been the experience in Ireland – see section 6.3). If the Fairchild judgement (see section 3.5) heralds a move towards joint and several liability, this could push the UK towards the US too. If UK tort costs were to increase to current US levels, this would amount to an additional £10b per year (as measured by the Tillinghast survey described in section 6.4). A half-way house might be an extra £5b of claims year (over and above normal "inflation" of these amounts), fuelled by an ever-growing number of cases presented using After-the-Event insurance. Our estimates of future inflation of compensation costs (see section 4) mean that the cost of compensation will have increased by this amount in four years time in any event.

Insurance meltdown ?

As claims against certain types of employer rise, either from their employee's or from the general public, so does the cost of those companies' Employers' Liability and Public Liability insurance premiums. For smaller companies in particular, the cost of EL/PL insurance for some trades is reaching a point where companies ability to trade is threatened. For example many children's homes have been struggling to obtain EL/PL cover at a price they can afford at the time of writing. If a care home does not have EL cover, it cannot remain open. Any area of employment where care is administered or advice given have tended to see considerable increases to EL/PL insurance. Cases highlighted in the press in July 2002 include a child care home who saw the cost of their insurance policy rise from £3,500 per year to £50,000 per year. A serious child abuse claim can cost £100,000 or more, which is in part what is driving insurers to ask for increased premiums.

A number of high profile commentators have opined on the difficulties of obtaining EL/PL cover recently. For example John Tiner, FSA Managing Director, recently commented that he did not think the availability of EL/PL cover was a crisis issue in the UK (July 2002 issue of Insurance Times). He compared the situation in the UK to Australia, where escalating compensation costs have had a huge impact and lead to statements from the Prime Minister about the availability of insurance. John Tiner's view was that the UK problems are not of "systemic proportions that are deep enough to make the social impact that I observed in Australia".

Taken to its extreme, spiralling insurance costs may lead to a fundamental change to the nature of Liability insurance. When insurer's offer EL/PL cover a period of a year, they are "on risk" for claims from that period for many years after the period of exposure. Should EL/PL costs become too excessive for some trades/occupations, it could be that a "claims made" rather than a "claims occuring" basis is the only sustainable way of providing cover. Of course, the ultimate problem is the cost of claims, and if some trades/occupations are suffering a crippling financial burden because of claims against them, the underlying problem that needs addressing is better procedures to avoid the claims in the first place.

The status quo ?

As companies like Claims Direct (see section 3.5) have struggled, it could be that Accident Management companies generally do not take off. Whilst claims per accident may still increase, this may be offset by underlying improvements to the number of accidents, as road safety, safety at work and so on, have been and may continue to improve. Should fears of escalating ATE costs lead to more people using BTE insurance, controlled by insurers, it could be that the use of CFA's and ATE's actually diminishes in future, or at least counter-acts some of the increasing propensity to claim we are witnessing due to other factors.

Compensation backlash ?

Should the costs increase much more, or the profile of the problems some bodies have had in obtaining insurance increase, there may be a governmental and public backlash against increasing costs of compensation. Certainly a large part of the current compensation costs relate to legal and administration costs. The increasing use of BTE cover may lead to a more controlled environment for the legal costs of making claims. Whilst Accident Management companies may lead to increased numbers of claims, the cost of using Accident Management staff may be cheaper than legal experts. A number of these points may lead to a reduction on the amount of the compensation pie that goes towards legal profession and a resultant reduction in the size of the pie itself. In the study comparing Ireland's astonishing compensation regime to other European countries (see section 6.3), the good point is made that compensation paid by the state has fundamentally less attritional costs (of legal and administrative expenses) than an adverserial compensation mechanism. Balanced against this is the possibility of state schemes leading to greater numbers of claims, as it is seen as an easy target. But the government might take a keener interest in regulating the cost of, and eligibility for, compensation if the amounts were being paid out of the public coffers.

6. HOW DO WE COMPARE WITH OTHER COUNTRIES?

6.1 Introduction

This section compares the UK with a couple of other countries, to see how the compensation regime and amounts of compensation paid compare. The US is the most obvious example, as a country that is widely held to demonstrate Compensation Culture in the extreme. Nearer to home, Ireland has witnessed phenomenal increases in compensation amounts, so it's interesting to consider the similarities and differences between the UK and these countries, to see if the UK may end up like the US and Ireland. Finally, we note some of the EC developments that may be pushing the UK (and the rest of Europe) towards an increasing emphasis on Compensation Culture.

6.2 Comparing the UK compensation environment with the US

In order to understand if the UK is already, or is going to end up a carbon copy of the US, a legal colleague of one of the Working Party members, with extensive experience of civil actions in both the UK and US kindly gave his views. The rest of this section gives some background about the US and UK legal systems, compares the processes by which compensation is claimed in the US and UK and considers whether the UK might ever reach the dizzy compensation heights that the US has scaled.

Comparing the US and UK legal systems

The US has two systems; the State system and the Federal system. A large majority of civil actions go through the State system, whereby a case is filed and heard at a Trial Court, if appealed it will be heard at an interim Appellate Court; and if this decision is further appealed it will go to the final State Appellate Court.

The US Federal system, which will take certain civil actions, has the following levels of court:

- District Court
- (Circuit) Court of Appeal
- US Supreme Court

If a case is rejected by the final Appellate Court in the State system depending on the nature of the issue, the losing side may ultimately attempt to get the case heard by the US Supreme Court, although almost all cases are rejected out of hand as being insufficiently significant.

The UK has County Courts to deal with low level civil disputes and a High Court (with branches throughout the UK) for more serious cases. There is then a Court of Appeal and ultimately the House of Lords.

Comparing the US and UK compensation processes

A US citizen who wants to pursue a compensation claim will take the following steps. The UK equivalent is shown in square brackets at each stage:

1. Go to a plaintiff lawyer [Hire a lawyer; not as marked a distinction between plaintiff and defence bar]
2. Strike a contingency deal with the lawyer (e.g. 40% of winnings) or arrange an alternative fee structure, for example hourly rate. [Broadly the same]
3. The lawyer will generally file suit in the relevant State Trial Court. The lawyer will take into account which court is most likely to lead to success and give the most compensation (forum shop). [Less forum shopping in UK; just file with the appropriate geographical court]
4. There then follows a long and tortuous discovery period, which is expensive for both sides. This will involve massive amounts of paperwork and depositions will be taken at this stage. Experts will be hired by both sides towards the end of the discovery stage. [No discovery phase as such; both sides need to hand over a pack of relevant documents early in the suit including witness statements from experts, less aggressive and expensive]
5. More often than not, the sides will be required to mediate, but this is not binding. [No such requirement in UK, although may be done voluntarily]
6. There will then be a motion practice in which both sides argue why they should win as a matter of law. This rarely works, but if a Summary Judgement is given by the judge, then only the amount of damages is left to be resolved (assuming the plaintiff wins). [Not generally done in UK]
7. At either parties' discretion (nearly always exercised) the case will be tried before a jury. A judge will deal with all legal issues whilst the jury consider all factual issues, including amount of compensation. [Almost all civil cases dealt with by a judge in UK]
8. More often than not there will be an attempt to claim punitive damages. [Much rarer in UK, referred to as exemplary damages]
9. The verdict will be given.[Same]
10. This will be appealed as a matter of course, but this will more often than not result in no change. [At judge's discretion in UK whether to allow an appeal]

Will the UK develop a similar Compensation Culture to the US?

The view of the lawyer was definitely NO – the UK does not have and will not have the same level of compensation costs as the US. The main reasons for this conclusion are given below:

- Civil actions in the UK, with the exception of libel and slander cases, are tried by a judge in the UK as opposed to a jury in the US. This has the following implications:

  - The judge is unlikely to become emotional, having seen similar cases frequently before, and will solely focus on the facts. This professional trial of fact will invariably lead to more conservative damage awards.

  - It is much easier to prove causation to a jury than to a judge. A recent well publicised example, although overturned by the House of Lords, was the Fairchild case (see section 3.5). The Judge found that neither of the two companies who exposed Mr Fairchild to asbestos was liable for his death, as the disease could have been caused by one fibre and no-one could prove which employer was responsible for the one and only fibre that triggered the disease. This outcome would be inconceivable in the US.

- Although the UK now allows Conditional Fee Agreements, the lawyer and client will more often than not take out (after the event) insurance. A risk review will be undertaken at that point and the merits of the case weighed up before proceeding any further. In the US the lawyer will just say "yes" or "no" recognising the lower burden of proof and the "nuisance value" of any claim (see the point below about recovery of legal fees). Therefore a much lower proportion of potential cases will become claims in the UK. The US is still geared very much more to pursuing aggressive results. Clearly if After-The-Event insurance takes off in the UK, this situation may change.

- It is rare in the US for the losing side to be responsible for the other side's legal fees. This allows claimants to push things much further. Because of the higher costs associated with litigation and little prospect of reclaiming legal fees (certain out-of-pocket expenses are recoverable), there is much more incentive for US defendants to settle to avoid litigation. This in-built incentive for the defendant to fold makes it easier for claimants to get at least some money leading to more and more trying to get it, fuelling Compensation Culture.

- Although punitive damages in the US are awarded to less than 10% of victorious plaintiffs, the fear of punitive damages can still influence out-of-court settlements.

6.3 Comparing the UK compensation environment with the Republic of Ireland

Ireland is an interesting (and worrying) example of how the compensation regime in the UK may develop. The majority of personal injury claims involving a solicitor are on a "no win, no fee" basis. Legal expenses insurance is becoming very common – nearly all of the (many, many) solicitors advertisements in the "Golden Pages" advertise the availability of this. Legal Aid is not generally available for compensation claims.

It is believed that some Irish solicitors charge on the basis of a percentage of the claimant's settlement (for example, 10% of settlement) in "no win, no fee" cases. Clients are generally unaware that by law, solicitors are required to advise clients in advance of their charges, or the basis for charging, and that they cannot base the calculation of the charge on a percentage or proportion of any damages payable to the client.

About 75% of the Motor claims cost in Ireland is personal injury compensation with the balance being for own and third party damage (compared to around 35% for UK Comprehensive Motor policies).

Comparison with UK average claims is difficult due to the different damage/injury mixes. The best available data is from a survey commissioned by the "Special Working Group on Personal Injury Compensation" (2nd report published in 2001) which in turn was established by the Department of Enterprise, Trade and Employment. This research compares English and Irish claim sizes and legal costs. Findings (and limitations) from the report are summarized below.

Summary of amounts of compensation

The following table shows a breakdown of total claims outlay for the total of motor personal injury claims, Employers' Liability claims and public liability claims settled from 1998-2000.

	Total amount of compensation claims (IR £000's)		
Settlement Year	1998	1999	2000
Amount to Claimant	193,637	275,785	320,698
Legal/Admin costs	74,790	114,792	135,911
Total Compensation	268,427	390,577	456,609
Legal/Admin as % total	28%	29%	30%
Legal/Admin as % of amount to claimant	39%	42%	42%

Methodology

- The research involved a review of settled personal injury claim files dealt with by an insurer underwriting liability and motor insurance in England and Ireland.
- The data was collected using randomly selected files settled in the period 1994 to 1997.
- The files were selected from claims involving personal injuries only and were from all liability and motor policies.
- The sample size was 315 Irish claims and 208 English claims.
- Owing to time constraints, only one company was used as a sample of how each insurer investigates claims. Consequently, the results cannot be generalised to all insurers.
- Within these limitations, however, the results indicate a marked difference between Ireland and England in the level of legal input to processing of personal injury compensation claims that have significant implications for higher delivery costs of compensation in Ireland.

The results of the comparative research commissioned by the Group indicated that there is a much greater involvement of counsel throughout the legal tort claims process in Ireland than in England and that significantly increases the legal cost of settlements in Ireland.

Some of the findings

Some of the main findings are:

- In England, a solicitor alone acted for the plaintiff in 90% of the cases and a junior counsel was only appointed in 3% of the claims. In Ireland, a junior counsel was appointed on behalf of the plaintiff in 48% of the claims and a senior counsel in 18% of the claims. No senior counsel was appointed in any of the English cases examined.
- The engagement of counsel by the insurer also showed significant differences between the two jurisdictions. In Irish cases, counsel was engaged in about 50% of cases compared with little engagement of counsel in the English cases.
- A further notable difference was that, whereas 60% of Irish cases were settled with the involvement of counsel, in the Law Library or at the courthouse, 60% of the English claims were settled by correspondence or on the telephone between claims handlers and the plaintiffs' solicitors.
- A more litigious approach to Irish claims was reflected in the longer duration of the settlement process in Ireland. Across the cases examined, the average time taken to settle an Irish claim was 3.6 times the average English settlement period.

- The higher expectation of damages awards generated by the Irish tort-based claims process was reflected in the relationship between the plaintiff's initial claim and the final settlement figure. In the cases examined, the Irish plaintiff's original claim was, on average, almost 80% above the final settlement figure, while the English plaintiff's initial claim was, on average, 17% above the final settlement figure.

Average Claim Sizes (IR £)

Class of Claim	Ireland	England	Ratio of Ireland/England
Motor Personal Injury	20,462	1,633	12.5
Employers' Liability	21,457	1,630	13.2
Public Liability	11,773	908	13.0
Overall	19,439	1,609	12.1

General Damages by Type of Injury

In the cases where damages were paid and the type of injury could be identified, the claims were divided according to type of injury. The average general damages were then compared. The results are shown in the table.

	Ireland		England	
Type of Injury	No. of Claims	Average General Damages	No. of Claims	Average General Damages
Spine and neck injury	108	13,842	120	1,532
Lacerations	5	8,140	5	2,540
Eye Injury	5	35,276	0	
Contusions, minor scars, burns	13	11,226	21	1,017
Leg Injury	31	23,284	10	1,592
Arm Injury	18	14,194	7	2,986
Hearing	1	3,000	4	1,220
Trunk Injury	18	17,389	4	1,838
Sickness	5	11,600	2	9
Death	1	11,430	0	
Head Injury	29	5,689	1	150
Psychological Only	2	8,500	1	150
	236		175	

As a further control, claims handlers in Ireland and England were asked to quantify the general damages for the same back injury claim. In England, the claim was valued at between IR£1,500 and IR£2,000 whereas in Ireland it was valued at between IR£10,000 and IR£12,000.

Other extracts from the report

There are a number of sources of OECD comparative data: "Eurostat, Social Protection Expenditure & Receipts, 1980-96" (OECD, 1999) and "Insurance Statistics Yearbook 1990-97" (OECD). These show that the provision of occupational injury compensation in Ireland is heavily weighted towards tort with liability insurance provision for tort claims in 1997 amounting to 0.57% of GDP compared with 0.1% GDP expenditure on social insurance provision for work injury. In contrast, the OECD data shows that the European countries researched spend an average of 0.5% of GDP on social security provision and 0.2% of GDP of liability insurance provision. This represents a more efficient and cost-effective delivery of work injury benefits in that the bulk of expenditure is on social security provision which has a low delivery cost and goes directly to the injured worker.

6.4 Comparing the UK compensation environment with the rest of the world

Tillinghast have published a number of studies of US Tort costs, the latest one, with figures to the year 2000, was published in February 2002. The survey produces an estimate of US tort costs and produces a rough and ready calculation of tort costs in other countries.

Tillinghast estimate that the US civil liability system cost around $180 billion in 2000 (over 70% of these costs are insured), equivalent to 1.8% of GDP, compared to 1.4% in 1970 and 0.6% in 1950. Tort costs peaked in 1987 at 2.3% of GDP. The estimate of tort costs as a percentage of GDP in the UK is estimated by Tillinghast to be around 0.6% (in 1998). The Working Party's stab at compensation costs in 2002 in section 4 suggests a higher figure of over 1%, which is rising rapidly.

The cost of the US tort system is nearly twice the average of other industrialised countries. The table below shows tort costs as a percentage of GDP (in 1998) for selected countries, as measured by Tillinghast:

Country	Tort Cost (% of GDP)
US	1.9%
UK	0.6%
France	0.8%
Japan	0.8%
Canada	0.8%
Australia	1.1%
Germany	1.3%
Italy	1.7%

Tillinghast found that 42% of costs go to litigants in the US. Of the remaining 58%, 17% are for claimants' lawyers, 16% for defence costs and the remainder for administrative costs. Although only 3% of liability claims are settled by court verdicts, they have a disproportionate effect on costs owing to their influence on out-of-court settlements. The UK figure as a % of GDP has stayed pretty flat over the mid-1990's. However, in isolation we believe this figure is misleading: UK GDP grew by 25% from 1994-98, one of the strongest growths of any European country. Without this growth, obviously the UK percentage would have been higher, at a comparable level to France and Japan.

Some of the other findings in the Tillinghast survey are noted below:

- Over the last 20 years, US tort costs as a proportion of GDP peaked in 1987 at 2.3%. This is partly explained by the high economic growth rate relative to inflation in the 1990s.
- The average tort cost per citizen in the US in 2000 was $636.
- Over the recent past, the gap between the US and other industrialised countries narrowed considerably between 1994 and 1998, with the US relative costs decreasing and most other countries increasing.
- Tillinghast expects relative tort costs in the US to increase in the near future due to losses from the September 11 events, asbestos losses and an increase in medical care costs leading to higher costs of personal injury claims.

The Tillinghast survey just based its' UK estimates on the insurance costs for Motor Bodily Injury and General Liability insurance (including expenses and with an allowance for self-insured amounts). However they do not include an estimate of the cost of NHS compensation, public services, criminal compensation or other forms of compensation for disease claims, which may explain why we have come up with higher figures in this paper.

The book Tort and Insurance Law (see the Bibliography in Appendix I), compares damages for non-pecuniary loss across Europe. The results for the UK, France and Germany are summarised in Appendix III. Broadly the amounts for very severe injury (such as paraplegia or blindness) are comparable between the three countries. For less severe injuries, the UK amounts of compensation are generally quite a bit higher than those in France or Germany.

6.5 EC Influences

There are a number of areas where EC legislation has and may continue to impinge on law and everyday life in the UK. Some of these areas are described below.

EC Human Rights Act ("HRA")

The Human Rights act came into force in October 2000. It will provide a number of new avenues for individuals to claim against companies or public bodies. For example the Act specifies that an individual should enjoy "respect for family life", so noisy aircraft flying overhead, or disruptive roadworks, could be challenged citing the HRA. The HRA also provides for the "right to education", so local authorities or companies involved in training and education, could be liable for poor educational standards. Across the board, the HRA is likely to lead to an increased number of claims, mainly against local authorities and public sector organisations (as happened in Canada and New Zealand when similar legislation was introduced).

Insurers may benefit as well as pay out more claims, for example the government breached the HRA when truck drivers were fined £2,000 for each stowaway under the Immigration and Asylum Act. As well as claims in Court, the HRA may be used to force companies, employers and public bodies to settle out of court to avoid bad publicity. There is an additional cost for businesses, as companies ensure that laws are not broken and to avoid potential litigation.

There will also be effects other than just relating to personal injury compensation directly. For example the HRA could curtail surveillance for personal injury claims and access to medical records to be used as evidence in court cases (as an invasion of privacy, so not acceptable according to the HRA).

The HRA has already been cited in a number of test cases. For example in the case of Marcic v. ThamesWater in March 2002, Mr Marcic claimed that ThamesWater had breached his human rights by failing to repair sewers near his home.

Environmental Liability

In 2000 the EC published a White Paper on Environmental Liability, proposing that "the polluter pays". The Paper proposed that the liability regime be extended to include "damage to the environment generally" (as well as damage to people and property), and suggested that non-governmental bodies (like Greenpeace) could bring actions against companies as well as the government. It's unlikely that such proposals will become law in the near future, but such White Papers show the way the legislative environment is likely to develop, with an increasing tilt towards the rights of the individual.

EC Product Liability Directive

This Directive is another area where EC Law has lead to changes to the boundaries in the UK regarding duty of care. The first major test case (in 2001) of the European Product Liability Directive was "A" and Others v. National Blood Authority and Another. The case relates to blood received by the claimants which was infected by Hepatitis C. At the time the infection took place, it was generally known that there was a slight risk of infection, but there was no effective test of donated blood for Hepatitis C. The National Blood Authority argued that as there was no test at the time that could have revealed the presence or otherwise of Hepatitis C, it was unreasonable for the public to expect the unattainable (that is blood guaranteed to be 100% safe). However the judge found in favour of the claimants, arguing that unless the public expressly and explicitly acknowledged the risk of infection, it was entitled to expect products 100% free from infection (even though this was impossible).

The case is another sign of the weight of the law increasing consumer's rights and expectations. Ultimately consumers of course pay for these additional rights and expectations, as consumers pay more for products as Product Liability premiums increase. As noted in section 5.1, there is also the risk that potentially beneficial new products stop being developed, because the costs associated with the risks are too great.

Fifth Motor Directive

Part of the draft 5th EU Motor insurance directive proposes that, as part of the compulsory insurance required by law, compensation should be paid for personal injuries suffered by pedestrians and cyclists in accidents involving a motor vehicle, irrespective of whether the driver is at fault. Although relatively minor in itself, this opens the prospect of no fault compensation being paid by UK liability insurers for the first time – a situation which the Fairchild case (see section 3.5) has also moved us towards.

7. OUR SURVEY SAYS …..

7.1 Introduction

For most of this paper, we've relied on information collected by third parties. However we thought we ought to get some views from actuarial practitioners, which we did by way of an e-mail survey. This worked very well, in terms of getting a speedy and sizeable response. Inspired by our success, we thought we'd use a similar technique to get some views from "the man in the street". The two surveys we sent out are shown in Appendix VI for reference, details of the results are shown in Appendix VII. The headline details from the two surveys are described in the next two sections.

The Practitioner survey concentrated on what GI actuaries thought inflation of Personal Injury claims had been and would be, and sought some views as to what the main drivers of Personal Injury inflation had been and might be. The survey also sought views on how significant practitioners thought Conditional Fee Arrangements are and might become, and how geared up insurers were to measure this.

The Public survey was, we accept, not an entirely representative sample of the general public. Rather, it was that distinguished sub-set of the general public, friends of actuaries. We asked (most of) the GI practitioners who had kindly completed the first survey if they would mind sending another survey on to a few friends of theirs. Or at least we asked those GI practitioners who responded who the Institute's IT department could easily discern an e-mail address to send this request to. The selective nature of this way of approaching members of the public will have led to a rather biased socio-economic grouping of the respondents, but interestingly there were some clear messages from the Public survey, which we suspect would be confirmed if the questions were given a wider airing. The Public survey concentrated on the types of accident that the public would consider claiming for, and asked the public for views on how much of a typical Motor premium went towards paying Personal Injury claims.

7.2 Practitioner survey

After weeding out the various "why have you sent this to me, I know nothing about general insurance" e-mails, we had about 150 valid and complete replies. This is about half the number of GIRO attendees, so we thought this was a pretty good hit rate. Some of the main results from the survey are as follows:

- Half of all practitioners believe Motor Personal Injury ("PI") inflation has been 10-15% over the last 5 years.
- 90% believe Motor PI inflation has been 10% or higher over the last 5 years, the average view being 15%.
- the "average" breakdown of what has contributed to Motor PI inflation is 5% due to increased numbers, 10% due to higher average amounts.
- the view for the next 5 years is for lower Motor PI inflation than we've seen over the last 5 years, an average of 11%. However 65% still believe we will see double-digit inflation of 10% per year or more.
- there was a suprisingly large range of answers for how much of a typical Comprehensive Motor premium is in respect of Bodily Injury costs (which perhaps explains a lot….), with 20% of practitioners thinking the answer was only 15% or less.
- increased Ogden multipliers were fingered as the main reason for increased PI costs in the last 5 years, but Conditional Fee arrangements and an increasingly litigious society were two of the other top four.
- an increasingly litigious society/other judicial changes were the top two reasons given for <u>future</u> inflation of Motor PI claims
- there was a wide range of estimates for how many Motor cases are currently presented on a CFA basis, with the average being 15%. The view was that in 5 years time this will have increased considerably, with the average number of cases in 2006 predicted to be 25%.
- amazingly, given the views on what has been and will be driving inflation, practically no insurers had good information to record the number of CFA cases.

The results for Employers' Liability inflation and use of CFAs were very similar to those for Motor, which we suspect means most people assumed the same for both, whether they had good cause to assume this was reasonable or not.

The first couple of questions asked for some details of what type of employer the respondents worked for and what level of expertise they felt they had in the area of PI reserving/projecting. There were some subtle differences between the different groups. For example the Reinsurer respondents generally felt that PI inflation over the last 5 years had been much higher than insurers or consultants. Yet looking forwards, a higher proportion of Reinsurers thought that inflation would stay under 10% than the Insurers. Gullible and optimistic some might say. However the self-proclaimed experts backed up this view by the Reinsurers with 40% of the "expert" group believing future Motor PI inflation would only be in the range 5-10% per year (the average from all practitioners was 11%). The experts tended to suspect legislative/judicial change would be a greater cause of future Motor PI inflation and they thought more Motor cases in future would be on a CFA basis (half thinking that more than a third of Motor cases would be on a CFA basis by 2006).

7.3 Public survey

A number of clear answers emerged from the Public survey. Overwhelmingly the respondents thought that there had been a shift in the public's attitude to claiming compensation in the last decade, and that this was not a good thing for society.

Respondents were pretty happy to make a compensation claim for an accident in a hospital (over 60%) or for an accident in the street (just over 50%). However, relatively few people felt they would claim for an accident at work (25%) and hardly anyone (less than 5%) said they would claim from a neighbour for an accident in their garden.

Interestingly for insurers, a quarter of respondents didn't know whether or not their Motor insurance covered them for legal expenses, and the average view of how much profit a Motor insurer made on a typical Motor premium was nearly 15% of premium(!).

Interestingly for Accident Management companies, most people said they'd use a solicitor or approach their Trade Union to make a claim, and only around 10% said they'd use an Accident Management company. This approach may be biased because of the socio-economic grouping of the "friends of actuaries". The MORI survey referred to in the Datamonitor report (see Appendix I), found that a third of people would use an Accident Management company, for example.

The results from a relatively small number of people are obviously not conclusive – but they were pretty clear about the view of claiming from the NHS and local authorities for accidents at hospital or in the street. This corroborates some of the statstics and developments referred to in sections 3 and 4. It will be interesting to see if this view of what it is reasonable to claim for remains the same over time, as this is the ultimate benchmark of the level of compensation in society. Some of the potential developments described in section 5 may lead to a society where most people think it is entirely natural and proper to claim for an accident at a neighbour's Barbeque, say, at which point we would know that Compensation Culture really has arrived. We propose repeating the Public survey in a number of years time, as a barometer of the type of accident that "the public" consider it reasonable to claim for.

APPENDIX I

BIBLIOGRAPHY

Publications

We have referred to a number of publications in pulling this paper together, including the following:

"Bodily Injury Claims", GIRO Working Party, Phil Ellis et al (1999)

"Compensation Crazy: Do we blame and claim too much?", Hodder & Stoughton, Institute of Ideas: E. Lee, J.Peysner, T. Brown, I. Walker, D.Lloyd (2002)

"Courting Mistrust: the hidden growth of a culture of litigation in Britain", Centre for Policy Studies, Frank Furedi (1999)

"European Motor data", Watson Wyatt survey for ABI (1999)

"Green Paper: Compensation to crime victims", Commission of the European Communities (2001)

"Handling Clinical negligence claims in England", NAO (2001)

"Just Rewards: The outcome of conditional fee cases", Nuffield Foundation, Stella Yarrow (2000)

"More Civil Justice? The impact of the Woolf reforms on pre-action behaviour", The law society and the Civil Justice Council, T. Goriely, R. Moorhead, P. Abrams (2002)

"Safety and Enforcement Statistics briefing 2000/01", HSE (2002)

"Second UK Bodily Injury Awards Study", IUA/ABI (1999)

"The funding of Peronal injury litigation", Institute for the study of the legal profession, S. Fennell (1994)

"Tort and Insurance Law Volume 2 - Damages for Non-Pecuniary Loss in a Comparative Perspective", Springer-Verlag Wein New York, Horton Rogers W.V. (2001)

"UK Personal Injury Ligation 2001: Surviving and Thriving in the Compensation Culture", Datamonitor (2001)

"US Tort Costs 2000: trends and findings on the costs of the US Tort system", Tillinghast-Towers Perrin (2002)

A summary of some of these papers is given below.

Bodily Injury Claims, GIRO Working Party, Phil Ellis et al (1999)

The aim of this paper is to provide some background information for an actuary or student new to the area of bodily injury claims. The paper covers:

- an introduction to UK law relating to personal injury
- a discussion of current and future legal issues
- practical approaches to reserving and rating for BI claims
- sources of legal information relevant to actuaries
- summaries of recent court cases

Compensation Crazy: do we blame and claim too much?, Hodder & Stoughton, Institute of Ideas: E. Lee, J.Peysner, T. Brown, I. Walker, D.Lloyd (2002)

This book is part of a (Debating Matters) series comprising essays voicing various sides of debate on contentious contemporary issues. The essays are provided by the Institute of Ideas, who regularly organize debates and conferences on issues of the day.

The (four) essays describe a range of views of "Compensation Culture". John Peysner (solicitor and Professor of Civil Litigation) argues that the negative views of litigation are misplaced and the view of society ready to sue at the drop of a hat is untrue. Rather, litigation has grown as a response to the erosion of collective sources of resource, such as the welfare state. He believes the negative views of Compensation Culture are fuelled by the negative image portrayed by adverts for Accident Management companies.

Tracy Brown (risk analyst and regular commentator and critic on litigation matters) is more concerned by the growth in litigation, and believes it can harm the social fabric in significant ways. She sees rising litigation as an erosion of trust between people and the propensity to look to the law to solve problems is a worrying development for society.

Ian Walker (Partner in a Personal Injury department at a law firm and former president of APIL - the Association of Personal Injury Lawyers) takes a very different view than Brown. He believes the extreme cases in the media are a caricature of reality. He believes that most claims are reasonable and are symptomatic of the population becoming more aware of its “legal and moral rights”. He sees Compensation Culture as a positive development, holding public services and big business to account.

Daniel Lloyd (barrister and author on legal issues from a civil liberties perspective) is concerned about Compensation Culture, believing that the paternalistic nature of the law is undermining personal responsibility. He believes judges are creating policy and that many of the claims being brought today are unreasonable and a negative trend in litigation.

Courting Mistrust: The hidden growth of a culture of litigation in Britian, (center for policy studies, Frank Furedi, (1999)

This publication from a right-wing think tank is firmly of the view that Compensation culture is a bad thing and is exploding with formidable momentum. In summary:

- Expenditure on compensation and legal fees has grown significantly, current estimates range for £3.3b to £6.8b per year, with the public sector paying around £1.8b.
- The expansion of liability to areas that were previously immune from it is a gross misuse of the law of tort to compensate for every misfortune.
- The growth of the culture of litigation has been paralleled by the expansion of the legal profession, with the number of practising solicitors and barristers doubling during the past two decades (turnover in the legal business now represents around 1.3% of GDP in England and Wales)
- The vast majority of cases are settled out of court, leaving the scale of the litigation crisis hidden from public view (and data hard to come by).
- Rather than create organisational efficiency this culture creates a climate of "litigation-avoidance", leading to the diminishing of quality of life.
- Rather than empowering the individual, litigation places people in a dependant relationship to professional advisors.

Overall Mr Furedi concludes that the present system of litigation is arbitrary and unfair, representing an unacknowledged tax on the British public.

European Motor Data, Watson Wyatt Survey for the ABI

The ABI commission Watson Wyatt to compare Motor markets across Europe, including looking at relative Bodily Injury costs. The survey isn't publically available, but some headline details are summarised below:

- Motor premiums form a significant part of total non-life premiums across Europe.
- Bodily injury and liability awards form a significant part of motor premiums.
- These awards are subject to substantial judicial inflation.
- The frequency of large awards is increasing.

Just under half of world motor insurance premiums in the year 2000 were written in North America, with its closest rival being Western Europe. Within Western Europe itself, there are six countries including Germany, Britain, France and Italy making up 84% of Motor premium.

In the UK, Germany and France, motor premiums make up less than 40% of total non-life premium income. This contrasts with Italy and Ireland where the proportion is over 50%. When it come to vehicle ownership per person, the Italians have a sizeable 0.74 compared to the UK's 0.48. The Germans and the French hold the middle ground at about 0.6 vehicles per person.

Ireland tops the average motor premium scales with premiums of over €900 per vehicle. More than half of the premium goes on third party liability costs. The average motor premiums in France, Germany and Italy are substantially lower, but third party liability costs are a greater proportion of the premium. The main Motor markets, including the European Motor market as a whole, are making losses. The combined expense and loss ratio for most Western European countries in 1999, was well in excess of 100% of premiums.

The number of injuries (resulting from RTAs) per million of population is significantly higher in the UK and Germany than in France. However, there is a complete reversal of positions when the number of fatalities per million of population is considered. The number of fatalities in French RTAs is over double the number in UK RTAs, with Germany and Italy occupying the middle ground.

There is a strong positive correlation between third party liability motor premiums and GDP per capita. The "outliers" are Ireland, where premium is very high relative to GDP and the Scandinavian states and France where premiums are low relative to GDP.

Second UK Bodily Injury Awards Study, IUA/ABI (1999)

In 1999, the Second UK Bodily Injury Awards Study was published. This study showed that the burning cost of personal injury claims for motor business increased between 1992 and 1997 at an annual average rate of 11.7%, with claim frequency increasing at an average of 5.9% per annum and claim severity increasing at 5.4% per annum, around 2% per annum faster than the increase in average earnings. The most rapid increase in frequency occurred for claims costing between £5,000 and £15,000. This evidence was used to support the assertion that the Compensation Culture was centred on relatively small claims for minor injuries that might otherwise have been ignored by the claimant. The effect of Compensation Culture was both to increase the number of these small claims and to increase the average cost, pushing a greater proportion of minor claims over the £5,000 threshold. This general increase in litigiousness, caused at least in part by mass media advertising of personal injury-related legal services, represented a trend which clearly worried the authors of the report.

The study also found that personal injury costs accounted for around 36% of the motor market premium income in 1997, representing a substantial increase from just 23% in 1993. Whilst part of this increase represents the effect of softening premium rates, the rise in personal injury costs played an important part.

A third study has been commissioned to update the results obtained previously, to prepare a detailed analysis of inflationary trends by size of claim and to consider the impact of escalating legal costs and various other matters. The intention is that the results of this study should be published in February 2003 and the members of the Working Party will be very interested to see the findings.

Tort and Insurance Law Volume 2 – Damages for Non-Pecuniary Loss in a Comparative Perspective, Springer-Verlag Wein New York, Horton Rogers W.V. (2001)

This book addresses the question of compensation for non-pecuniary loss, that is loss which cannot be expressed in monetary terms. It focuses on bodily injury, non-pecuniary loss and compensation in an overview of policy in Europe, including the provisions being established. The reports on each country are complemented by a comprehensive comparative report. The harmonisation and standardisation of compensation for non-pecuniary loss is also considered.

The book opens with a questionnaire, the answers of which form the basis of the subsequent chapters with each chapter being dedicated to the responses of the respective countries. The main headings in the questionnaire are:

Personal Injury and Death

- General.
- Specific Cases – those responding are asked to give approximate figures for the sums that might be recovered for non-pecuniary loss by a person assumed to be 30 years old who has suffered from an injury e.g. PTSD, quadriplegia, blindness, facial scarring and so on.
- Reform – includes questions about the perceived level of non-pecuniary loss and whether it would be "desirable or feasible that there should be harmonisation or standardisation… across Europe".

Non-Personal Injury Cases

- General.
- Specific Cases - hypothetical examples to which those responding are asked to indicate a "ball park figure".

The bulk of the book describes the main elements of the compensation regime in countries around Europe. Details of the summaries of the main European countries are given below:

England (by W.V. Horton Rogers)

- There is not any "general principle" governing compensatory damages for non-pecuniary loss.
- Three broad categories:
  1. That involving physical injury to the body,
  2. Psychic injury (a medically recognised injury),
  3. Non-physical injury, which causes "worry", "anxiety", "distress" or "injury to feelings".
- Clear "yes" that in the case of Personal Injury, damages in England are high in comparison to other European countries.
- If a case of defamation can be established, substantial damages can be recovered for what is called the "mere" loss of reputation (esp. in libel cases).
- Courts have shown a willingness to control awards in actions against the police.

France (by Suzanne Galand-Carval)

- Article 1382 of the Civil Code is interpreted in the loosest sense and this had led to a constantly expanding non-pecuniary category.
- French law allows the recovery of *dommage moral* to persons who are not the direct victims of an accident - this is only allowed to a very limited degree under English law.
- Non-pecuniary loss holds an important status in the modern French law of torts. In personal injury cases, both pecuniary loss and non-pecuniary loss are treated equivalently.
- French law sees pecuniary loss of a physically injured victim not as a single item, but rather as a sum of different elements – the courts distinguish between:
  1. Temporary impairment (mainly concerned with damages for physical pain on a scale from 1 to 7)
  2. Permanent impairment (based on the quantum doloris suffered before stabilisation and among others permanent reduction in the victim's physical, psychological or intellectual functions – quantified be a percentage called IPP)
- In fatal cases, relatives are entitled to damages for their moral suffering. If death is not instantaneous then the victim's claim survives for the benefit of the estate. In the case where the victim has suffered pre-death fear, it is probable that the victim's estate would benefit from a claim (but there are no examples of this as yet).
- Some compensation schemes:
  1. Social Security System
  2. Workers' Compensation Scheme
  3. Criminal Injuries Compensation Scheme
  4. Fonds d'indemnisation des transfusés et hémophiles
- Agree with the English that absolute amounts of awards cannot be the same because of varying economic strength, but a uniform method could be sought.

Germany (by Ulrich Magnus/Jörg Fedtke)

- As a general principle German law allows for non-pecuniary loss.
- Compensation for pain and suffering presupposes intent or negligence can be proven.
- The traditional function of German tort law is have the tortfeasor compensate the victim for making their life more difficult.
- German liability law, on the whole, excludes damages for non-pecuniary loss making current statutes irrelevant in non-pecuniary loss claims.
- Some compensation schemes:
    1. Social Security Systems: Accident Insurance
    2. Traffic Accidents: Criminal Injuries Compensation
- There are proposals for far higher levels of non-pecuniary awards in the case of severe injuries, but this would mean not awarding a pretium doloris (the value of physical or mental pain, for those of you who didn't know) in the case of slight injuries.

UK Personal Injury Ligation 2001: Surviving and Thriving in the Compensation Culture, Datamonitor (2001)

The following statistics are drawn from the Datamonitor survey dated 6 June 2001. In the year to March 2001, 743,593 personal injury claims were made to insurers. This is a 3.7% increase on the previous year. Datamonitor estimates there are 10.4m accidents in the UK each year of which 1.7m could result in a claim being made against a party - in other words there are a significant number of accidents that are currently going unclaimed for. The Datamonitor report makes some big assumptions in reaching the 10.4m figure. For example, it estimates that there are twice as many unrecorded accidents as recorded: however it notes that only a third of these might be serious enough to warrant compensation.

Of the claims made to insurers, 289,000 were a result of road traffic accidents, with Datamonitor estimating a further 100,000 traffic claims per year could be made. 20-40% of personal injury payout is estimated to be fees and other expenses.

Research by MORI Financial Services (Nov 2000) quoted by Datamonitor indicates that:

- 78% of the population believes it to be morally and socially acceptable to make a personal injury claim.
- 72% would consider making a claim if someone else were at fault.
- 68% know "not very much" or " nothing at all" about how to pursue a claim
- 51% of claimants would go to a solicitor and 34% would go to an accident intermediary

A Tillinghast report cited by Datamonitor (see section 6.4) estimated that the US civil liability system cost 2.3% of GDP in 1995 compared to 0.8% in the UK. Datamonitor believes that the current state of the UK market is equivalent to that in the USA in 1987. On this basis, UK insurers would be paying £6.7b per annum by 2005, a 72% increase from £3.9b in 2000.

US Tort Costs 2000: trends and findings on the costs of the US Tort system, Tillinghast-Towers Perrin (2002)

The contents of this paper are described in section 6.4.

APPENDIX II

COMPARISON OF AMOUNTS OF UK COMPENSATION

JSB Guidelines (All Figures are the Bottom of the relevant JSB Guideline range)

Injury	First Edition (1992)	Second Edition (1994)	Third Edition (1996)	Fourth Edition (1998)	Fifth Edition (2001)	Increase from 1st-5th Editions	% Increase from 1st - 5th Editions	Annual Inflation 1st - 5th Editions
Paralysis (quadriplegia)	100,000	105,000	110,000	120,000	160,000	60,000	60%	6%
Brian Injury(very severe)	100,000	105,000	105,000	110,000	140,000	40,000	40%	4%
Psychiatric(severe)	20,000	22,500	25,000	25,000	27,500	7,500	38%	4%
Pevis and hip(severe)	30,000	30,000	32,500	35,000	40,000	10,000	33%	4%
Amputation of leg-above knee	35,000	37,500	40,000	42,500	47,500	12,500	36%	4%
Amputation of arm - above elbow	40,000	42,500	46,000	48,000	55,000	15,000	38%	4%
Ankle (very severe)	20,000	20,000	22,000	23,500	25,000	5,000	25%	3%
Scarring - Female	20,000	20,000	22,000	22,500	24,000	4,000	20%	2%
Neck (severe Category (ii))	20,000	25,000	27,500	30,000	33,000	13,000	65%	6%
Back (moderate Category (ii))	5,000	5,000	5,500	6,000	6,250	1,250	25%	3%
Knee (severe)	25,000	27,000	30,000	32,000	35,000	10,000	40%	4%

Comparison of CICA and JSB Awards

Injury	JSB Fifth Edition (2001)	CICA (2001)
Paralysis (quadriplegia)	160 - 200,000	250,000
Brian Injury (very severe)	140 - 200,000	250,000
Psychiatric (severe)	27.5 - 57,000	27,000
Pevis and hip (severe)	40 - 65,000	11,000
Amputation of leg-above knee	47.5 - 70, 000	44,000
Amputation of arm - above elbow	55 - 65,000	44,000
Ankle (very severe)	25 - 35,000	11,000
Scarring - Female	24 - 48,000	11,000
Neck (severe Category (ii))	33 - 65,000	11,000
Back (moderate Category (ii))	6.25 - 14,000	2,500
Knee (severe)	35 - 47,500	8,200

APPENDIX III

COMPARISON OF COMPENSATION CLAIMS ACROSS EUROPE

Comparison of General Damage costs across Europe

The comparisons are compiled from answers to the questionnaire about injury costs from Tort and Insurance Law Volume 2

	England	France[1]	Germany
Quadriplegia	€ 270,000 - € 330,000[2]	€ 275,000	€ 175,000 - € 250,000
Total Blindness	€ 225,000	€ 230,000	€ 75,000 - € 250,000
Loss of taste and smell	€ 33,000	Case not sufficiently precise to give an estimate	€ 3,500 - € 22,500
Loss of non-dominant hand	€ 80,000	No data	€ 10,000[3]
Simple fracture of the tibia with full recovery within the normal period	€ 7,500	€ 2,300	€ 2,000 - € 2,500
Ineradicable facial scarring (male)	€ 1,500 - € 55,000	€ 4,600	€ 1,500 - € 16,000
Ineradicable facial scarring (female)	€ 3,300 - € 80,000	€ 4,600	€ 1,500 - € 16,000
Total loss of sexual function (male)	€ 125,000	€ 77,000	€ 15,000 - € 75,000
Sterility – female (young, no children)	€ 96,000 - € 142,000[4]	€ 77,000	€ 6,000 - € 30,000
Sterility – male (middle-aged, 2 children)	€ 5,000 - € 25,000	€ 23,000	€ 12,500 - € 35,000
PTSD – psychiatric trauma as a result of own injury	€1,300 - € 31,600	Case not sufficiently precise to give an estimate	€ 12,500 - € 110,000
PTSD – psychiatric trauma as a result of injury to a third party	No data	No data	€ 1,500 - € 45,000

Notes:

1. The French figures were supplied in Francs and are converted to Euros at rate of 6.6 FF = €1
2. Depending on pain, degree of residual movement, depression and life expectancy
3. For the loss of 2 ½ fingers
4. Assumes depression

Compensation of state criminal compensation schemes across Europe

The table below gives estimates for the total amount (in Euros) of compensation paid and the total number of applications received during one year under the state compensation schemes in each Member state. The estimates are provided for the purpose of illustration only, to indicate the size of the schemes.

Country	Total compensation paid (€)	Applications received
Austria	1,400,000	200 – 300
Belgium	6,307,000	740
Denmark	5,456,000	3,156
Finland	5,130,000	4,770
France	147,550,000	13,353*
Germany	106,694,000*	9,787
Ireland	3,329,000	232
Luxembourg	42,000	16
Netherlands	4,706,000	3,650
Portugal	972,000	68
Spain	1,540,000	1,468
Sweden	7,421,000	6,552
United Kingdom	340,926,000	78,165

All estimates are from 2000 except for (*) which are from 1999. Source: Mikaelsson, Julia, and Wergens, Anna, Repairing the irreparable – State compensation to crime victims in the European Union, The Crime Victim Compensation and Support authority, Emeå, Sweden, 2001

APPENDIX IV

EXAMPLES OF SOME COMPENSATION CLAIMS

UK

Mr. A v. unnamed school

In May 2000, £300,000 was awarded in an out-of-court settlement after disciplinary chaos left a teacher with a nervous breakdown. The teacher was pushed down a flight of stairs and although uninjured became irrational and unable to teach since.

Teachers again

A fellow teacher won £190,000 in the High Court in early 2002, after the Local Authority was found liable for failing to protect the teacher (who was attacked by a pupil). Whilst teachers have been awarded damages before, they have until now been in the form of out-of-court settlements and this is the first time such an award has been made in Court.

Deep Vein Thrombosis

A writ was issued in October 2001 against British Airways by a solicitor hoping to represent several hundred passengers who suffered death or serious injury after developing DVT on long-haul flights.

Lead at work

At the time of writing, a personal injury "class action" is being put together against a firm Colebrand, for alleged breach of "lead at work" regulations. It is being supported by After-the-Event insurance.

Case falls flat on its face

Common sense prevailed in 2001 in the case of a hapless Mancunian criminal, who made a habit of daredevil escapes from the police via his second floor window when they routinley came to arrest him. When he was being arrested, he broke away from the arresting officer and jumped out of the window, unfortunately suffering a fractured skull and brain damage. He sued the police for negligence but lost.

Cold coffee unacceptable

Common sense prevailed again in the case of Sam Bogle & Other v. McDonalds in early 2002. This was a group action against McDonalds (funded by Legal Aid) by claimants who suffered burns by spilling hot drinks on themselves. McDonalds presented evidence that even at temperatures of 65C or lower, coffee could still cause burns – yet if coffee was served at temperatures lower than this, it is unlikely that anyone would buy it. The judge astutely observed that someone buying a hot drink is likely to have done so on the basis that it is hot. The court also ruled on the weighty subject of the quality of McDonald's cups and whether McDonald's was negligent for not putting warning labels on all their cups, advising customers not to spill coffee on themselves and advising them that hot coffee was hot. The case was rejected on all counts. The case mirrors the infamous case of Mrs Liebeck in America (see below).

It couldn't happen here, could it? (great US compensation claims)

Hot coffee

81 year old Mrs Liebeck won $3m in damages against McDonalds after spilling coffee on her lap.

Costly hand-shake

A school teacher in Utah is being sued for £175,000 for shaking a parent's hand too hard at a parent's evening…..

An illustration of US litigation culture….

A professor in New York illustrated the litigation culture in the US by pulling a chair from under one of his students, Denise DiFede, during a lecture. Miss DiFede is suing him for $5m for the "pain and mental anguish" she suffered as a result.

Value for money

In 2000, a Klu Klux Klan member, Larry Webster, received £37,000 in damages against the sheriff and prison managers after he was beaten up in the cell where he was put whilst awaiting trial. He had, however, been left in a cell full of black inmates who instantly recognised the well-known KKK member. £37,000 seems reasonable value for money however….

Guns are dangerous

In 2001, the family of a US teenager who commited suicide was awarded £3m against KMart, who "showed reckless indifference" in selling him the gun he used to kill himself.

Shoplifting

Continuing the shopping theme, with Wal-Mart in the dock this time, Mrs Goodman was awarded $3.2m in 1999 for the trauma of being handcuffed in front of her children having been arrested for shoplifting.

Shopping again

In 2002, lawyers Weekly USA noted the $600m (!!) awarded to a family who claimed they were deceived about the rate of interest on H.P. agreement for a satellite dish they purchased. This (obviously) included punitive damages. Let's hope the dish actually worked….

APPENDIX V

A DAY IN THE LIFE OF A COMPENSATION JUNKIE

The following is copied from the BBC News Online Web site. Is it the shape of things to come?!?

Life is full of dangers to life, limb and sanity. But lawyers are on hand to make sure victims of life's slings and arrows can claim compensation - a nightmare day in the life of a composite compensation citizen.

0700: Waking up
Compensation range £50 - £1,000 (Supply of Goods Act)
Sleeping in the wrong sort of bed can cause back and neck problems, and an over-loud alarm clock may cause whiplash injuries. But the 1994 Supply of Goods Act gave consumers the right to demand damages if they are supplied with faulty, dangerous or malfunctioning goods. So if you were injured, it might be worth speaking to your lawyer.

0705: Getting dressed
Compensation range £50,000 - £100,000 (Industrial tribunal)
Much here depends on gender. Women in some occupations can limber up for a day of compensatable victimisation by opting for a pair of trousers. Last year Judy Owen claimed compensation after she was forced to resign from her job with the Professional Golfers' Association because she would not wear a skirt. There is yet to be a case of a man claiming compensation after being sacked for wearing a dress. But doubtless this is just a matter of time.

0715: Going downstairs
Compensation range £50 - £5,000 (Supply of Goods Act)
Houses are full of hazards and the most common type of accident is a fall on the stairs (or, for the more elderly, the danger of falling out of bed). There are about 2.7 million accidents in the home each year which result in a visit to hospital. Falls account for 40% of the non-fatal injuries and 46% of all deaths. Sadly, an injury in the home is likely to be thought of by the legal system as your own fault. So be extra careful. There is not much compensation on offer...

> Glass breaks and shatters and in doing so can break into numerous pieces, some of which can spread far from the point of impact
>
> Department of Trade and Industry on milkbottle danger

...at least until you reach the kitchen breakfast table - bristling as it is with negligently designed tin-openers, lethal electric kettles and exploding pop-up toasters - all cause for complaint and potential compensation under the 1994 Act.

0718: Opening the post
Compensation range £1,000 - £50,000 (Personal injury, negligence)
A cheque arrives from your package holiday operator for mishap during a recent winter break - £5,000 in respect of a coconut which fell on your head while you were sitting under a palm tree. Your personal injury compensation lawyers have followed the precedent set by Jean Gratton who sued Airtours after a coconut fell on her chest while on holiday in the Caribbean. She got £1,700. Travel operators are now so worried about compensation claims that they have established a £1bn "fighting fund" to contest cases and make pay outs. There is also a postcard from a distant cousin, a former prison inmate who, following the example of a former IRA terrorist, is suing the Prison Service for injuries sustained during an attempted jail-break.

0720: Breakfast
Compensation range £50 - £5,000 (Supply of Goods Act, personal injury)
The main compensation news here is the danger of injury from badly designed packaging which, according to the Department of Trade and Industry results in thousands of compensatable injuries every year. One particular hazard to look out for is the glass milk bottle and, in fact, glass objects in general. The danger arises, the Department of Trade and Industry says, because: "Typically milk bottles are left on the doorstep where they can get wet. They are very smooth and slippery and therefore are frequently dropped." But there are no known cases of people suing their milkman for supplying overly-slippery milk bottles... yet.

0730: Sending the kids off to school
Compensation Range £500 - £500,000 (Human Rights Act, personal injury)
Last year's Human Rights Act established a legal claim to a "good quality education" and there have already been legal threats and demands for compensation from schools said to be failing to deliver a good education to pupils. So as you are sending the kids off to school brief them to take sworn statements providing evidence of sub-standard teaching, overcrowded classes, leaky buildings and smelly changing rooms - all part of a possible compensation goldmine if they later fail their GCSEs or fail to gain entry to Harvard University. At the same time be sure to brief the kids about the personal injury compensation aspects of falling over in the playground, getting a rubber stuck up their nose or getting bruised legs from playing hockey.

0745: Getting to work
Compensation range £10 - £500 (fare rebates)
Train companies now routinely pay compensation for inadequate service. But so far only token sums have been involved. It can not be long, surely, until a massive "class action" featuring the Whole Country v The Entire Rail System leads to a bonanza pay-out.

0830: Work
Compensation range £50,000 - £250,000 (Industrial tribunal, personal injury, Human Rights Act)
Stress, bullying, sex discrimination, injuries sustained from overuse or incorrect use of computers, chairs, keyboard, mice, photocopiers and other horrors make the workplace a personal injury hell and, therefore, compensation paradise. Last year bank manager Leslie North was awarded £100,000 after suffering a nervous breakdown when a "hostile boss" reduced him to tears. He should try explaining reserve deteriorations to a Finance Director. Working for a local authority or public sector body appears to be particularly threatening to physical and mental health. Earlier this year local government officer Randy Ingram won £203,000 after his life was "ruined" by work as a gipsy site manager for Worcester City council. And primary school teacher Jan Howell was last year awarded £254,362 in compensation after showing that her job had driven her towards a nervous breakdown. The year 2000 saw a total of £320m awarded in compensation as a result of work-related stress.

1300: Lunchtime
Compensation range £50 - £5,000 (Supply of Goods Act, personal injury)
All the dangers of breakfast apply, but in public. Therefore somebody else and not yourself will be liable if there is a problem - opening up much more promising compensation possibilities.

1400: Back at work

Compensation range £50,000 - £1,000,000 (Industrial tribunal, personal injury, Human Rights Act, Defamation Act)

Since your job is damaging your health, you might consider a change of employer. The compensation possibilities here surround the nature of your boss's reference letter. Last year one woman, Belinda Coote, bagged £195,000 after her employer refused to supply a letter of reference. She might have got even more if her boss wrote an unjustifiably negative reference. This would have counted as libel (defamation in a permanent form) and might have entitled her to "damages" for loss of reputation.

1700: Mobile phone call / doctor's appointment

Compensation range £50,000 - £1,000,000 (Public health liability, medical negligence, personal injury, Human Rights Act)

You book your place in the impending, possible class action against the mobile phone industry by using your mobile to call the GP's surgery. American lawyer Peter Angelos earned $4.2b in damages for cigarette addicts from tobacco companies before announcing he was taking on the mobile phone companies over fears that they can cause brain tumours. You arrange an emergency examination with your GP, who is unlikely to give categorical advice because of danger of your suing him for misdiagnosis. GPs are now 13 times more likely to face negligence claims than 10 years ago.

2300: Bedtime

Compensation range: Unknown

Sex is full of every imaginable kind of hazard - though not many attract compensation... yet. Last year a woman attempted to sue Durex for £120,000 when a condom split and she became pregnant. But a judge threw out the case. No jokes about the case not standing up in Court.

2400: Sleep

Compensation range: Zero

You fall asleep. A Franz Kafka-style nightmare set in a sinister world of dungeons, castles and law courts where everyone in the whole world is suing everybody else slowly gives way to a heavenly scenario where there are no lawyers at all…... but it is only a dream.

APPENDIX VI

COPIES OF OUR SURVEYS

Practitioner Survey

As part of a GIRO Working Party, we are collating views of practitioners on personal injury costs. We would very much appreciate your time filling in this survey - we guarantee this will take less than five minutes of your valuable time! There are a mere 16 questions. We would expect respondents to give "top of the head" answers rather than indulge in any detailed research. All answers will be treated anonymously and will be collated by Institute of Actuaries staff so individual answers will not be seen by any working party members.

Please can you e-mail your completed survey to cccsurvey@actuaries.org.uk. You can do this by "replying with history", replacing the recipient of the reply with "cccsurvey@actuaries.org.uk", and editing the "answer" sections of this e-mail.

WHY NOT JUST EDIT THE "ANSWER" SECTIONS BELOW AND COMPLETE THE SURVEY NOW? If you prefer you can send this by post, either with answers "edited" electronically or filled in by hand. Postal details are given at the end of this e-mail. PLEASE REPLY BY 31 MAY AT THE LATEST. It would be helpful to have as many replies as possible, so that the answers we play back at GIRO2002 are as meaningful as possible, so we'd really appreciate a few minutes of your time completing and returning this e-mail. Many thanks.

Q1: How would you describe the company for which you work?

A: Insurer B: Reinsurer C: Consultancy D: Other

A1: A, B, C, D (delete all bar one)

Q2: Which of the following best describes your recent experience of pricing or reserving for UK insurance classes likely to give rise to personal injury claims (e.g. motor or liability)?

A: I have spent much of my time working in this area.
B: I have spent part of my time working in this area.
C: I have spent only a little time working in this area.
D: I have not worked in this area recently.

A2: A, B, C, D (delete all bar one)

Q3: How well-informed do you consider yourself on issues regarding personal injury claims and recent legislative developments in this area?

A: Very well-informed
B: Quite well-informed
C: Not very well-informed
D: Not at all well-informed

A3: A, B, C, D (delete all bar one)

Q4: Over the last five years, at what annual average rate do you think the cost of personal injury claims (and associated legal costs) per policy for a typical UK private motor policy has increased?

A: <5% p.a.
B: 5%-10% p.a.
C: 10%-15% p.a.
D: 15%-20% p.a.
E: >20% p.a.

A4: A, B, C, D, E (delete all bar one)

Q5: Approximately how much of this annual increase is attributable to:

increases in claim frequency a% p.a?

increases in the average cost of claims b% p.a?

A5: a%, b% (please replace "a" and "b" with two numbers adding up to the over all inflation per policy)

Q6: Over the next five years, by what annual average rate do you expect the cost of personal injury claims (and associated legal costs) per policy for a typical UK private motor policy to increase?

A: <5% p.a.
B: 5%-10% p.a.
C: 10%-15% p.a.
D: 15%-20% p.a.
E: >20% p.a.

A6: A, B, C, D, E (delete all bar one)

Q7: Over the next five years, by what annual average rate do you expect the cost of personal injury claims (and associated legal costs) per policy for a typical UK employers' liability policy to increase?

A: <5% p.a.
B: 5%-10% p.a.
C: 10%-15% p.a.
D: 15%-20% p.a.
E: >20% p.a.

A7: A, B, C, D, E (delete all bar one)

Q8: What proportion of the premium for a typical comprehensive private motor policy in the UK do you think currently represents:

(i) personal injury compensation costs?

A: <10% B: 10%-15% C: 15%-20% D: 20%-25% E: >25%

A8i: A, B, C, D, E (delete all bar one)

(ii) associated legal expenses?

A: <10% B: 10%-15% C: 15%-20% D: 20%-25% E: >25%

A8ii: A, B, C, D, E (delete all bar one)

Q9: In decreasing order of significance, which of the following do you think have caused the greatest increase in personal injury claims costs over recent years? Please give your top five.

A: Recovery of social security benefits by the Compensation Recovery Unit (CRU)
B: Recovery of NHS treatment costs by the CRU
C: Reductions in the Ogden discount rate
D: Other changes related to lump sum awards, e.g. improving mortality
E: Increases in general damages for pain & suffering
F: Woolf Reforms
G: Conditional Fee Arrangements
H: After-the-Event legal expense insurance
I: Increasing litigiousness of society
J: New heads of damage

A9: A, B, C, D, E, F, G, H, I, J (please leave your "top five" letters, most significant first)

Q10: Which of the following do you think will have a significant effect (positive or negative) on claim costs in the next five years? Please give your top five in decreasing order of significance.

A: Further changes in the Ogden discount rate
B: Increased use of structured settlements instead of lump sums
C: Extension of the right of recovery of NHS trusts to other classes of business
D: Implementation of Law Commission recommendations on wrongful death (LCR #263)
E: Implementation of Law Commission recommendations on psychiatric illness (LCR #249)
F: Other legislative / judicial changes
G: Increased use of conditional fee arrangements / after-the event insurance
H: Increasing litigiousness of society
I: New heads of damage
J: Increased use of rehabilitation techniques

A10: A, B, C, D, E, F, G, H, I, J (please leave your "top five" letters, most significant first)

Q11: If you work for an insurer can you identify from computer systems which personal injury claims involve conditional fee arrangements (CFAs)?

A: Yes, as soon as the CFA is notified
B: Yes, but only after the claim has been settled
C: No, not at all

A11: A, B, C (delete all bar one)

Q12: If you answered A or B to question 10, can you distinguish between individual and collective conditional fee arrangements?

A: Yes B: No

A12: A, B (delete all bar one)

Q13: What proportion of motor personal injury claims notified in 2001 do you estimate involve conditional fee arrangements?

A: <10% B: 10%-20% C: 20%-30% D: 30%-50% E: >50%

A13: A, B, C, D, E (delete all bar one)

Q14: What proportion of employers' liability personal injury claims notified in 2001 do you estimate involve conditional fee arrangements?

A: <10% B: 10%-20% C: 20%-30% D: 30%-50% E: >50%

A14: A, B, C, D, E (delete all bar one)

Q15: What proportion of motor personal injury claims notified in 2006 do you estimate will involve conditional fee arrangements?

A: <10% B: 10%-20% C: 20%-30% D: 30%-50% E: >50%

A15: A, B, C, D, E (delete all bar one)

Q16: What proportion of employers' liability personal injury claims notified in 2006 do you estimate will involve conditional fee arrangements?

A: <10% B: 10%-20% C: 20%-30% D: 30%-50% E: >50%

A16: A, B, C, D, E (delete all bar one)

Many thanks! Please "reply" with you edited answers to: cccsurvey@actuaries.org.uk, or post it (either edited on or filled in by hand) to:

Peter Stirling
Institute of Actuaries
Staple Inn
High Holborn
London
WC1V 7QJ

Please reply by 31 May. Thank you very much.

The CCC Working Party
- Julian Lowe
- James Rakow
- Shreyas Shah
- Mark Malone
- Grant Mitchell
- Jonathan Broughton
- Brian Gravelson

Public Survey

Dear friend of the actuarial profession,

You have received this e-mail because you are a friend of an actuary. It is part of an Institute of Actuaries working party that is doing some research into "Compensation Culture" in the UK. This is not a chain mail, it is a serious survey. By way of encouragement, if you do respond, you will be entered into a draw for £50 cash.

The questionnaire has been designed to be completed in less than two minutes - there are 13 simple questions. For each question answer either Y for Yes, N for No or D for Don't know, by deleting the two that are not applicable. Where the question is asking for a percentage, just put the number in before the percentage. Once complete, please send the e-mail to cccsurvey@actuaries.org.uk.

1. Do you perceive there to have been a change in the public's attitude over the last ten years to claiming compensation after an accident? Y / N / D

2. Do you think that a society in which people increasingly claim compensation is a good thing? Y / N / D

3. From memory, does your motor policy cover you for legal costs? Y / N / D

4. Estimate (nearest 5% for each, totalling 100%) what proportion of a typical UK motor premium currently goes to the following:

Car repair/replacement costs	%
Injury claims	%
Insurer's expenses	%
Insurer's Profit	%

5. Has anyone in your immediate family received compensation for an injury? Y / N / D

6. If you had a routine operation at your local NHS hospital which, as a result of a suspected error by the surgeon, resulted in daily severe headaches, would you investigate suing the surgeon for compensation? Y / N / D

7. If you used a lawyer in question 6 above, what proportion of the amount of compensation that you receive would you expect your lawyer to receive? %

8. If you tripped over a box in a corridor at work and broke your arm, would you consider suing your employer? Y / N / D

9. If you tripped over a chair in a neighbour's garden and broke your arm, would you consider suing your neighbour? Y / N / D

10. If you tripped over a paving stone in the street and broke your arm, would you consider suing someone? Y / N / D

11. If you did decide to try and get compensation from your employer in question 8 above, how would you proceed (delete all but one)?

    Directly yourself (letter or meeting)
    Use a solicitor familiar to you
    Approach your Trade Union
    Call a firm specialising in making compensation claims
    No idea

12. How old are you?

13. Are you: Male / Female

PLEASE E-MAIL BACK TO cccsurvey@actuaries.org.co.uk. MANY THANKS.

Please do not send any replies after 31/07/02.

APPENDIX VII

SUMMARY OF OUR SURVEY RESULTS

Practitioner Survey for Answers: Q1 to Q8

All

	Q1	*Q2*	*Q3*	*Q4*	*Q5a*	*Q5b*	*Q6*	*Q7*	*Q8i*	*Q8ii*
A	37%	15%	4%	0%	5%	10%	1%	3%	9%	38%
B	16%	23%	43%	11%			32%	34%	15%	33%
C	33%	21%	24%	49%			39%	36%	19%	9%
D	13%	41%	28%	24%			14%	12%	29%	6%
E				9%			3%	7%	19%	4%
F										
G										
H										
I										
J										
N/A	1%	0%	1%	7%			9%	8%	9%	10%

Insurers

	Q1	*Q2*	*Q3*	*Q4*	*Q5a*	*Q5b*	*Q6*	*Q7*	*Q8i*	*Q8ii*
A	100%	24%	7%	0%	6%	9%	0%	2%	9%	39%
B		22%	44%	17%			28%	31%	19%	33%
C		20%	22%	48%			52%	43%	17%	7%
D		33%	24%	22%			11%	15%	20%	7%
E				9%			4%	6%	28%	4%
F										
G										
H										
I										
J										
N/A		0%	2%	4%			6%	4%	7%	9%

Reinsurers

	Q1	*Q2*	*Q3*	*Q4*	*Q5a*	*Q5b*	*Q6*	*Q7*	*Q8i*	*Q8ii*
A		9%	0%	0%	5%	10%	0%	4%	13%	61%
B	100%	39%	48%	0%			35%	13%	22%	13%
C		26%	22%	83%			43%	48%	9%	4%
D		26%	30%	13%			17%	22%	43%	9%
E				4%			0%	9%	9%	9%
F										
G										
H										
I										
J										
N/A		0%	0%	0%			4%	4%	4%	4%

Consultants

	Q1	*Q2*	*Q3*	*Q4*	*Q5a*	*Q5b*	*Q6*	*Q7*	*Q8i*	*Q8ii*
A		13%	2%	0%	5%	10%	4%	4%	8%	25%
B		21%	42%	8%			31%	42%	10%	40%
C	100%	23%	25%	42%			29%	27%	23%	10%
D		44%	31%	29%			17%	8%	27%	4%
E				4%			2%	2%	15%	4%
F										
G										
H										
I										
J										
N/A		0%	0%	17%			17%	17%	17%	17%

Others

	Q1	*Q2*	*Q3*	*Q4*	*Q5a*	*Q5b*	*Q6*	*Q7*	*Q8i*	*Q8ii*
A		5%	5%	0%	6%	10%	0%	5%	5%	42%
B		16%	37%	16%			47%	47%	11%	42%
C		11%	32%	32%			26%	26%	32%	11%
D	100%	68%	26%	32%			11%	5%	42%	5%
E				21%			11%	16%	11%	0%
F										
G										
H										
I										
J										
N/A		0%	0%	0%			5%	0%	0%	0%

Answers of those who answered A or B to question 2 (ie: who consider themselves "experts")

	Q1	*Q2*	*Q3*	*Q4*	*Q5a*	*Q5b*	*Q6*	*Q7*	*Q8i*	*Q8ii*
A	45%	61%	9%	0%	5%	9%	0%	4%	2%	43%
B	20%	39%	75%	13%			41%	39%	13%	32%
C	29%		14%	61%			43%	41%	21%	14%
D	7%		2%	23%			13%	13%	34%	4%
E				4%			0%	2%	27%	4%
F										
G										
H										
I										
J										
N/A	0%		0%	0%			4%	2%	4%	4%

Practitioner Survey for Answers: Q9 and Q10

All

	Q9(1st)	*Q9(2nd)*	*Q9(3rd)*	*Q9(4th)*	*Q9(5th)*	*Q10(1st)*	*Q10(2nd)*	*Q10(3rd)*	*Q10(4th)*	*Q10(5th)*
A	1%	4%	3%	7%	10%	14%	6%	6%	6%	6%
B	4%	8%	7%	12%	8%	8%	8%	8%	8%	10%
C	31%	14%	12%	9%	1%	5%	8%	8%	8%	14%
D	3%	4%	5%	3%	13%	1%	1%	6%	6%	1%
E	7%	21%	16%	9%	8%	1%	2%	4%	7%	5%
F	2%	4%	3%	5%	4%	5%	13%	14%	8%	8%
G	6%	10%	12%	8%	15%	6%	17%	19%	11%	8%
H	4%	3%	10%	8%	6%	36%	15%	6%	8%	4%
I	26%	14%	12%	16%	6%	3%	3%	2%	10%	10%
J	0%	0%	5%	5%	10%	3%	7%	7%	7%	12%
N/A	15%	16%	16%	17%	19%	18%	20%	19%	21%	22%

Insurers

	Q9(1st)	*Q9(2nd)*	*Q9(3rd)*	*Q9(4th)*	*Q9(5th)*	*Q10(1st)*	*Q10(2nd)*	*Q10(3rd)*	*Q10(4th)*	*Q10(5th)*
A	4%	4%	4%	9%	9%	19%	0%	7%	4%	7%
B	4%	13%	11%	13%	9%	6%	13%	7%	11%	7%
C	28%	17%	15%	6%	0%	2%	15%	6%	11%	19%
D	2%	2%	2%	4%	11%	0%	0%	2%	7%	2%
E	7%	22%	17%	13%	7%	0%	2%	6%	6%	6%
F	0%	0%	4%	7%	2%	6%	7%	20%	6%	9%
G	6%	13%	13%	13%	17%	6%	13%	26%	15%	6%
H	6%	2%	9%	9%	9%	41%	22%	2%	4%	0%
I	33%	17%	7%	9%	9%	4%	4%	2%	11%	17%
J	0%	0%	7%	4%	13%	6%	9%	9%	9%	9%
N/A	11%	11%	11%	13%	13%	13%	15%	13%	17%	19%

Reinsurers

	Q9(1st)	*Q9(2nd)*	*Q9(3rd)*	*Q9(4th)*	*Q9(5th)*	*Q10(1st)*	*Q10(2nd)*	*Q10(3rd)*	*Q10(4th)*	*Q10(5th)*
A	0%	9%	4%	9%	13%	22%	17%	4%	4%	0%
B	9%	13%	9%	13%	13%	4%	4%	9%	9%	17%
C	35%	26%	4%	4%	0%	4%	4%	22%	4%	13%
D	4%	4%	9%	0%	13%	0%	0%	9%	13%	0%
E	4%	13%	22%	4%	13%	0%	0%	0%	9%	9%
F	4%	13%	4%	13%	9%	9%	13%	9%	13%	0%
G	13%	4%	9%	4%	9%	9%	17%	9%	13%	9%
H	0%	0%	4%	4%	0%	26%	13%	13%	4%	17%
I	17%	4%	22%	30%	4%	4%	0%	0%	4%	9%
J	0%	0%	0%	4%	9%	4%	9%	4%	4%	4%
N/A	13%	13%	13%	13%	17%	17%	22%	22%	22%	22%

Consultants

	Q9(1st)	*Q9(2nd)*	*Q9(3rd)*	*Q9(4th)*	*Q9(5th)*	*Q10(1st)*	*Q10(2nd)*	*Q10(3rd)*	*Q10(4th)*	*Q10(5th)*
A	0%	2%	2%	2%	8%	8%	6%	8%	8%	6%
B	4%	2%	2%	8%	4%	10%	6%	8%	8%	6%
C	29%	8%	15%	13%	2%	6%	4%	4%	6%	17%
D	0%	6%	6%	6%	17%	2%	2%	8%	2%	2%
E	8%	23%	13%	6%	4%	0%	4%	2%	8%	2%
F	0%	4%	2%	0%	6%	4%	19%	10%	8%	10%
G	4%	8%	13%	6%	19%	2%	21%	17%	10%	4%
H	2%	8%	10%	10%	6%	42%	6%	6%	10%	2%
I	27%	13%	10%	19%	0%	2%	4%	4%	10%	2%
J	0%	0%	2%	4%	8%	0%	4%	8%	2%	23%
N/A	25%	25%	25%	25%	25%	23%	23%	23%	25%	25%

Others

	Q9(1st)	*Q9(2nd)*	*Q9(3rd)*	*Q9(4th)*	*Q9(5th)*	*Q10(1st)*	*Q10(2nd)*	*Q10(3rd)*	*Q10(4th)*	*Q10(5th)*
A	0%	5%	5%	11%	16%	5%	5%	0%	11%	5%
B	0%	0%	5%	21%	11%	16%	0%	11%	0%	16%
C	37%	11%	5%	16%	0%	11%	5%	11%	5%	0%
D	11%	5%	5%	0%	11%	0%	0%	11%	5%	0%
E	5%	21%	16%	11%	11%	5%	0%	11%	0%	5%
F	11%	5%	0%	0%	0%	0%	16%	11%	5%	11%
G	5%	16%	5%	5%	11%	16%	21%	11%	0%	16%
H	11%	0%	16%	5%	0%	21%	16%	11%	16%	5%
I	16%	26%	21%	5%	11%	0%	5%	0%	16%	11%
J	0%	0%	11%	11%	11%	5%	5%	0%	16%	5%
N/A	5%	11%	11%	16%	21%	21%	26%	26%	26%	26%

Answers of those who answered A or B to question 2 (ie: who consider themselves "experts")

	Q9(1st)	*Q9(2nd)*	*Q9(3rd)*	*Q9(4th)*	*Q9(5th)*	*Q10(1st)*	*Q10(2nd)*	*Q10(3rd)*	*Q10(4th)*	*Q10(5th)*
A	2%	4%	5%	7%	7%	20%	9%	7%	9%	9%
B	2%	11%	9%	11%	11%	9%	11%	9%	9%	9%
C	48%	18%	14%	4%	0%	4%	4%	11%	11%	16%
D	4%	5%	13%	2%	14%	2%	0%	4%	9%	2%
E	5%	25%	5%	20%	13%	0%	2%	2%	4%	4%
F	0%	2%	5%	7%	4%	9%	25%	16%	11%	5%
G	5%	9%	16%	14%	16%	4%	18%	29%	9%	7%
H	4%	2%	7%	11%	7%	39%	16%	7%	9%	5%
I	27%	21%	16%	18%	4%	5%	4%	4%	13%	11%
J	0%	0%	5%	4%	18%	4%	5%	7%	9%	23%
N/A	4%	4%	4%	4%	7%	5%	7%	5%	9%	9%

Practitioner Survey: Answers: Q11 to Q16

All

	Q11	*Q12*	*Q13*	*Q14*	*Q15*	*Q16*
A	3%	1%	16%	20%	3%	3%
B	3%	6%	26%	27%	12%	12%
C	28%	0%	22%	17%	20%	21%
D	0%	0%	8%	10%	22%	22%
E	0%	0%	3%	3%	19%	19%
F						
G						
H						
I						
J						
N/A	66%	93%	25%	22%	23%	23%

Insurers

	Q11	*Q12*	*Q13*	*Q14*	*Q15*	*Q16*
A	9%	0%	26%	26%	6%	6%
B	6%	15%	22%	22%	19%	22%
C	50%	0%	15%	15%	15%	11%
D	0%	0%	4%	7%	15%	17%
E	0%	0%	7%	7%	20%	20%
F						
G						
H						
I						
J						
N/A	35%	85%	26%	22%	26%	24%

Reinsurers

	Q11	*Q12*	*Q13*	*Q14*	*Q15*	*Q16*
A	0%	0%	17%	30%	4%	4%
B	0%	0%	26%	35%	9%	13%
C	26%	0%	30%	13%	26%	26%
D	0%	0%	0%	4%	30%	35%
E	0%	0%	0%	0%	13%	4%
F						
G						
H						
I						
J						
N/A	74%	100%	26%	17%	17%	17%

Consultants

	Q11	*Q12*	*Q13*	*Q14*	*Q15*	*Q16*
A	0%	2%	6%	10%	0%	0%
B	2%	0%	27%	31%	4%	2%
C	8%	0%	21%	17%	23%	29%
D	0%	0%	19%	13%	25%	19%
E	0%	0%	0%	2%	21%	23%
F						
G						
H						
I						
J						
N/A	90%	98%	27%	27%	27%	27%

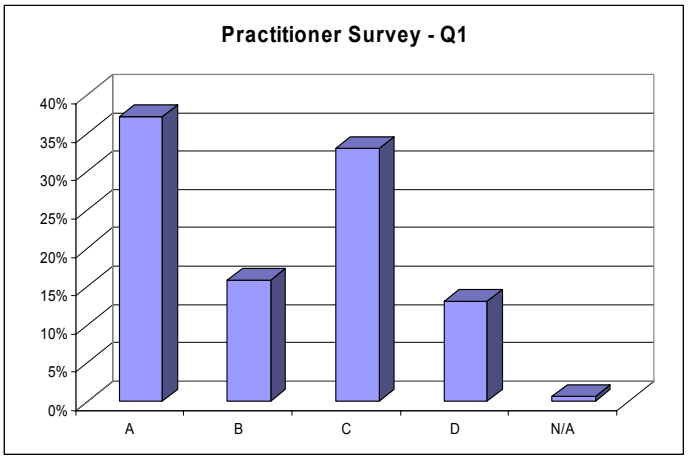
Others

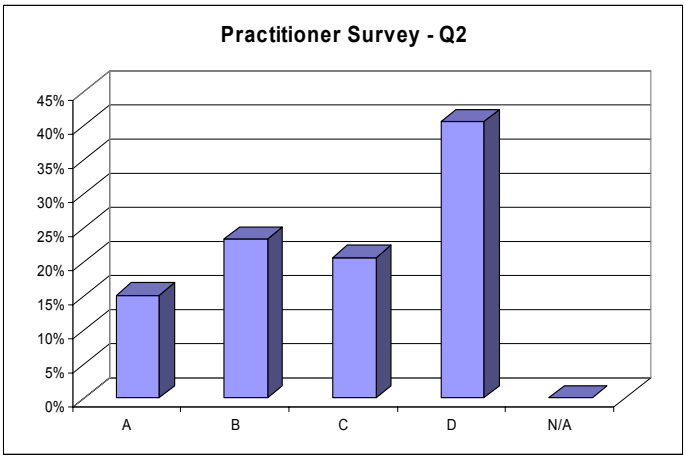
	Q11	*Q12*	*Q13*	*Q14*	*Q15*	*Q16*
A	0%	0%	11%	16%	0%	0%
B	0%	5%	32%	21%	21%	5%
C	21%	0%	37%	26%	16%	26%
D	0%	0%	0%	21%	26%	26%
E	0%	0%	5%	0%	21%	26%
F						
G						
H						
I						
J						
N/A	79%	95%	16%	16%	16%	16%

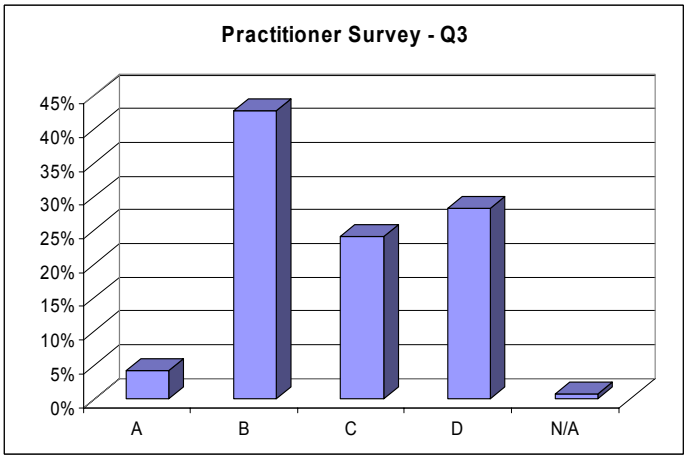
Answers of those who answered A or B to question 2 (ie: who consider themselves "experts")

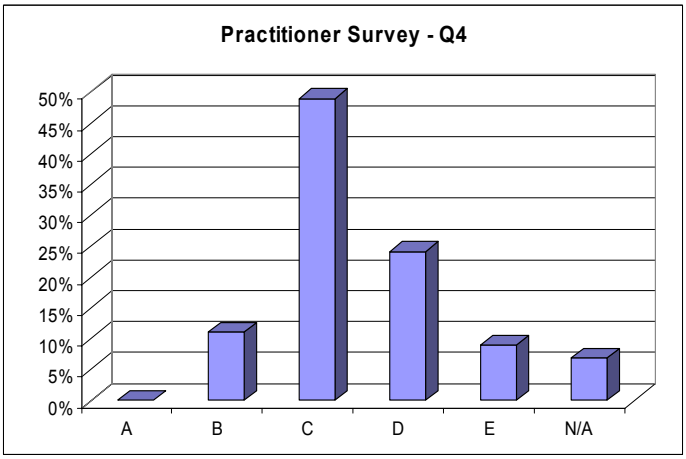
	Q11	*Q12*	*Q13*	*Q14*	*Q15*	*Q16*
A	7%	0%	13%	20%	4%	4%
B	4%	9%	27%	27%	11%	9%
C	36%	0%	29%	21%	18%	23%
D	0%	0%	7%	13%	29%	21%
E	0%	0%	4%	4%	21%	27%
F						
G						
H						
I						
J						
N/A	54%	91%	21%	16%	18%	16%

Practitioner Survey Graphs of answers



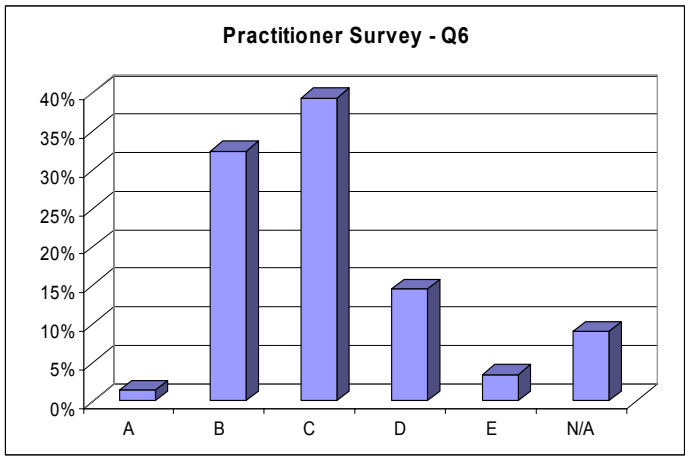


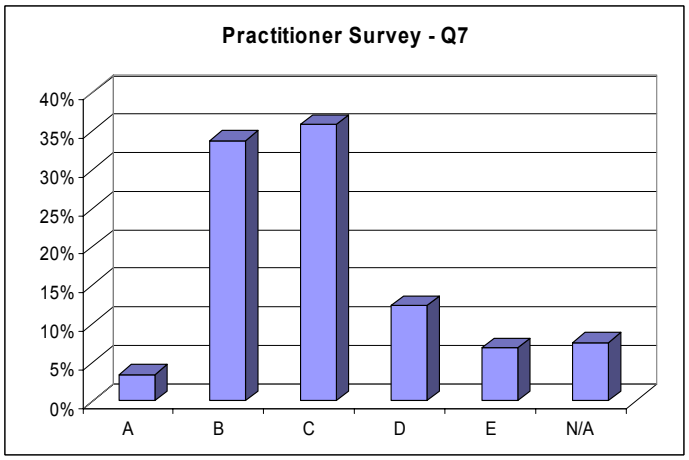


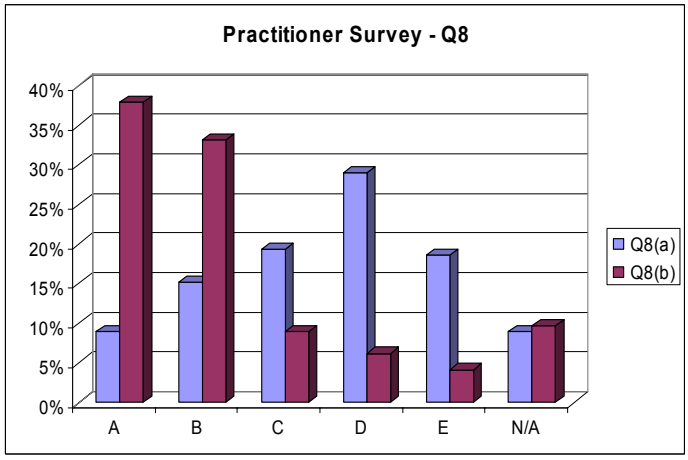


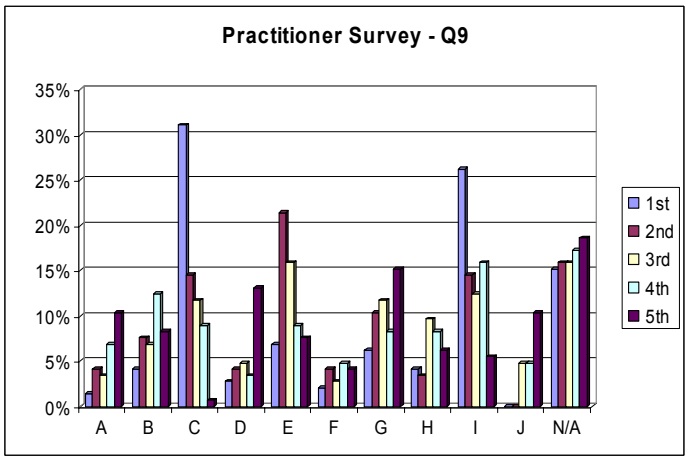
Practitioner Survey - Q5(a) Average: 5%

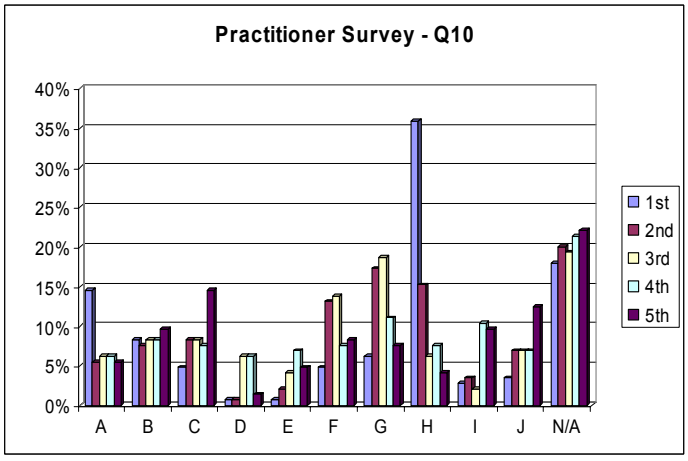
Practitioner Survey – Q5(b) Average: 10%

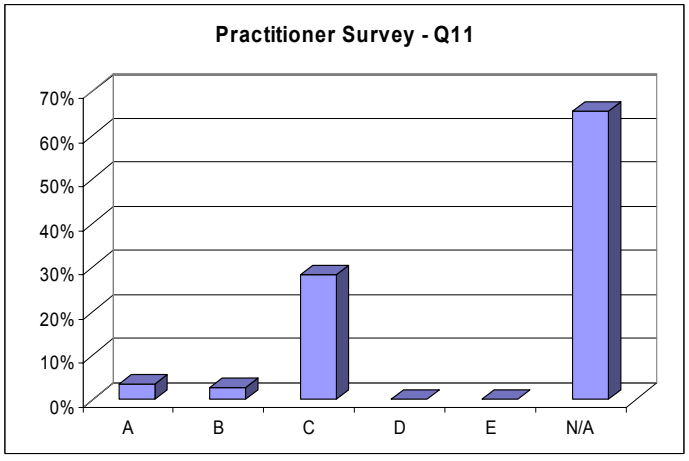


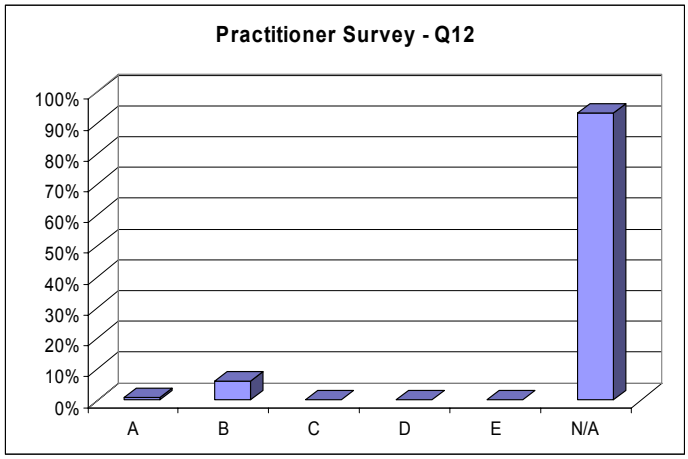


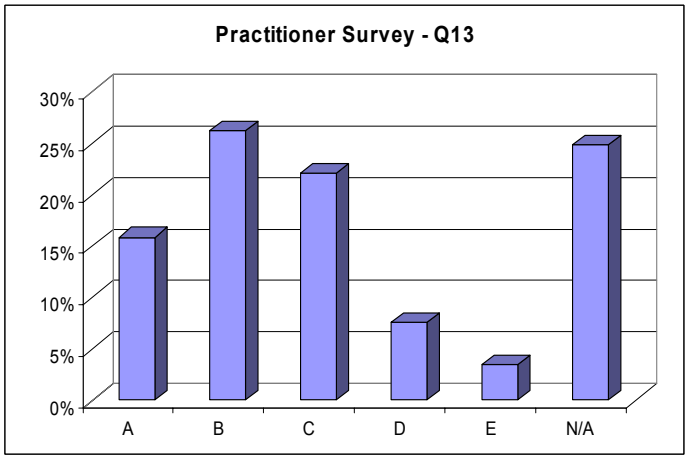


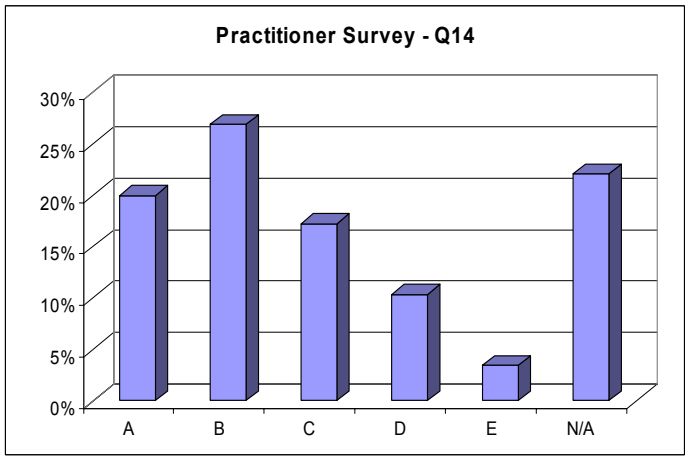


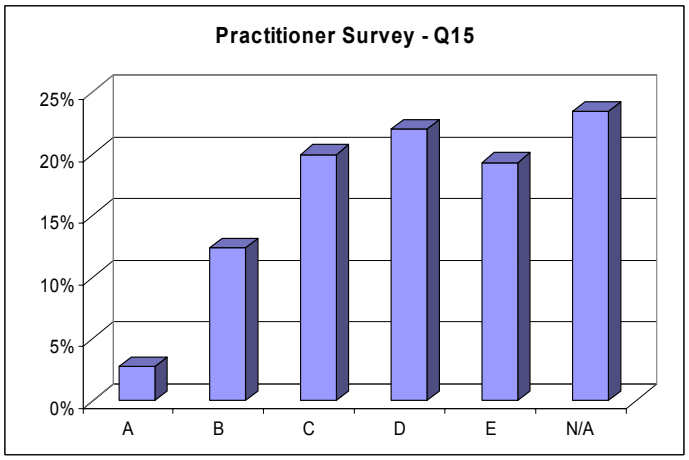




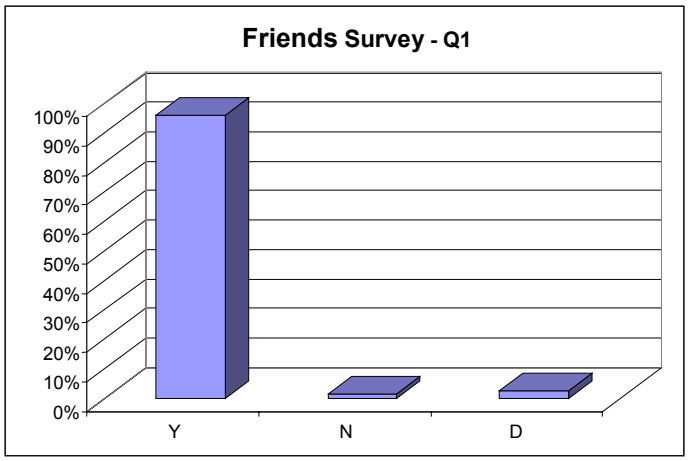

Practitioner Survey - Q12
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
A
B
C
D
E
N/A

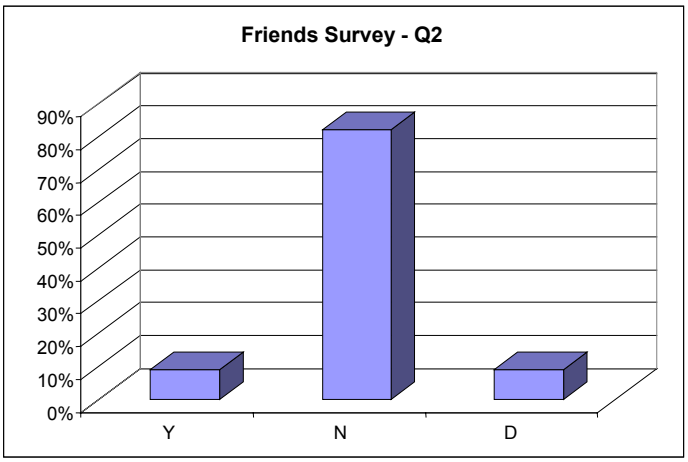

Practitioner Survey - Q13
30%
25%
20%
15%
10%
5%
0%
A
B
C
D
E
N/A

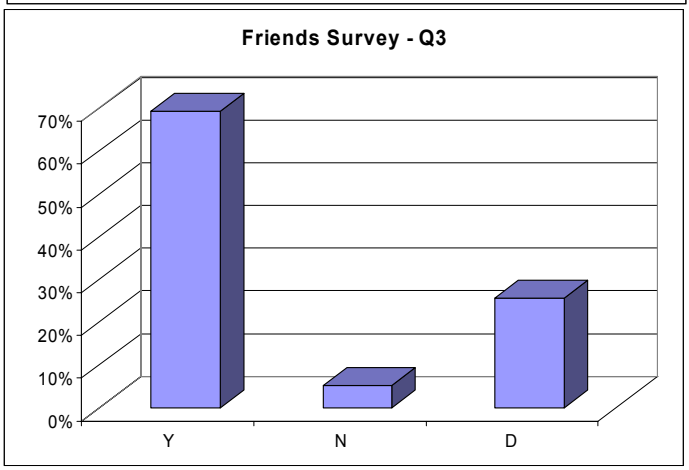

Practitioner Survey - Q14
30%
25%
20%
15%
10%
5%
0%
A
B
C
D
E
N/A

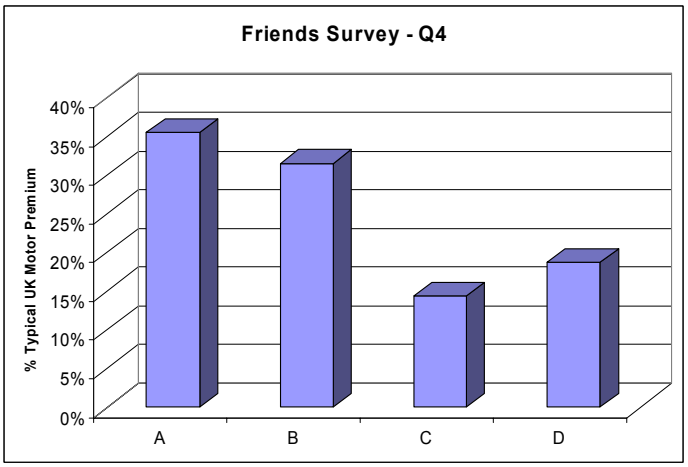

Practitioner Survey - Q15
25%
20%
15%
10%
5%
0%
A
B
C
D
E
N/A

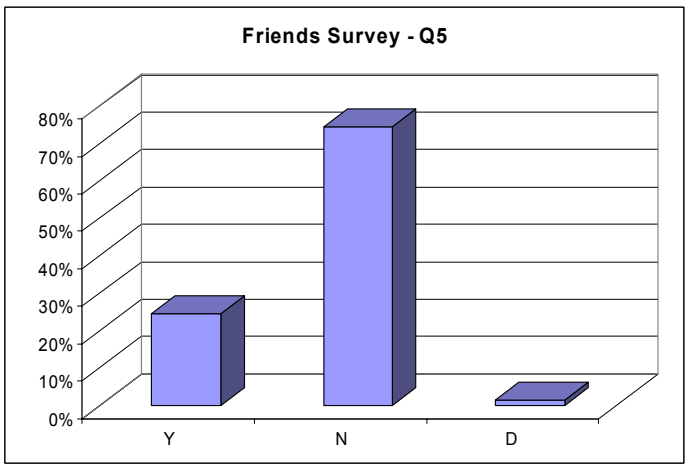
Public Survey: Graphs of Answers

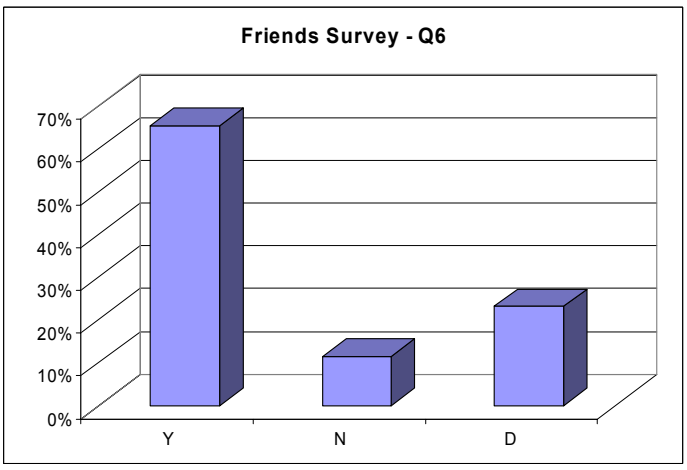




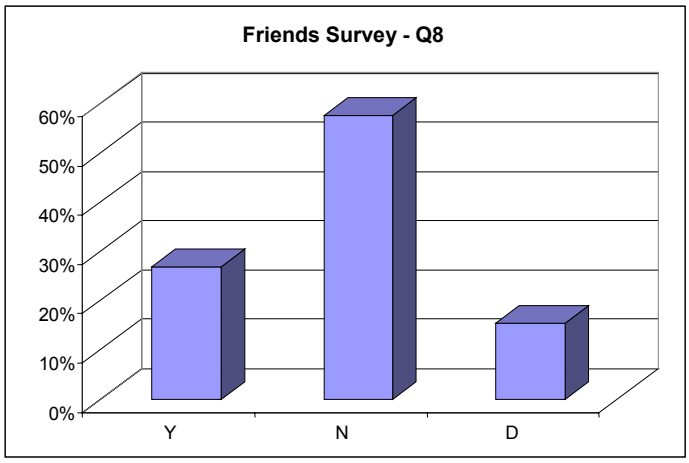


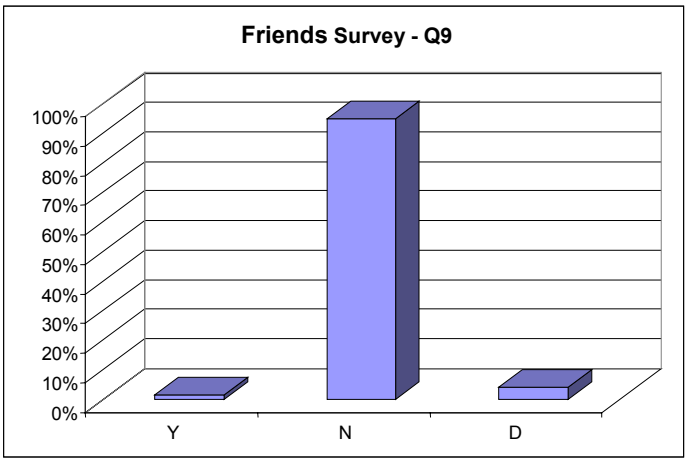


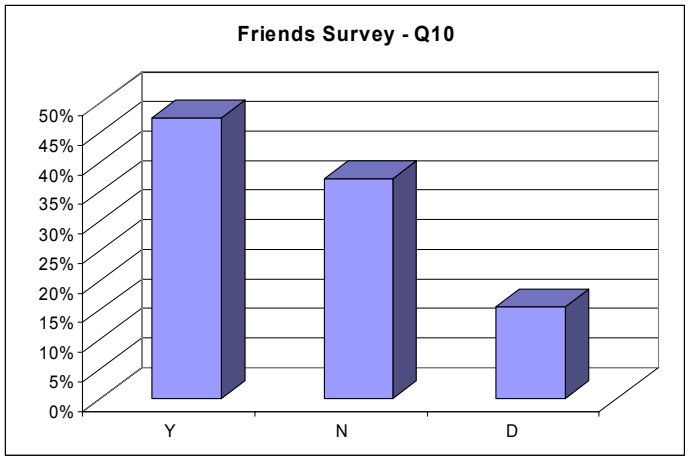


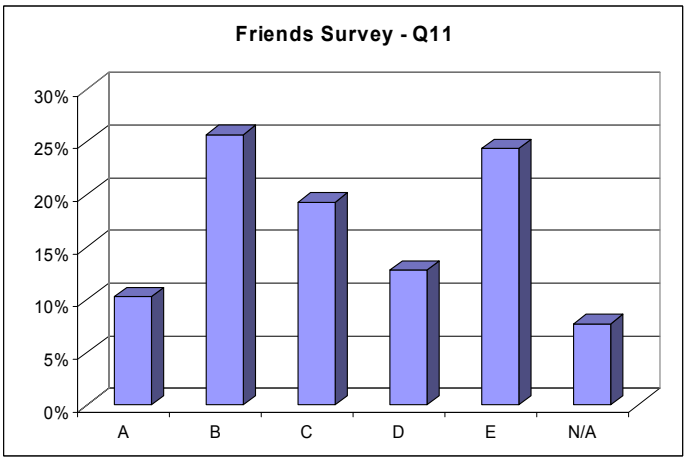


Friends Survey – Q7: Average 16%

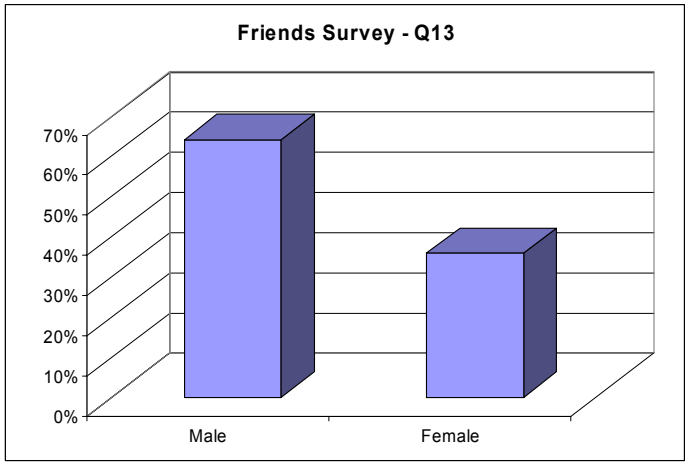








Friends Survey – Q12: Average Age 37 (Male Average 38, Female Average 34)



Friends Survey Data

	Q1	*Q2*	*Q3*	*Q5*	*Q6*	*Q8*	*Q9*	*Q10*
Y	96%	9%	69%	24%	65%	27%	1%	47%
N	1%	82%	5%	74%	12%	58%	95%	37%
D	3%	9%	26%	1%	23%	15%	4%	15%

	Q4	*Q11*
A	35%	10%
B	32%	26%
C	14%	19%
D	19%	13%
E		24%
N/A		8%

	Q12	*Q13*
Male	38	64%
Female	34	36%