What Next For Noise Induced Hearing Loss Claims?

Brian Gravelsons
Gary Brankin

05 October 2015

Agenda

• Recent experience

• The future for NIHL claims
Recent Experience

The future for NIHL claims
The future for NIHL claims

Current position

Big Players...

...are getting bigger!
The future for NIHL claims

NIHL are now big business with private investors

And with this comes exposure to market volatility...

For both Claimant and Defendant advisors...
The future for NIHL claims

Poor quality Audiology in a hotel...

...or in your house

Real Limitation concerns

"Just tell the solicitor 18 months, or he will not take your case on."

Consultation details

Seated on 19th July 2013 at The Conference Rooms
The Midland Hotel & Conference Rooms,
Fenster Square, Bradford, BD1 4HU.

Instruction details

Instructions received from
Industrial Medical Agency Limited (Reference: 1460)

Consultation details

Seated on the 14th November 2013,
At The Conference Rooms, Holiday Inn Brentwood,
Brentwood
CM14 5NP
Repudiation rates are high

Claimant costs are high

The average claimant legal costs for an NIHL claim is £10,400
The future for NIHL claims

Key factors which control cost:

1. Volume.
2. Repudiation Rate.
3. Cost Per Case.

Examine how key changes may impact on the key factors.

What changes over the next 12-24 months may impact on those key factors?

- LASPO changes will bite.
- Claimant Settlement Packs and Schemes
- Changes to “the Guidelines.”
- Audiologist only schemes.

The Association of British Insurers propose the following:

- Medco style reporting in NIHL.
- Extension of MOJ Portal to Multi Defendant claims.
- Fixed fees in NIHL claims.

Need to examine how these might impact on future of NIHL claims market.
MedCo Beset With Criticism

Medco Reporting - Current experts

Guidelines on the diagnosis of noise-induced hearing loss for medicolegal purposes

The future for NIHL claims

The diagnosis rate for NIHL is increasing

2009
Yes/No

2014
80%/20% Yes/No
The future for NIHL claims

Current Medical experts/Audiologists

Problems with the Guidelines

• What are the Guidelines?

1. Limited scope

2. Scope

2.1. For the most part, the guidelines refer to uncomplicated cases of NIHL; that is, cases of “typical” NIHL together with presumed “normal” AAHL.

2. It is 2015, we are no longer seeing the “normal case”

3. They are very simplistically applied by experts

4. 25th, 50th and 75th Centile only

---

The audiometric configuration has been assessed according to the Guidelines on the Diagnosis of Noise Induced Hearing Loss for Medico-Legal Purposes by Coles, Lutman & Burtin (2000):

- R1 is satisfied as in the right ear as: at 1 kHz the HtL (5 dB) is at least 10 dB less than the HtL at 3 kHz (15 dB), the HtL at 4 kHz (15 dB) and the HtL at 6 kHz (34 dB).
- R2 is satisfied in the right ear as: at 1 kHz the HtL (5 dB) is at least 10 dB less than the HtL at 3 kHz (15 dB), the HtL at 4 kHz (23 dB) and the HtL at 6 kHz (34 dB).
- R3 is met in the right ear as there is a significant notch at 6 kHz.
- There is a 9 dB grade in the left ear, if we refer to note 11 of the Coles et al. (2000) guidelines then there is a more likely than not probability of noise deafness.

---

The future for NIHL claims

Modifying Criteria

10. MODIFYING FACTOR MF2: “COMPATIBILITY WITH AGE AND NOISE EXPOSURE”

10.1. The hearing impairments measured should be checked for compatibility with the claimant’s age, sex and estimated total amount of noise exposure, including military and non-occupational, using the ‘NPL Tables’ (Robinson and Shipston, 1977) up to the 5th percentile values of susceptibility, or other appropriate source, such as ISO 1999: 1990. By definition, 5% of the population are even more susceptible than that, but the other evidence for the hearing impairment being due to noise and age alone should be strong for more extreme percentiles of susceptibility to be acceptable.

10.2. However, if the amount of hearing impairment is excessive in relation to the age and noise exposure (occupational, military and non-occupational), this does not necessarily negate a diagnosis of NIHL. The extra hearing impairment may well be due to a third causation, additional to NIHL and AAHL.
The future for NIHL claims

Audiologist only Scheme?

Coles/Lutman Guideline diagnosis?

The future for NIHL claims

It certainly is…

The future for NIHL claims

Audiologist only Scheme
The future for NIHL claims

**Audiologist only Scheme**

...definitely so...

The audiometric configuration has been assessed according to the Guidelines on the Diagnosis of Noise Induced Hearing Loss for Medico-Legal Purposes by Coles Lutman & Buffin (2000):

- R1 is satisfied as in the right ear at 1 kHz the NML (3 dB) is at least 10 dB less than the NML at 3 kHz (15 dB), the NML at 4 kHz (15 dB) and the NML at 6 kHz (34 dB).
- R1 is satisfied in the left ear as at 1 kHz the NML (5 dB) is at least 10 dB less than the NML at 3 kHz (15 dB), the NML at 4 kHz (25 dB) and the NML at 6 kHz (34 dB).
- R2 is the subject of engineering evidence.
- R3 is met in the right ear as there is a significant notch at 6 kHz.
- There is a 9 dB notch in the left ear, if we refer to note 11 at the Coles et al (2003) guidelines then there is a more likely than not probability of noise deafness.

...seems to meet the Guidelines...

---

**The future for NIHL claims**

**Audiologist only Scheme**

...but what about Modifying Criteria 2 of the Guidelines?

**Blue Line - - - Ageing data 87th Percentile.**

4kHz, the most noise sensitive frequency, unmoved from age data exactly matched at 8kHz.

Only loss at 6kHz see Pascoe v MOD
4. RECOMMENDATIONS

For an individual test subject, a single audiogram is an unconfirmed determination of that individual's state-of-hearing in both ears. Put more starkly, a single audiogram is a guess.
The future for NIHL claims

Audiologist only scheme/Settlement packs

- NIHL Diagnosis more than just an audiogram

Dear Dr Heighton

Re:

**Diagnosis:** Probable Gentamicin induced vestibulopathy

Many thanks for asking me to see this chap. He is quite precise in dating the onset of his balance problems you eluded to in your letter. Thirty-four years ago, he was in the Renal Unit at Guy's Hospital as a result of renal failure, probably induced by septicaemia. At that time, he developed severe vertigo, and was bed bound because of that for a number of days, following which he was extremely unsteady. He underwent various tests at that time, and was told that his balance problems could be due to the medication which he had been given. In the years since, he has been able to manage with his balance problems, which as you say, are more by way of dys equilibrium than true vertigo.

The future for NIHL claims

Audiologist only scheme/Settlement Packs

1. Audiologist not competent to diagnose NIHL
2. Need to be able to rule out other competing causes
3. Need to examine medical history, ototoxic medication, impact of medication on late onset tinnitus
4. The audiogram may be Coles compliant, but so was Hughes, Pascoe and Holloway
5. Not competent to consider disability and the impact of loss at individual frequencies
6. Not competent to recommend hearing aids on NHS. There is a risk of Claimants under compensated
7. How many Audiologists can be agreed? Would this cope with volume?
8. Can a Claimant Solicitor reasonably agree to accept an offer, or reject the claim, without an ENT opinion? Do professional duties require it? Sceptre of professional negligence claims
9. Can all Defendant questions be dealt with by an Audiologist? Issues of symptom onset etc.?
10. The problems with Guidelines identified above and reliance on single audiograms
11. Can they assess tinnitus?
The future for NIHL claims

Audiologist only scheme/Settlement packs

Claims Pack

Contents

1. Letter of Claim
2. Schedule of Employment & HMRC
3. Schedule of Insurer & ELTO
4. Schedule of Co-Defendants
5. Review of Medical Records Pro-forma
   a. GP Records
   b. Hospital Records
6. Medical Report (format to be agreed)
7. Occupational Health & Personnel Form of Authority
8. Schedule of Special Damages

• This would be the first an insurer would see.
• The claims with unsupportive medical evidence, no insurance traced, no employer confirmed on IR or obvious limitation entry in medical notes may never be seen.

Settlement Packs

• 44% of claims withdrawn for no real reason. Likely these claims would not be seen.
• Would remove a huge admin burden on insurers.
The future for NIHL claims

Settlement Pack Limits - You have to trust contents

SECTION 2 - Mandatory client questions about any medical and ear-related conditions

The client reported suffering from the following conditions:

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>2A: EARACHE for more than 7 days within the last 90 days?</td>
<td>NO</td>
</tr>
<tr>
<td>2B: EAR DISCHARGE within last 90 days?</td>
<td>NO</td>
</tr>
<tr>
<td>2C: ROTATORY/VERTIGO within last 90 days?</td>
<td>NO</td>
</tr>
<tr>
<td>2D: TINNITUS within last 90 days?</td>
<td>NO</td>
</tr>
<tr>
<td>If YES**, is TINNITUS:</td>
<td>NO</td>
</tr>
<tr>
<td>Unilateral Left</td>
<td></td>
</tr>
<tr>
<td>If YES**, is TINNITUS:</td>
<td>NO</td>
</tr>
<tr>
<td>Unilateral Right</td>
<td></td>
</tr>
<tr>
<td>Pulsatile?</td>
<td>NO</td>
</tr>
<tr>
<td>Distressing?</td>
<td>NO</td>
</tr>
</tbody>
</table>

TINNITUS was first noticed: 18 months

- A body of medical opinion that states unilateral tinnitus is not noise related.
- Remember “18 months?”

“Just tell the solicitor 18 months, or he will not take your case on.”
Let LASPO bite?

The future for NIHL claims

- Claimant lost success fee on profit costs but can take up to 25% of damages.
- Claimant no longer liable for defence cost on lost cases - Qualifying One Way Costs Shifting ("QOCS")
- Applies to post April 2013 cases.
- Impact not fully seen in litigation yet, as cases have 3 years before issue.
- Easy way to make up the shortfall of 62.5% success fee on profit costs?
- Add more onto your Bill.
- Recent North West Judiciary Meeting indicated that District Judges felt profit costs were being presented at 30+% more than they had been on pre LASPO cases.
- These cases do not take any more time to bring.

The future for NIHL claims

LASPO - Effect on volume

- What we do know:
  - Lower returns have not impacted on volume:

![Graph showing LASPO, EL/PL Portal, Stock of Pre-LASPO claims, and Quindell claims over time.](chart)
LASPO- Claimant care free attitude to litigation

• Limited evidence in a more carefree approach to litigation on QOCS cases?

That being said, you have denied the claim based on causation, the Claimant again is within his right to issue and serve proceedings on the Defendant, it is not by any stretch of the imagination, conducive to the process, or indeed in his interest to continue with protracted discussions regarding what may or may not be a constitutional condition in one ear. The Claimant is within his right to seek resolution from the Court, all pre action attempts at resolution have failed.

I will remind you, this claim falls under the new regime, the Claimant is afforded such cost protection that, regardless of any protestations you may make regarding the timing of the proceedings, the Defendant will not be able to recover any costs from him. The Claimant is afforded QOCS protection for the entirety of this action. In short, for the Claimant, there are no costs implications. Albeit, there are for the Defendant.

Yours faithfully,

<table>
<thead>
<tr>
<th>Head Litigator</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-mail:</td>
</tr>
<tr>
<td>20810 WILMSLOW</td>
</tr>
</tbody>
</table>

The future for NIHL claims

LASPO bite increasing interest in PSLA awards due to an interest in a “a cut of the pie”?

• Not as much of an issue in RTA claims. A minor whiplash injury is worth £2-2,500.

• However NIHL claims are currently settled at much reduced sums for risk:

<table>
<thead>
<tr>
<th>Settlement amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>As discussed further in “Section 6 Data Collection and Trends”, settlement amounts are thought to be in the range of £2,500 to £15,000.</td>
</tr>
<tr>
<td>The majority of claims involve mild cases where settlement amounts for damages average £5,000 to £10,000. In contrast to the relatively low cost of damages, solicitor bills average £14,000 to £20,000.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>(d) Partial Hearing Loss ear(s) alone</th>
</tr>
</thead>
<tbody>
<tr>
<td>This category covers the full of cases where damage is not confined to one ear only. For example a degree of hearing loss and a degree of tinnitus present. Age is particularly relevant because impairment of hearing affects most people in the fullness of time and impacts both upon earning and upon health.</td>
</tr>
<tr>
<td>(i) Severe tinnitus and hearing loss. £21,800 to £33,500 £23,800 to £36,850</td>
</tr>
<tr>
<td>(ii) Moderate tinnitus and hearing loss. £11,000 to £21,300 £12,100 to £23,100</td>
</tr>
<tr>
<td>(iii) Mild tinnitus with some hearing loss. £9,250 to £11,100 £10,175 to £12,100</td>
</tr>
<tr>
<td>(iv) Slight or occasional tinnitus with slight hearing loss. £5,400 to £9,250 £5,940 to £10,175</td>
</tr>
<tr>
<td>(v) Slab hearing loss without tinnitus or slight tinnitus without hearing loss. Up to £5,150 Up to £5,665</td>
</tr>
</tbody>
</table>

• How better to make up the shortfall of 62.5% on profit costs than by taking 25% of an increased damages sum?
Some evidence of increasing interest in higher PSLA awards where risk on Claimant is less:

Without prejudice

We note that you offer £1,300.00 by way of part 36 offer.

Taking into account the fact that your Client Company has been calculated by the Engineer to be responsible for 35% of the Claimants exposure to noise it would appear that you value the total claim as worth £3,714.00.

The Claimant suffers from 1.3dB of noise damage at 1 2 and 3 kHf plus moderate tinnitus and the particulars of claim specify the claim for hearing aids.

On a full liability basis General Dungs (JC guidelines) are £11,000 to £23,800.00 and special damages as claimed are £7,287.00.

This therefore equates to on a 100% basis between £18,287.00 and £31,087.00 and your client companies share is between £6,400.00 and £10,881.45.

We have judgment against your client company and in the circumstances we cannot see that the Claimant will be awarded £13,500.00 or less.

- Here Judgment was entered and we received papers too late to set it aside. We had to agree quantum with no risk.
- We ended up paying £12,000.
- QOCs reduces risk and it is potential other changes might reduce the risk on a Claimant further.
- Real potential for damages and litigation rates to go up.

Extending the MOJ Portal

Less than 10% of total claims enter the Portal.

Less than 10% of single Defendant claims in the Portal settle in the Portal.

Concession of breach of duty in the Portal compromises potential limitation

Extending it further to Multi Defendant claims will not improve the settlement rate and it works for no party:

Potentially give Claimants a chance to claim increased fee for a failure of insurer to settle within Portal timescales.

Some insurers for some risks may be prepared to make apportioned offer and take the risk of full Portal fee.

Not the answer to problems.
Insurers accept that the level of fixed fee will be higher than in EL/PL claims for the following reasons:
- Multi Defendant.
- Causation.
- Breach.
- Limitation arguments.
- Insurance histories
- 20 years of exposure to investigate and to defend.
- NIHL claims will be the most lucrative fixed fee in the market place and volumes are unlikely to reduce.

If profit margins reduce, increased volume can maintain income levels.
### The future for NIHL claims

#### Fixed fees in NIHL claims

- Law Society at ABI event indicated that they were not currently prepared to support fixed fees in these complex cases until there is some certainty around how much time each stage takes.

#### Issues generally with fixed costs

- The work reasonably required is predictable within reasonable parameters
  - Not currently for NIHL
- The cost of assessing the reasonable costs payable towards the cost of reasonable and proportionate work between the parties is likely to be disproportionate
  - May be the case for NIHL
- The amount of the fixed costs is fixed empirically to reflect the reasonably necessary inputs in time and experience to produce a reasonable output for the client
  - Not delivered for Portal costs
- There are sensible escape provisions
  - ‘Exceptionality’ provides no practical escape

- To deal with this we put together a model that may offer that security and be acceptable to both side.

#### The future for NIHL claims

<table>
<thead>
<tr>
<th>Pre Issue</th>
<th>Pre Issue</th>
<th>Pre Issue</th>
<th>Issued - post Issue</th>
<th>Issued - post allocation</th>
<th>Issued - post listing</th>
<th>Trial advocacy fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1000 - £5,000</td>
<td>£5,001 - £10,000</td>
<td>£10,001 - £25,000</td>
<td>pre allocation</td>
<td>pre listing</td>
<td>pre trial</td>
<td></td>
</tr>
<tr>
<td><strong>Damages</strong></td>
<td><strong>Basic Fee</strong></td>
<td><strong>Breach premium</strong></td>
<td><strong>Causation premium</strong></td>
<td><strong>Limitation premium</strong></td>
<td><strong>Success fee %</strong></td>
<td><strong>Success fee</strong></td>
</tr>
<tr>
<td>£2,500.00</td>
<td>£1,500.00</td>
<td>£250.00</td>
<td>£250.00</td>
<td>£250.00</td>
<td>17.5%</td>
<td>£417.50</td>
</tr>
<tr>
<td>£5,500.00</td>
<td>£2,500.00</td>
<td>£1,500.00</td>
<td>£750.00</td>
<td>£750.00</td>
<td>12.5%</td>
<td>£687.50</td>
</tr>
<tr>
<td>£12,500.00</td>
<td>£3,500.00</td>
<td>£1,500.00</td>
<td>£1,500.00</td>
<td>£1,500.00</td>
<td>10.0%</td>
<td>£1,500.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>20.0%</td>
<td>£2,500.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>25.0%</td>
<td>£625.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>30.0%</td>
<td>£750.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>35.0%</td>
<td>£1,250.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>40.0%</td>
<td>£1,500.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>45.0%</td>
<td>£1,500.00</td>
</tr>
<tr>
<td>£25,000.00</td>
<td>£4,500.00</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>50.0%</td>
<td>£1,500.00</td>
</tr>
</tbody>
</table>

- Also includes a higher return to the Claimant the more points are taken by a Defendant in litigation and the longer that point remains in issue.
- This encourages a Defendant to nail their “colour to the mast”.
- More litigation more return- model shows this.
- Coupled with QOCS likely to promote litigation volumes. No risk and improves recovery.
- More damages more return as success fee now comes from damages.
- Fixed fee also encourage Defendants to defend Screenshot Keoghs approach in RTA
- Would we not run many more limitation cases if we knew our maximum costs exposure was £11,000? I would
### Fixed fees in NIHL claims

#### Damages Agreed £2,500.00

<table>
<thead>
<tr>
<th>Disease cases</th>
<th>Pre Issue £1,000</th>
<th>Pre Issue £5,000</th>
<th>Pre Issue £10,000</th>
<th>Pre Issue £25,000</th>
<th>Issued pre-trial post allocation</th>
<th>Issued post allocation pre-trial</th>
<th>Trial advocacy fee</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Disease cases</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Damage</td>
<td>£2,500.00</td>
<td>£5,500.00</td>
<td>£12,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>£2,500.00</td>
<td>£750.00 (£3,000)</td>
</tr>
<tr>
<td>Basic Fee</td>
<td>£1,500.00</td>
<td>£2,500.00</td>
<td>£3,500.00</td>
<td>£4,500.00</td>
<td>£6,000.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breach premium</td>
<td>£250.00</td>
<td>£500.00</td>
<td>£750.00</td>
<td>£750.00</td>
<td>£1,000.00</td>
<td>£1,250.00</td>
<td>£3,000.00 (£3,100)</td>
</tr>
<tr>
<td>Clawback premium</td>
<td>£250.00</td>
<td>£500.00</td>
<td>£750.00</td>
<td>£750.00</td>
<td>£1,000.00</td>
<td>£1,250.00</td>
<td>£1,250.00 (£10,150)</td>
</tr>
<tr>
<td>Limitation premium</td>
<td>£250.00</td>
<td>£500.00</td>
<td>£750.00</td>
<td>£750.00</td>
<td>£1,000.00</td>
<td>£1,250.00</td>
<td>£1,250.00 (£10,150)</td>
</tr>
<tr>
<td><strong>Success Fee %</strong></td>
<td>17.5%</td>
<td>12.5%</td>
<td>10.0%</td>
<td>20.0%</td>
<td>25.0%</td>
<td>30.0%</td>
<td></td>
</tr>
<tr>
<td><strong>Success Fee</strong></td>
<td>£437.50</td>
<td>£637.50</td>
<td>£1,250.00</td>
<td>£500.00</td>
<td>£625.00</td>
<td>£750.00</td>
<td>£1,750 (£15,100)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>£5,387.50</td>
<td>£6,187.50</td>
<td>£9,150.00</td>
<td>£8,750.00</td>
<td>£10,625.00</td>
<td>£13,000.00</td>
<td></td>
</tr>
</tbody>
</table>

- What behaviours does this model drive?
- More return for Claimants for litigation and the longer litigation continues.
- More return the higher the damages award.
- Will it encourage Defendants to defend more cases? £10,000 to run a Limitation only hearing?

---

### The future for NIHL claims

**Fixed fees in NIHL claims Care free attitude to litigation from Defendant?**

"In the event that fixed fees are introduced to NIHL claims, might we not run more limitation hearings, safe in the knowledge that even if the Claimant performs well, the cost to the insurer client will be relatively limited and other issues can be taken on another day?"
The future for NIHL claims

What behaviours do the proposed changes promote and what is the potential impact on actuarial predictions?

Obviously if damages stay the same, repudiation rate stays the same and we pay less in costs there is a saving to the insurance industry.

Is this likely?

• OOCS- No cost risk.
• Claimants Solicitors have an interest in damages.
• LASPO loss of income has not reduced claims volumes. Unlikely Fixed Fee in NIHL would impact on volumes either.
• NIHL are drastically under settled.
• Medco- Would this leave us tied to one expert?
• Would there be limits placed on second audiometry by Settlement Packs/Portal or Fixed Fee regime?
• Would there be limits placed on expert evidence by Settlement Packs/Portal or fixed fee regime?
• Will repudiation rates go down?
• Will damages go up?
• Even if fixed costs reduce spend per case, how does this impact on future insurer spend?

What then is the impact of variations in the existing model?

The future for NIHL claims

Impact on insurer cost of various outcomes

<table>
<thead>
<tr>
<th>(A) Existing position</th>
<th>(B) Volume maintains but repudiation rate falls</th>
<th>(C) Volume maintains, repudiation rate drops and settlement value goes up</th>
<th>(D) Volumes falls, repudiation drops and settlement value goes up</th>
<th>(E) Volumes increase, repudiation drops and settlement value goes up</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repudiation rate: 70%</td>
<td>Repudiation rate: 50% Settlement rate: 10,000 per annum</td>
<td>Repudiation rate: 50% Settlement rate: 10,000 per annum</td>
<td>Repudiation rate: 50% Settlement rate: 7,000 per annum</td>
<td>Repudiation rate: 50% Settlement rate: 12,000 per annum</td>
</tr>
<tr>
<td>Settlement rate: 10,000 per annum (for ease of maths)</td>
<td>Settlement rate: 10,000 per annum</td>
<td>Settlement rate: 10,000 per annum</td>
<td>Settlement rate: 7,000 per annum</td>
<td>Settlement rate: 12,000 per annum</td>
</tr>
<tr>
<td>Damages paid: £2,500 (GRO DWP 2013 Actuarial data: damages cost between £2-3,000)</td>
<td>Damages paid: £2,500</td>
<td>Damages paid: £3,500</td>
<td>Damages paid: £7,000</td>
<td>Damages paid: £7,000</td>
</tr>
<tr>
<td>Costs paid: £7,600 (GRO DWP Actuarial data: costs paid are around £7-8,000)</td>
<td>Costs paid: £3,500</td>
<td>Costs paid: £3,500</td>
<td>Costs paid: £3,500</td>
<td>Costs paid: £3,500</td>
</tr>
<tr>
<td>10,000 claims of which 30% paid = 3,000 paid claims</td>
<td>10,000 of which 50% paid = 5,000 paid claims</td>
<td>10,000 claims of which 50% paid = 4,000 paid claims</td>
<td>7,000 of which 50% paid = 3,500 paid claims</td>
<td>12,000 of which 50% paid = 6,000 paid claims</td>
</tr>
<tr>
<td>£10,000 per claim = £30 million paid by insurance industry</td>
<td>£8,000 per claim = £24 million paid by insurance industry</td>
<td>£7,000 per claim = £35 million paid by insurance industry</td>
<td>£10,500 per claim = £36.75 million paid by insurance industry</td>
<td>£10,500 per claim = £36.75 million paid by insurance industry</td>
</tr>
</tbody>
</table>
The future for NIHL claims

How the various factors interact

Conclusions

- So what does that mean for Actuaries?
- What can we tell from the claims market and behaviour prediction for future case spend?
- Depends whether fixed fees are adopted. Civil Justice Council have picked up so looks likely.
- Depends on rates agreed but this will always be the most potentially lucrative area of volume work.
- Good basis to believe that litigation rates will go up and damages payments will go up. The extent to which remains to be seen
- The two will be certain if insurers do not retain right to get own expert evidence.
- Fixed fee negotiations will be crucial and it remains to be seen what is given away in negotiations in return for seemingly lower costs.
- How the Guidelines are amended will be important.
- Can you reduce your reserves and reserve projections any time soon? I think not.
- Is NIHL the new whiplash? No, we are dealing with a limited pool and new claims are not created in volume every day.

The day will come!
Questions?

The views expressed in this presentation are those of invited contributors and not necessarily those of the IFoA. The IFoA do not endorse any of the views stated, nor any claims or representations made in this presentation and accept no responsibility or liability to any person for loss or damage suffered as a consequence of their placing reliance upon any view, claim or representation made in this presentation.

The information and expressions of opinion contained in this publication are not intended to be a comprehensive study, nor to provide actuarial advice or advice of any nature and should not be treated as a substitute for specific advice concerning individual situations. On no account may any part of this presentation be reproduced without the written permission of the author Gary Brankin, BC Legal.

What Next For Noise Induced Hearing Loss Claims?

Brian Gravelsons
Gary Brankin

05 October 2015