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Department
for Work &
Pensions



Study into average civil compensation in mesothelioma cases

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Summary

The research provides estimates of average civil compensation and legal costs for occupational mesothelioma cases. It was designed to inform the development of proposals by both the Department for Work and Pensions and the Ministry of Justice in relation to helping mesothelioma victims who cannot trace a liable employer to access compensation and to speed up the settlement process for all victims.

Using a variety of measures, average compensation awarded ranged from £137,000 to £153,531 and average legal costs ranged from £22,000 to £28,407. The estimates were based on a survey of 2,334 mesothelioma claims settled between 2007 and 2012.

Regression analysis was used to investigate how civil compensation awarded and legal costs varied with the characteristics of the claimant and features of the claim. It was found that civil compensation decreased with the claimant's age (by around £3,500 per year) and grew over time between 2007 and 2012. Average civil compensation was higher in Scotland than in England and Wales, and also higher where court proceedings were issued and where the claimant was alive at settlement. The length of the case was not associated with the size of civil compensation.

The regression analysis found that legal costs increased by £4, on average, for every additional £100 of compensation. Legal costs were higher if the claimant was younger, the claim was made in England and Wales rather than Scotland, the claim was made after 2008, court proceedings were issued, the duration of the case was longer and the claimant was deceased on award.

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List of abbreviations and glossary of terms

ABI	Association of British Insurers
ATE	After the event insurance. This is insurance taken out by a party to a claim (usually the claimant), to cover their legal costs if they do not win their case.
Claimant	The person seeking compensation for mesothelioma. This will be the victim, whilst they are alive.
Confidence interval	The range either side of the sample mean within which the true population mean is likely to lie.
CRU	Compensation Recovery Unit. The CRU is part of the DWP. It recovers, from the defendant, social security benefits and lump sum payments made to the victim pending settlement of the claim.
Defendant	An organisation against which the mesothelioma victim makes a claim for damages. This will be a former employer or, if the employer no longer exists, the former employer's insurance company.
DWP	Department for Work and Pensions
Mean	A measure of 'average', computed by summing all values in a series and then dividing by the total number of values.
Median	A measure of 'average': the value which falls in the centre of the distribution when all values are arranged in ascending order of magnitude.
Mesothelioma	A cancer of the thin membrane that lines the chest and abdomen.
MoJ	Ministry of Justice
Normal distribution	A bell-shaped distribution that is symmetric about the mean.
Ordinary least squares regression	An approach to estimating the general relationship between a dependent variable and one or more explanatory variables. The method of ordinary least squares identifies the solution which minimises the sum of the squared differences between the observed responses in the dataset and the fitted values provided by the model.

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Percentile	The value in a series below which a certain percentage of cases fall.
Skewed distribution	A distribution that departs from the bell-shape of the normal distribution by being asymmetric about the mean. In other words, one tail of the distribution is longer than the other.
Standard error	An estimate of the degree to which a survey estimate is likely to vary under repeated sampling. Provides an indication of the uncertainty that is inherent to the survey estimate because some members of the population were not sampled.
Trimean	A measure of 'average', computed as the average of: (a) the 25th percentile; (b) the 75th percentile; and (c) twice the value of the median.
Weighting	In a weighted dataset, each individual is assigned a weighting factor so that, after weighting, the profile of the achieved sample closely matches that of the population at large (i.e. it is representative of the population). Groups that are under-represented in the sample vis-a-vis the population are given larger weighting factors than groups which are over-represented.

Executive summary

Background and introduction

Mesothelioma is a cancer of the thin membrane that lines the chest and abdomen. Symptoms often do not develop for 30 to 40 years after exposure to asbestos, but once diagnosed the disease is rapidly terminal. Both the DWP and the MoJ are developing proposals in relation to mesothelioma to help victims who cannot trace a liable employer to access compensation and to speed up the settlement process for all victims.

To inform the development of these proposals, the DWP and the MoJ commissioned NIESR to provide estimates of average civil compensation and legal costs for occupational mesothelioma cases.

Approach

Estimates of average compensation and average legal costs were based on a survey of 2,334 mesothelioma claims settled between 2007 and 2012. The cases were analysed for Britain (for the DWP scheme) and for England and Wales (for the MoJ).

Main findings for Britain¹

A number of measures of 'average' were calculated. Using these measures:

- average compensation awarded ranged from £137,000 to £153,531;
- average legal costs ranged from £22,000 to £28,407.

Compensation awarded and legal costs varied with personal and case characteristics. Using regression analysis to take a number of characteristics into account simultaneously, the size of the award:

- decreased with age (on average by £3,500 per year);
- grew between 2007 and 2012 (on average by £17,900);
- was higher in Scotland than in England and Wales (on average by £53,500);
- was higher if court proceedings had been issued (on average by £8,300);
- was higher for those who were alive at settlement (on average by £10,900).

The size of award and the length of the case did not appear to be related.

For legal costs, regression analysis found that legal costs:

- increased by £4, on average, for each additional £100 of compensation;
- were lower for older claimants (on average by £111 per year);

¹ Results were adjusted to take into account inflation and are in 2012 prices.

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- were higher for claims made after 2008 (on average, between £2,400 to £3,100 higher, depending on the year);
- were lower in Scotland (on average by £18,400);
- were higher if court proceedings were issued (on average by £9,400);
- rose with the length of the case, rising steeply after six months and after two years;
- were higher if the claimant was deceased on award (on average by £2,000).

1 Introduction

1.1 Background

Mesothelioma is a cancer of the thin membrane that lines the chest and abdomen. Symptoms often do not develop for 30 to 40 years after exposure to asbestos, but once diagnosed the disease is rapidly terminal. Both the DWP and the MoJ are developing proposals in relation to mesothelioma.

The DWP is establishing a payment scheme for occupational mesothelioma victims who develop mesothelioma after their employer has negligently, or through breach of statutory duty, exposed them to asbestos, but who are unable to trace an employer or employers' liability insurance policy against which to make a claim.

The MoJ is developing proposals to increase the pace and improve the efficiency of the claims process for all occupational mesothelioma victims where there is a traced employer or insurer, to ensure that early payment of compensation is made.

To inform the development of the DWP payment scheme and the MoJ proposal, both departments commissioned the NIESR to conduct a survey to establish estimates of average civil compensation and legal costs for work-related mesothelioma cases.

There is no comprehensive dataset which is known to provide sufficiently representative data on mesothelioma compensation levels or legal costs. In 2008, the Association of British Insurers (ABI) conducted a survey of 363 claims handled by the five insurers with the greatest number of mesothelioma claims (Alliance, Aviva, Axa, RSA and Zurich) which the ABI estimate jointly cover around half of all claims. Following a feasibility study, the DWP and the MoJ jointly commissioned NIESR to conduct a new study to provide more recent, robust, independent estimates of mesothelioma compensation levels and legal costs.

1.2 Aims

The aim of this research was to provide representative data on occupational mesothelioma claims, to allow analysis of:

- average compensation levels by age;
- average claimant legal costs;
- average compensation and legal costs by:
 - year (2007–12);
 - legal jurisdiction (England and Wales, Scotland);
 - whether litigation was involved;
 - whether the victim was alive at the date of award.

1.3 Report layout

The next chapter describes the study method: the survey design, response rates, weighting and the profile of the returned sample. Chapter 3 presents the findings, describing average compensation and legal costs (using various measures of average), the characteristics of claims and of claimants, how average compensation and legal costs varied with claim and claimant characteristics and the components of legal costs. The chapter provides findings for Britain. For those interested in England and Wales only, tables of descriptive findings are given in Appendix B².

² Response rates for England and Wales only are not described, as jurisdiction could not be identified for cases for which there was no response.

2 Method

2.1 Survey design

The study covered:

- settled employer liability claims in the private sector (i.e. excluding government, local authority, NHS and unknown cases);
- claims recorded as having been settled between 1 January 2007 and 31 December 2012³.

‘Special’ cases covered by other compensation schemes were excluded. In total 4,216 claims met these three criteria (i.e. private sector liability, settlement date and were not special cases).

A sample of 3,477 cases were selected from the CRU⁴ register of claims for inclusion in the survey. Further details on the sampling are included in Appendix A.

The organisations which had registered these claims with CRU (‘registrants’) were asked to provide details of the selected claims, resulting in 43 organisations (mainly insurance companies and defendants’ solicitors) being contacted.

The survey was in the field from 22 January 2013 to 8 March 2013.

2.2 Response

In total, 2,334 cases which included either an amount for total compensation paid and/or an amount for total legal costs (67 per cent of the total sample) were returned. Twenty-five of the 43 sampled organisations participated. Tables 2.1 and 2.2 show the response by type of organisation.

³ The questionnaire also asked for date of settlement. For three cases, the survey respondents gave the settlement year as 2005/06. These cases were retained in the sample.

⁴ CRU is part of the DWP. It recovers, from the defendant, social security benefits and lump sum payments made to the victim pending settlement of the claim. All mesothelioma claims must be registered with CRU. They are registered by the defendant (normally the insurance company or the employer) or their representative (normally a law firm). However, CRU does not hold data on the amount of compensation.

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Table 2.1 Response by organisation

Type of organisation	Organisations which returned:			Total
	all cases	some cases	no cases	
Insurers	0	9	0	9
Defendant solicitors	3	12	15	30
Employers	0	0	1	1
Loss adjusters	0	0	2	2
Not known	0	1	0	1
Total	3	22	18	43

‘Type of organisation’ as recorded in the CRU database; in some cases, the questionnaires were passed on to a different organisation for completion.

Table 2.2 Response by individual case

Type of organisation	Number sampled	Number returned	Percentage returned
Insurers	1,239	1,015	82
Defendant solicitors	1,971	1,156	59
Employers	24	0	0
Loss adjusters	65	0	0
Not known	178	163	92
Total	3,477	2,334	67

Prior to analysis, cases with Northern Ireland jurisdiction (as recorded in the questionnaire) were removed from this sample (as they were outside the remit of the DWP and MoJ schemes); this reduced the total sample by two, to 2,332⁵. In addition, two organisations (accounting for 256 returned cases) did not give permission for their responses to be linked to CRU data (one solicitor and one in the ‘not known’ category). As a result, these responses were excluded from analysis requiring linking of survey and CRU data. Therefore, the useable sample for linked analysis was 2,076.

2.3 ‘Weighting’

In order to make the survey findings more representative of all claims, the data were adjusted (‘weighted’) to take into account the way in which the sample had been drawn and the response. See Appendix A for details.

2.4 The profile of the returned sample

Table 2.3 compares the profile of the 4,216 CRU claims eligible for the survey (see Section 2.1) with the 2,076 surveyed cases returned where both the total compensation paid was reported and permission for data to be linked to CRU data was given (this is the

⁵ Organisations were asked whether the data they provided could be linked to the data held on the CRU database for that case. Two organisations did not give permission for linking. As a result, these cases were excluded from analyses requiring data from both the CRU database and the survey.

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sample used for the majority of the analysis). This analysis shows that the profile of the returned sample was very similar to the eligible sample. The returned sample can therefore be considered representative (as far as can be assessed from the information available from the CRU database) of all occupational mesothelioma claims.

Table 2.4 compares the profile of the returned and non-returned sample, for organisations which returned some cases only. The profile suggests a lack of bias in the returned sample. The main exception is in the type of respondent: a larger percentage of non-returned cases were cases registered with the CRU by law firms. It is unknown whether this may be a source of bias. However, this difference is unsurprising, as insurers have been more highly involved in the issue.

Table 2.3 Comparison of eligible population (based on the CRU register) with the sample of returned cases

	Total eligible population %	Returned cases (total) ¹ %
Gender		
Male	94.7	94.7
Female	5.3	5.3
Age at time of claim registration		
Under 65	22.7	22.9
65-69	18.8	18.7
70-74	20.6	20.9
75-79	19.0	18.9
80-84	12.2	12.0
85+	6.8	6.6
Settlement year		
2007	5.8	3.9
2008	18.3	17.7
2009	19.6	22.4
2010	19.1	19.4
2011	19.4	19.5
2012	17.7	17.1
Total CRU recovery banded		
Zero	13.0	12.7
Under 5k	16.9	16.7
5k up to 10k	11.1	11.1
10k up to 15k	11.7	10.7
15k up to 20k	14.8	14.5
20k up to 25k	10.5	10.8
25k up to 30k	6.4	7.0
30k up to 50k	10.9	11.5
50k +	4.6	5.1

Continued

Study into average civil compensation in mesothelioma cases

Table 2.3 Continued

	Total eligible population %	Returned cases (total) ¹ %
Type of organisation		
Insurer	34.8	46.5
Law firm	58.1	53.5
Other/not known	7.1	0
Claimant's country of residence		
England	85.6	85.4
Wales	3.9	3.4
Scotland	7.1	7.3
Other/not known	3.5	3.9
Total	100	100
<i>Number of cases</i>	<i>4,216</i>	<i>2,076</i>

¹ Weighted by probability of selection weight.

Table 2.4 Comparison of returned and non-returned cases, from organisations who returned some cases only

	Returned cases %	Non-returned cases %
Gender		
Male	95.1	95.5
Female	4.9	4.5
Age at time of claim registration		
Under 65	27.0	27.8
65-69	17.1	19.3
70-74	19.2	18.3
75-79	17.9	17.0
80-84	12.1	11.6
85+	6.8	6.0
Settlement year		
2007	4.7	5.7
2008	16.7	19.9
2009	21.1	16.2
2010	20.3	15.8
2011	20.5	18.7
2012	16.8	23.7

Continued

Study into average civil compensation in mesothelioma cases

Table 2.4 Continued

	Returned cases	Non-returned cases
	%	%
Total CRU recovery banded		
Zero	11.8	12.7
Under 5k	16.5	16.0
5k up to 10k	10.5	12.7
10k up to 15k	10.9	11.4
15k up to 20k	15.0	12.7
20k up to 25k	10.4	10.0
25k up to 30k	6.8	6.7
30k up to 50k	12.2	13.2
50k+	5.8	4.5
Type of organisation		
Insurer	44.2	30.6
Law firm	48.7	67.4
Other/not known	7.1	2.0
Claimant's country of residence		
England	84.6	86.9
Wales	3.9	4.9
Scotland	8.0	4.8
Other/not known	3.4	3.3
Total	100	100
<i>Number of cases</i>	2,293	748

3 Findings

3.1 Introduction

The analysis presented here focuses on two principal issues:

- **the total value of compensation awarded to the claimant**, i.e. the actual amount of damages paid to the claimant, plus any amount repaid to CRU in respect of benefit recovery; and
- **the total amount of claimant legal costs**, i.e. the total of all sums paid by the compensator(s) to the claimant's legal representatives in respect of legal costs, any success fee, court fees, and all other disbursements (inclusive of VAT).

Summary statistics are presented to indicate the average amounts of compensation and legal costs. The relationships between compensation or legal costs and the characteristics of the claim or claimant are also explored.

All findings have been weighted to make them more representative of all claims (see Section 2.3 and Appendix A).

Findings in this chapter are for Britain. Appendix B replicates the descriptive tables for England and Wales.

3.2 Up-rating monetary values to account for inflation

The survey collected information on cases with award dates ranging from 2005–12, although all but three cases awards were made in the period 2007–12. In order to account for inflation over this period, monetary amounts were converted to current (2012) values using the annual All-items Consumer Price Index (CPI).⁶ The CPI provides an indicator of changes in the cost of living and so, after up-rating, £1 of compensation awarded in 2007 has the same value to the claimant as £1 of compensation awarded in 2012. One case was lost from the overall sample at this point because of the inability to determine the date of award, leaving a total of 2,323 cases with a non-zero value for compensation and 2,187 cases with a value for legal costs.

3.3 Summary statistics for total compensation

There are a number of ways in which an 'average' value may be estimated from a set of survey responses on compensation claims.

The most familiar calculation is perhaps the arithmetic mean. Among the 2,323 cases with a non-zero value for total compensation, the mean award is estimated at £153,531 (in 2012 prices), as shown in Table 3.1. The arithmetic mean has the advantage of drawing upon all of the values in the distribution. It is a useful way of indicating the 'typical' value in a series when all values cluster closely and symmetrically around the central value. However, the

⁶ Office for National Statistics Time-Series Identifier: D7BT.

distribution of compensation values has a long and sparsely populated upper tail. This tail begins at around the 99th percentile in the distribution (around £420,000) and extends well beyond £1m. The mean will be pulled upwards by these large, atypical values.

The median is an alternative measure of the ‘average’ award, which takes no account of the overall shape of the distribution. In calculating the median, the distribution of values is simply divided into two evenly-sized groups. In other words, half of all claimants will have received amounts below the median and half will have received amounts above it. The median award for mesothelioma claimants is estimated from the survey to be £137,000.⁷

Trimmed means make use of large parts of the distribution after excluding values which lie beyond specified thresholds. If one expects that awards beyond these thresholds are likely to be extremely rare, then the trimmed mean will better represent the vast majority of claims that are likely to be awarded in the future. A range of trimmed means are presented in Table 3.1, alongside the mean and median. As the long upper tail in the distribution of compensation awards begins around the 99th percentile, the 1% trimmed mean is arguably the most informative measure of the ‘average claim’ alongside the arithmetic mean.

Table 3.1 Measures of average compensation (2012 prices)

Measure	Value
Arithmetic mean	£153,531
Median	£137,000
1% trimmed mean	£146,923
5% trimmed mean	£143,734
Interquartile mean	£137,630
Trimean	£138,257

Source: NIESR survey.

The interquartile mean is the mean of all values from the 25th to 75th percentiles inclusive.

The trimean is the average of: the 25th percentile, the 75th percentile and twice the median.

Average compensation varied by £16,531 among the six measures presented in Table 3.1.

In order to identify the cut-off points for the various trimmed means, and also to give a general sense of the shape of the distribution of compensation claims, Table 3.2 shows a selection of percentiles from the full distribution of values. As with the median claim in Table 3.1, the figures are rounded to the nearest £1,000 so as not to identify individual claim values. The shape of the distribution of claims between the 1st and 99th percentiles is shown in Figure 3.1.

⁷ The figure has been rounded to the nearest £1,000 so as not to identify the amount of compensation given to any individual claimant.

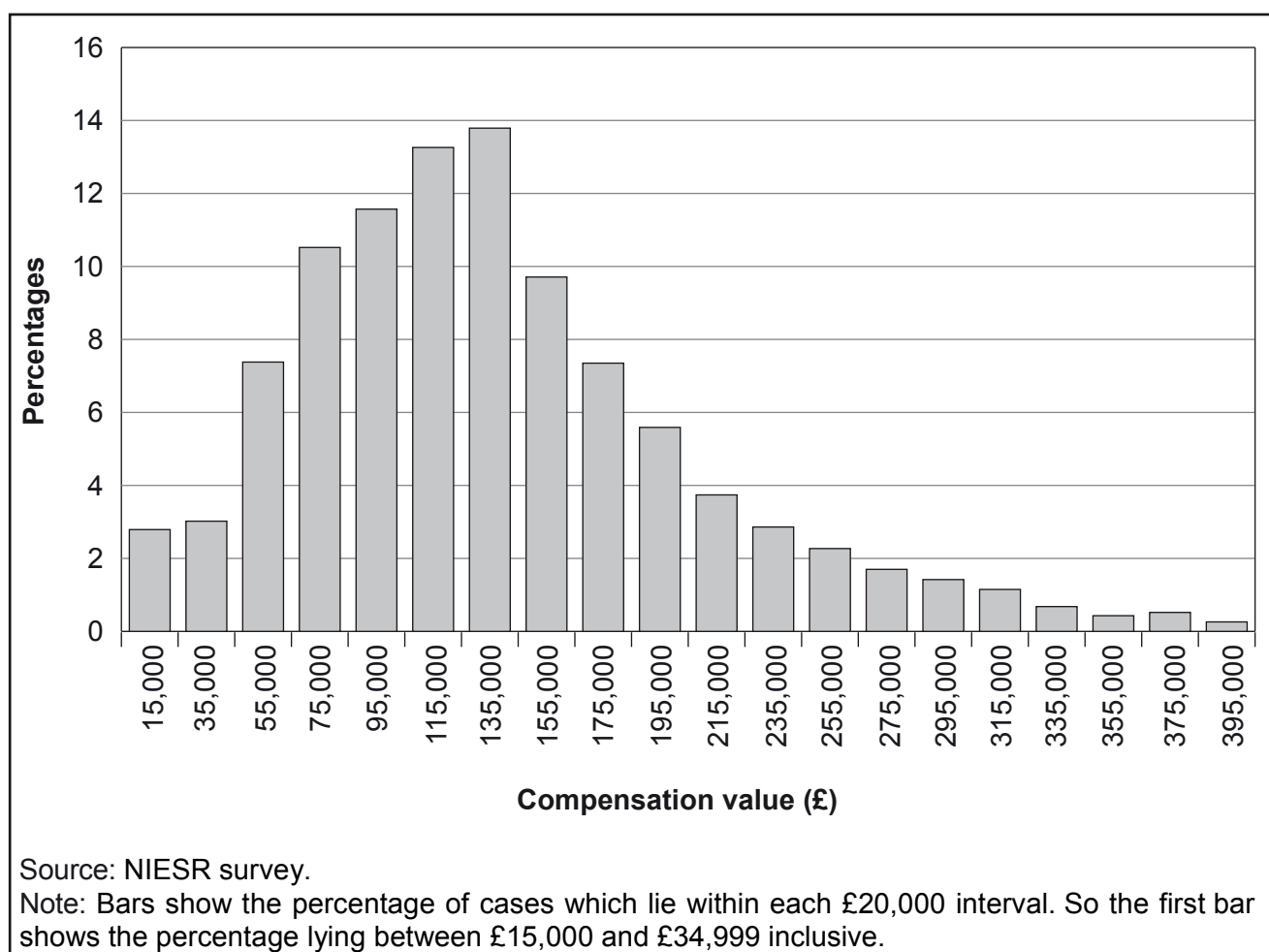
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Table 3.2 Percentiles of the distribution of compensation values (2012 prices)

Percentile	Value (rounded to nearest £1,000)
1st	£15,000
5th	£43,000
25th	£97,000
75th	£183,000
95th	£300,000
99th	£421,000

Source: NIESR survey.

Figure 3.1 Distribution of compensation values between 1st and 99th percentiles (2012 prices)



While the preceding discussion serves to provide an indication of the average value of compensation in the population, the figures in Table 3.1 are derived from a sample of all cases, rather than a census. As such, they are only estimates of the true values that pertain

in the full population of settled claims. We can obtain an indication of how an estimate would vary across repeated surveys by computing its standard error. The mean value of £153,531 has a standard error of £2,810. This implies that we can be 95% confident that the true mean value for all mesothelioma cases lies between £148,023 and £159,039.⁸

3.4 Summary statistics for legal costs

Among the sample of 2,187 cases with data on total legal costs (including eight cases in which the costs are stated to be zero), the mean value of these costs is estimated at £28,407 (including VAT) in 2012 prices. This mean value has a standard error of £617. This implies that we can be 95 per cent confident that the true mean value for legal costs in mesothelioma cases lies between £27,198 and £29,616.⁹

There was again a long upper tail in the distribution of legal costs, which extended well beyond £150,000. Accordingly, Table 3.3 shows a variety of measures of average legal costs. Table 3.4 shows selected percentiles from the overall distribution and Figure 3.2 shows the shape of the distribution between the 1st and 99th percentiles. The upper tail of the distribution of legal costs is longer than that for compensation values (see Figure 3.1), beginning around the 95th percentile, and so it could be argued that the 5% trimmed mean is the measure most complementary to the overall mean in this distribution.

Table 3.3 Measures of average legal costs including VAT (2012 prices)

Measure	Value
Arithmetic mean	£28,407
Median	£22,000
1% trimmed mean	£26,601
5% trimmed mean	£24,729
Interquartile mean	£22,477
Trimean	£22,651

Source: NIESR survey.

The interquartile mean is the mean of all values from the 25th to 75th percentiles inclusive.

The trimean is the average of: the 25th percentile, the 75th percentile and twice the median.

⁸ The 95 per cent confidence interval extends to 1.96 standard errors either side of the mean in a normally-distributed (bell-shaped) series. The confidence interval cited in the text is necessarily an approximation since, as stated earlier, the full series of compensation claims is not normally distributed but has a long upper tail.

⁹ Again, this confidence interval cited in the text is necessarily an approximation since the full series of legal cost values is not normally distributed but has a long upper tail, as shown later.

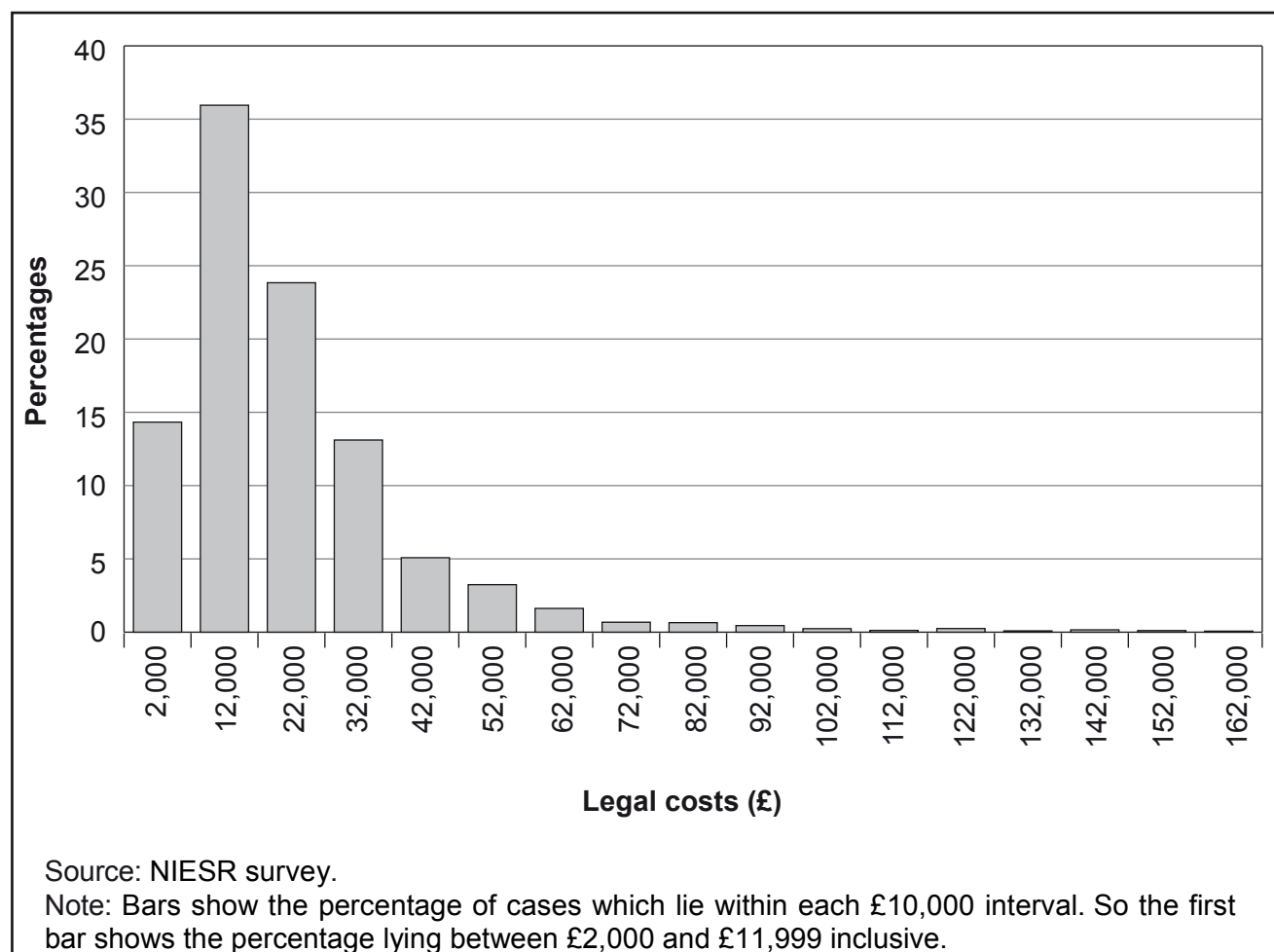
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Table 3.4 Percentiles of the distribution of legal costs (2012 prices)

Percentile	Value (rounded to nearest £1,000)
1st	£2,000
5th	£8,000
25th	£15,000
75th	£33,000
95th	£64,000
99th	£167,000

Source: NIESR survey.

Figure 3.2 Distribution of legal costs between 1st and 99th percentiles (2012 prices)



3.5 The characteristics of the claim or claimant

The survey allows a number of characteristics of the claim or claimant to be examined. These are:

- the claimant's age (when the claim was registered);
- the year of the award;

- the jurisdiction;
- whether court proceedings were issued;
- whether the claimant was alive at the time of the award; and
- the overall length of the case.

The claimant's age (when the claim was registered) was identified in the CRU database. All other attributes were identified in the survey; however missing values for the year of the award and the length of the case were imputed from the CRU database where possible. The distribution of claims across each characteristic is shown in Tables 3.5 to 3.10. The tables are based on those 2,076 cases which provided a non-zero value for total compensation and which provided the consent to link to the CRU database.¹⁰ In some cases, the percentages cited in the table may not sum to 100 because of rounding.

3.5.1 The age of the claimant

The average (mean) age of the claimant at the time of registering the claim was 71 years, although the age range of respondents extended to around 30 years either side of this average. Just under one-quarter of claimants were aged under 65 at the time of their claim, whilst 19 per cent were aged 80 or over.

Table 3.5 Age of claimant (when the claim was registered)

Age band	Percentage of cases
Under 65	23
65-69	19
70-74	21
75-79	19
80-84	12
85 and over	7

Source: NIESR survey.

3.5.2 The year of the award

The claims covered in the survey were primarily from the period 2008–12, with a small proportion coming from 2005–07.

¹⁰ Some 247 of the 2,323 cases that provided a value for total compensation did not give consent to link to the CRU database, and so the age of the claimant could not be determined for these cases. We exclude these cases from all of the tables in this section, for consistency with the later section that presents regression analysis of the relationship between all of the various factors and total compensation.

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Table 3.6 Year of award

Year	Percentage of cases
2005/06	<1
2007	6
2008	18
2009	20
2010	19
2011	20
2012	16

Source: NIESR survey.

As noted earlier, all monetary amounts cited in this chapter were converted to current (2012) values prior to analysis, in order to account for the effects of inflation.

3.5.3 Jurisdiction

Some eight per cent of the cases covered in the survey fell under Scottish jurisdiction; in other words, the claim against the main defendant was brought to a Scottish court or, in cases that did not go to court, it was perceived that the case would have been heard by a Scottish court.

Table 3.7 Jurisdiction

Jurisdiction	Percentage of cases
England and Wales	92
Scotland	8
Not known	<1

Source: NIESR survey.

3.5.4 Whether court proceedings were issued

Court proceedings were issued in 56 per cent of the cases. The percentage was much higher (91 per cent) among cases falling under Scottish jurisdiction than it was for cases falling under English or Welsh jurisdiction (53 per cent). This serves to indicate the inter-related nature of many of the characteristics covered in this section.

Table 3.8 Whether court proceedings were issued

Any court proceedings	Percentage of cases
No court proceedings	41
Formal service of court proceedings	56
Not known	2

Source: NIESR survey.

3.5.5 Whether the claimant was alive or deceased

Around three-fifths (59 per cent) of claimants were known to be deceased at the time of the award. However, in a further 11 per cent of cases, the status of the claimant at the time of the award was not known by the survey respondent.

Table 3.9 Whether claimant was alive or deceased at the time of the award

Alive or deceased at time of award	Percentage of cases
Alive	31
Deceased	59
Not known	11

Source: NIESR survey.

3.5.6 The length of the case

In order to indicate the length of the case, we rely primarily on the dates given by survey respondents for: (a) the month and year in which the claimant first lodged a claim for damages; and (b) the month and year in which compensation was awarded¹¹. The length of the case was computed simply as the difference between the two. However, at least one of these dates was missing in around one-fifth of cases; in most of these instances, the relevant dates were imputed from the CRU database, using date claim recorded (instead of the survey date the claim was lodged) and date of settlement (instead of the survey date of award)¹².

Cases varied considerably in length, with some taking only one or two months to reach a conclusion and others taking at least three or four years. The mean duration was 14.5 months (median: 12 months). The distribution is shown in six-monthly bands in Table 3.10. The 'not known' category includes the small set of cases for which dates were missing both in the survey and on the CRU database, plus a small number where the date of lodging the claim was recorded as being later than the date of receiving compensation.

Table 3.10 Length of case

Length of case	Percentage of cases
0-6 months	26
7-12 months	27
13-18 months	17
19-24 months	11
25+ months	17
Not known	1

Source: NIESR survey.

¹¹ Date of award was the date reported in the survey in response to Question 8 (see Appendix A).

¹² 'Date of settlement', as taken from the CRU database, is the date the claimant received the compensation awarded. The date of settlement (CRU database) was similar to the survey reported date of award. The date the claim was recorded (CRU database) tended to be later than the survey reported the date the claim was first lodged.

3.6 The relationship between total compensation and characteristics of the claim or claimant

This section explores the relationship between total compensation and those characteristics of the claim or claimant discussed in Section 3.5.

First we present summary statistics showing how average compensation varies with each of these characteristics (using the arithmetic mean as our measure of average compensation). Second we use ordinary least squares regression to indicate the general relationships in a more formal way.

The initial sample size for this analysis was reduced from the 2,323 cases utilised in Section 3.3, to a total of 2,076 cases because, as noted in the previous section, some cases did not give consent to link to the CRU database, and so the age of the claimant could not be determined for these cases. However, the analysis excludes cases below the 1st percentile of the distribution of compensation values and those above the 99th percentile, so as to limit the influence of extreme values (see Section 3.3). As shown in Figure 3.1, this truncated distribution (based on 2,030 cases) is approximately normally distributed.

3.6.1 The age of the claimant

Table 3.11 shows that compensation awards generally fall with age. The highest awards are typically for those claimants aged under 65, while the lowest awards are typically for those claimants aged 85 and over. The table also shows the percent of claimants within each age band who were awarded more than the mean. This is as low as 40 per cent of claimants for those aged 85 and over and only rises above half for those aged 75 to 79.

Table 3.11 Average compensation (2012 prices), by age of claimant (when the claim was registered)

Age band	Mean award	Percentage of claimants in age band awarded more than the mean
Under 65	£194,466	48
65-69	£160,859	47
70-74	£135,143	48
75-79	£129,223	53
80-84	£110,099	43
85 and over	£95,188	40

Source: NIESR survey.

Note: Excludes compensation values below the 1st percentile of the distribution of compensation values and those above the 99th percentile.

This relationship can be examined more formally using regression, a statistical method for modelling the relationship between variables. A number of regression models were estimated, using the method of ordinary least squares, in order to show the relationship between total compensation and victims' age (see Table 3.12). The first model (Model 1) used all available cases, but the presence of large, outlying values in the upper tail of the distribution of compensation claims limits the value of the regression method here.¹³ Model 2 removes a large

¹³ The method of ordinary least squares regression assumes that the dependent variable is normally distributed.

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part of the upper tail by excluding the top and bottom one per cent of all cases. Model 3 goes further by excluding the top and bottom five per cent of all cases. The distribution of compensation claims moves closer to normality as these exclusions are made, but larger parts of the sample are inevitably omitted from the estimation. Among these three, Model 2 achieves the best fit; in this model, age explains 20 per cent of the variance in total compensation. The elasticity of compensation with respect to age was estimated in Model 2 at -£3,681 per year. In other words, compensation declines by £3,681 for each additional year of age, on average.

Table 3.12 Regression-based estimates of the relationship between compensation and age of claimant

	Coefficient ^b	T-statistic
Model 1		
Dependent variable: Total compensation		
Sample: all cases		
Age of claimant ^a	-4,657.14	-9.50
Constant	486,465.13	13.11
<i>Observations</i>	2,076	
<i>R-squared</i>	0.074	
Model 2		
Dependent variable: Total compensation		
Sample: all cases from 1st to 99th percentile		
Age of claimant ^a	-3,681.17	-21.65
Constant	409,617.41	32.15
<i>Observations</i>	2,030	
<i>R-squared</i>	0.202	
Model 3		
Dependent variable: Total compensation		
Sample: all cases from 5th to 95th percentile		
Age of claimant ^a	-2,835.24	-20.00
Constant	346,937.82	
<i>Observations</i>	1,856	
<i>R-squared</i>	0.179	
Model 4		
Dependent variable: Natural logarithm of total compensation		
Sample: all cases		
Age of claimant ^a	-0.028	-18.09
Constant	13.743	125.53
<i>Observations</i>	2,076	
<i>R-squared</i>	0.143	

^a Age at the time of claim registration.

^b The value of the coefficient indicates the size of change in the dependent variable (total compensation or the natural logarithm of total compensation, depending on the model) for a one year change in age.

Source: NIESR survey.

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As noted earlier, very large and very small compensation awards are excluded from Model 2 so as to limit the influence of outliers and to improve the overall fit of the regression model. However an alternative means of estimating the relationship with age in a skewed sample is to transform the dependent variable. Taking the natural logarithm of compensation gives a distribution that is approximately normally distributed without the need to exclude any outliers; all 2,076 cases can then be entered into the regression. The coefficients are shown in Model 4 of Table 3.12. This model has the benefit of including all available cases but explains 14 per cent of the variance in the dependent variable. Models 2 and 4, therefore, represent a trade-off between a better overall fit (Model 2) and a more inclusive approach to outlying values (Model 4).

The relationship estimated in Model 4 is non-linear, such that the elasticity of compensation with respect to age is higher among younger claimants than among older claimants. This is illustrated in Table 3.13, which shows the compensation value predicted by Models 2 and 4 for each value of age between 40 and 95 years (Models 2 and 4 being those with the highest R-squared values in Table 3.12). At the average claimant age of 71, the estimated elasticities from the two models are very similar (-£3,681 in Model 2 and -£3,644 in Model 2).

Table 3.13 Average compensation (2012 prices), by age of claimant (at time of claim registration), estimated via regression

Age	Model 2		Model 4	
	Average award	One-year elasticity	Average award	One-year elasticity
40	£262,370		£305,991	
41	£258,689	-£3,681	£297,600	-£8,391
42	£255,008	-£3,681	£289,440	-£8,161
43	£251,327	-£3,681	£281,503	-£7,937
44	£247,646	-£3,681	£273,784	-£7,719
45	£243,965	-£3,681	£266,276	-£7,507
46	£240,283	-£3,681	£258,975	-£7,302
47	£236,602	-£3,681	£251,873	-£7,101
48	£232,921	-£3,681	£244,967	-£6,907
49	£229,240	-£3,681	£238,250	-£6,717
50	£225,559	-£3,681	£231,717	-£6,533
51	£221,878	-£3,681	£225,363	-£6,354
52	£218,196	-£3,681	£219,183	-£6,180
53	£214,515	-£3,681	£213,173	-£6,010
54	£210,834	-£3,681	£207,327	-£5,845
55	£207,153	-£3,681	£201,642	-£5,685
56	£203,472	-£3,681	£196,113	-£5,529
57	£199,790	-£3,681	£190,735	-£5,378
58	£196,109	-£3,681	£185,505	-£5,230
59	£192,428	-£3,681	£180,418	-£5,087
60	£188,747	-£3,681	£175,471	-£4,947
61	£185,066	-£3,681	£170,660	-£4,812
62	£181,385	-£3,681	£165,980	-£4,680

Continued

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Table 3.13 Continued

Age	Model 2		Model 4	
	Average award	One-year elasticity	Average award	One-year elasticity
63	£177,703	-£3,681	£161,429	-£4,551
64	£174,022	-£3,681	£157,002	-£4,427
65	£170,341	-£3,681	£152,697	-£4,305
66	£166,660	-£3,681	£148,510	-£4,187
67	£162,979	-£3,681	£144,437	-£4,072
68	£159,298	-£3,681	£140,477	-£3,961
69	£155,616	-£3,681	£136,625	-£3,852
70	£151,935	-£3,681	£132,878	-£3,746
71	£148,254	-£3,681	£129,235	-£3,644
72	£144,573	-£3,681	£125,691	-£3,544
73	£140,892	-£3,681	£122,244	-£3,447
74	£137,211	-£3,681	£118,892	-£3,352
75	£133,529	-£3,681	£115,632	-£3,260
76	£129,848	-£3,681	£112,461	-£3,171
77	£126,167	-£3,681	£109,378	-£3,084
78	£122,486	-£3,681	£106,378	-£2,999
79	£118,805	-£3,681	£103,461	-£2,917
80	£115,123	-£3,681	£100,624	-£2,837
81	£111,442	-£3,681	£97,865	-£2,759
82	£107,761	-£3,681	£95,182	-£2,684
83	£104,080	-£3,681	£92,572	-£2,610
84	£100,399	-£3,681	£90,033	-£2,538
85	£96,718	-£3,681	£87,564	-£2,469
86	£93,036	-£3,681	£85,163	-£2,401
87	£89,355	-£3,681	£82,828	-£2,335
88	£85,674	-£3,681	£80,557	-£2,271
89	£81,993	-£3,681	£78,348	-£2,209
90	£78,312	-£3,681	£76,199	-£2,148
91	£74,631	-£3,681	£74,110	-£2,089
92	£70,949	-£3,681	£72,078	-£2,032
93	£67,268	-£3,681	£70,101	-£1,976
94	£63,587	-£3,681	£68,179	-£1,922
95	£59,906	-£3,681	£66,310	-£1,870
Elasticity	-£3,681		-£3,644 between the ages of 70 and 71	

3.6.2 Other characteristics: descriptive analysis

The bivariate (or descriptive) relationships between compensation and other characteristics of the claim or claimant are shown in Tables 3.14 to 3.18. If we examine those values between the 1st percentile and 99th percentiles (this being the sample for Model 2 in Table 3.13 and for the further regression analysis which follows), we find that awards were:

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- around £10,000 higher, on average, after 2008;
- almost £60,000 higher, on average, in Scotland;
- around £20,000 higher, on average, if there had been a formal service of court proceedings;
- around £14,000 higher, on average, if the claimant was still alive at the time of the settlement.

There was no clear relationship with the length of the case, however.

Table 3.14 Average compensation (2012 prices), by year of award

Year	Mean award: all cases	Mean award: 1st-99th percentiles	Median award: all cases
2007	£140,555	£139,473	£133,926
2008	£148,511	£138,267	£130,369
2009	£159,257	£147,198	£136,593
2010	£155,657	£150,210	£139,651
2011	£152,410	£150,177	£138,838
2012	£158,969	£149,875	£135,000

Source: NIESR survey.

Note: Excludes three cases where the award was made in 2005/06.

Table 3.15 Average compensation (2012 prices), by jurisdiction

Jurisdiction	Mean award	Mean award: 1st-99th percentiles	Median award: all cases
England and Wales	£149,787	£142,132	£133,926
Scotland	£202,320	£198,646	£200,275

Source: NIESR survey.

Note: Excludes 11 cases where the jurisdiction was unknown.

Table 3.16 Average compensation (2012 prices), by whether court proceedings were issued

Any court proceedings	Mean award	Mean award: 1st-99th percentiles	Median award: all cases
No court proceedings	£134,970	£134,907	£130,000
Formal service of court proceedings	£167,170	£155,278	£144,311

Source: NIESR survey.

Note: Excludes 42 cases where it was not known whether court proceedings were issued.

Table 3.17 Average compensation (2012 prices), by whether claimant was alive or deceased at the time of the award

Alive or deceased at time of award	Mean award	Mean award: 1st-99th percentiles	Median award: all cases
Alive	£160,359	£158,969	£146,492
Deceased	£154,864	£144,456	£133,696

Source: NIESR survey.

Note: Excludes 197 cases where it was not known whether the claimant was alive at award.

Table 3.18 Average compensation (2012 prices), by length of case

Length of case	Mean award	Mean award: 1st-99th percentiles	Median award: all cases
0-6 months	£138,311	£140,093	£133,588
7-12 months	£156,718	£149,130	£138,158
13-18 months	£166,378	£140,423	£126,890
19-24 months	£158,798	£151,175	£145,871
25+ months	£157,512	£154,892	£142,668

Source: NIESR survey.

Note: Excludes 27 cases where the length of the case could not be determined.

3.6.3 Regression analysis of the associations between claim characteristics and total compensation

As noted earlier, these various characteristics are somewhat inter-related. The independent associations with the amount of compensation were, therefore, identified by adding each of the characteristics mentioned above to Model 2 from Table 3.12. The results are shown in Table 3.19. The broad relationships described previously were maintained, although the magnitude of those relationships altered somewhat. For instance, the £20,000 premium in favour of claims which had involved court proceedings was reduced to around £8,000 after controlling for other characteristics of the case. There remained no clear relationship between the size of the award and the length of the case.

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Table 3.19 Regression-based estimates of the relationship between compensation and various characteristics of the claim or claimant

	Coefficient	T-statistic
Age of claimant (at time of claim registration)	-3,532.25	-20.81
Year of award		
2007	Ref.	
2008	919.10	0.15
2009	10,111.33	1.69
2010	11,712.88	1.89
2011	13,685.74	2.28
2012	17,919.98	2.70
Jurisdiction		
England or Wales	Ref.	
Scotland	53,516.04	7.54
Not known	29,773.18	1.14
Whether court proceedings		
No	Ref.	
Yes	8,340.55	2.81
Not known	16,592.12	1.48
Whether claimant alive or deceased at time of award		
Alive		
Deceased	-10,893.08	-2.83
Not known	-26,993.81	-4.69
Length of case		
0-6 months	Ref.	
7-12 months	590.48	0.16
13-18 months	-1,004.78	-0.22
19-24 months	2,033.50	0.35
25+ months	-812.36	-0.14
Not known	17,373.43	1.33
Constant	388,523.54	28.88
<i>Observations</i>	2,027	
<i>R-squared</i>	0.268	

Source: NIESR survey.

Note: Model excludes compensation values below the 1st percentile of the distribution of compensation values and those above the 99th percentile. Excludes three cases where the award was made in 2005/06.

3.7 The relationship between total legal costs and characteristics of the claim or claimant

This section explores the relationship between total legal costs and those characteristics of the claim or claimant discussed in Section 3.5.

As in the preceding analysis of total compensation, we first present summary statistics showing how average legal costs vary between claimants of different types (using the arithmetic mean as our measure of average costs). We then use ordinary least squares regression to indicate the general relationships in a more formal way.

The initial sample size for this analysis was reduced from the 2,187 cases utilised in Section 3.4, to a total of 1,948 cases after dropping those which did not give consent to link to the CRU database. However, the analysis also excluded cases below the 5th percentile of the distribution of cost values and those above the 95th percentile, so as to limit the influence of extreme values (see Section 3.4). Figure 3.2 shows that this truncated distribution (based on 1,750 cases) is approximately normally distributed.

3.7.1 Descriptive analysis

The simple bivariate (or descriptive) relationships between legal costs and other characteristics of the claim or claimant are shown in Tables 3.20 to 3.26. If we examine those values between the 5th and 95th percentiles (this being the sample for Figure 3.2 and for the further regression analysis which follows)¹⁴, we find that legal costs were:

- negatively associated with the age of claimant (at time of claim registration);
- around £3,000 higher, on average, after 2007;
- almost £10,000 lower, on average, in Scotland;
- around £9,000 higher, on average, if there had been a formal service of court proceedings;
- around £3,000 lower, on average, if the claimant was still alive at the time of the settlement;
- positively associated with the length of the case.

Some of these associations – such as the negative association with the age of the claimant – can be at least partially explained by the positive association between legal costs and the total value of compensation awarded (see Table 3.20). The correlation coefficient for these two series was 0.24.¹⁵

Some associations are, however, contrary to this general pattern, such as the lower average value of legal costs in Scotland (average compensation values were higher in Scotland than in England and Wales – see Table 3.15).

¹⁴ Descriptive tables also provide the mean and median for all cases.

¹⁵ The correlation coefficient is a measure of the strength and direction of the association between two variables. It can vary between -1 (perfect negative association) and +1 (perfect positive association). The bivariate association shown between legal costs and compensation is not unduly affected by outliers in the compensation series. The correlation coefficient of 0.24 is based on the full series for both variables. If the sample of cost values omits those below the 5th percentile and those above the 95th percentile, and the sample of compensation values omits those below the 1st percentile and those above the 99th percentile, the correlation coefficient is 0.23.

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Table 3.20 Average legal costs (2012 prices), by total value of compensation

Compensation	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
Under £100,000	£19,258	£20,558	£16,114
£100,000-£149,999	£26,926	£24,233	£21,854
£150,000-£199,999	£30,847	£26,618	£25,223
£200,000 and over	£42,384	£29,170	£29,310

Source: NIESR survey.

**Table 3.21 Average legal costs (2012 prices), by age of claimant
(at time of claim registration)**

Age band	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
Under 65	£39,245	£29,063	£29,159
65-69	£29,866	£25,058	£22,813
70-74	£27,318	£24,924	£21,012
75-79	£24,653	£22,577	£20,569
80-84	£20,222	£21,739	£17,207
85 and over	£20,174	£20,922	£17,571

Source: NIESR survey.

Table 3.22 Average legal costs (2012 prices), by year of award

Year	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
2007	£23,985	£21,404	£17,915
2008	£25,655	£24,479	£21,256
2009	£28,047	£24,941	£22,202
2010	£33,383	£26,312	£24,707
2011	£29,579	£24,810	£21,597
2012	£28,160	£24,311	£21,000

Source: NIESR survey.

Note: Excludes cases where the award was made in 2005/06.

Table 3.23 Average legal costs (2012 prices), by jurisdiction

Jurisdiction	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
England and Wales	£29,643	£25,455	£22,673
Scotland	£16,105	£15,750	£13,069

Source: NIESR survey.

Note: Excludes cases where the jurisdiction was unknown.

Table 3.24 Average legal costs (2012 prices), by whether court proceedings were issued

Any court proceedings	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
No court proceedings	£20,534	£19,800	£16,712
Formal service of court proceedings	£34,805	£28,578	£27,207

Source: NIESR survey.

Note: Excludes cases where it was not known whether court proceedings were issued.

Table 3.25 Average legal costs (2012 prices), by whether claimant was alive or deceased at the time of the award

Alive or deceased at time of award	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
Alive	£29,077	£23,074	£20,410
Deceased	£30,022	£26,131	£24,170

Source: NIESR survey.

Note: Excludes cases where it was not known whether the claimant was alive at award.

Table 3.26 Average legal costs (2012 prices), by length of case

Length of case	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases
0-6 months	£22,990	£20,634	£17,990
7-12 months	£28,450	£24,637	£21,539
13-18 months	£28,080	£24,841	£23,734
19-24 months	£31,209	£24,712	£23,354
25+ months	£36,012	£30,275	£29,541

Source: NIESR survey.

Note: Excludes cases where the length of the case could not be determined.

3.7.2 Regression analysis

As noted earlier, these various characteristics are somewhat interrelated. The independent associations with total legal costs were, therefore, identified by adding each of the characteristics into a regression analysis. The dependent variable is total legal costs (with values below the 5th percentile and those above the 95th percentile omitted). The regressors are identical to those used in the earlier regression analysis of total compensation, although here, total compensation forms one of the regressors in the model. Compensation values below the 1st percentile and above the 99th percentile are omitted as they are found to have a strong influence on the size of the coefficient estimated from the model.

The results of the regression analysis are shown in Table 3.27. The regression analysis found that legal costs increase by £4, on average, for each additional £100 of compensation. They are lower for older claimants, higher for claims made after 2008, lower in Scotland, higher if the claim involved court proceedings and higher if the claimant was deceased at the

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time of the award. It is perhaps worth noting that the characteristics listed in Table 3.27 are better able to explain the variance in legal costs than in the case of total compensation (i.e. the model shown in Table 3.27 has a better fit – a higher R-squared – than the model shown in Table 3.19).

Legal costs remain positively associated with the length of the case after controlling for other factors, as one might expect. The model shown in Table 3.27 uses a categorical indicator for case length; however, if this categorical indicator is replaced with a continuous variable indicating the length of the case in months, we obtain a coefficient of 206.27 (t-statistic: 6.06). In other words, total legal costs rise by around £200, on average, for each additional month, after controlling for other factors. Nevertheless, it should be noted that this is the simple linear elasticity estimated from the model: the coefficients shown in Table 3.27 suggest that the association is not linear, however, and that it rises more steeply in the early phases of a case (perhaps reflecting fixed and marginal costs). Compared to cases with 0-6 months duration, there is an increase of around £3,000 for cases that last 7-12 months and around £4,000 for cases that last 13-18 months.

The coefficients on the other variables shown in Table 3.27 were substantively unaltered when the categorical indicator for case length was replaced with the continuous indicator.

Table 3.27 Regression-based estimates of the relationship between total legal costs and various characteristics of the claim or claimant

	Coefficient	T-statistic
Total compensation (£)	0.043	9.44
Age of claimant (at time of claim registration)	-111.22	-3.50
Year of award		
2007	Ref.	
2008	1,323.05	1.11
2009	2,391.40	2.22
2010	2,664.61	2.44
2011	3,093.37	2.90
2012	2,676.94	2.22
Jurisdiction		
England or Wales	Ref.	
Scotland	-18,431.95	-22.26
Not known	4,765.69	1.67
Whether court proceedings		
No	Ref.	
Yes	9,447.68	16.16
Not known	4,599.19	2.76
Whether claimant alive or deceased at time of award		
Alive		
Deceased	1,982.34	2.94
Not known	374.53	0.32
Length of case		
0-6 months	Ref.	
7-12 months	2,995.35	3.96
13-18 months	3,907.88	4.59
19-24 months	3,458.82	3.73
25+ months	6,996.10	6.41
Not known	12,061.87	3.36
Constant	15,811.06	5.60
<i>Observations</i>	1.725	
<i>R-squared</i>	0.373	

Source: NIESR survey.

Note: Excludes cost values below the 5th percentile and those above the 95th percentile, and compensation values below the 1st percentile and above the 99th percentile. Excludes three cases where the award was made in 2005/06.

3.8 Components of legal costs

The survey asked whether the total legal costs included each of the following components:

- a success fee¹⁶;
- disbursements¹⁷;
- after-the-event (ATE) insurance costs¹⁸.

In cases where these elements were included in the total legal costs, the respondent was asked to specify the value of that component.

In practice, many respondents did not know whether a specific component was included in the legal costs. In cases where they did know that it was included, they were often unable to specify the value of that component. Some caution should, therefore, be attached to the findings of the survey on this particular issue.

The analysis presented in this section returns to the overall sample of 2,187 cases utilised in Section 3.4.

3.8.1 Success fees

A success fee was known to be included in the legal costs in 67 per cent of cases. It was known not to be included in seven per cent, while in the remaining 26 per cent of respondents did not know whether it was included or not.

A small number of respondents said that a success fee was included, but then gave a figure of zero for the value of that success fee. These cases were treated as if there was no success fee. A small number gave a success fee that was larger than the total value of legal costs and these are treated as if the value of the success fee was not known.

Table 3.28 Whether legal costs included a success fee

	Percentage of cases
Yes – amount known	37
Yes – amount not known	30
No	7
Do not know	26

Source: NIESR survey.

¹⁶ Most claimants' cases are taken on by solicitors on a 'no win, no fee' basis. If the claimant wins, the claimant's solicitor charges their actual costs plus an additional charge (the success fee). The success fee is to compensate for the risk the solicitor faced (because they might lose). In the scoping study for the survey, this was reported by solicitors to vary little.

¹⁷ Disbursements are non-legal costs such as payment for medical reports and travel.

¹⁸ After the event insurance is insurance taken out by the claimant to cover their legal costs if they do not win their case.

The average success fee among the 37 per cent of cases where the amount was known was £4,797 (in 2012 prices) (Table 3.29). Mean legal costs for these cases amounted to £33,860, and so the success fee accounted for 14 per cent of total legal costs, on average, in these cases.

Table 3.29 Average success fees (2012 prices)

	Value
Mean	£4,797
Median	£3,788
1% trimmed mean	£4,526
5% trimmed mean	£4,237

Source: NIESR survey.

If we combine the 37 per cent of cases where the amount was known with those seven per cent where there was no success fee (giving those cases a value of zero), the average (mean) across all cases where complete information was given was £4,029. Mean legal costs for these cases amounted to £31,513. Consequently, our best estimate is that success fees account for 13 per cent of total legal costs on average across all cases. However, as noted earlier, the large proportion of cases with incomplete information means that some caution must necessarily be attached to this estimate, as these cases may not be fully representative.¹⁹

3.8.2 Disbursements

Disbursements were known to be included in the legal costs in 74 per cent of cases. They were known not to be included in only one per cent, while in the remaining 25 per cent the respondent did not know whether they were included or not. Inconsistencies were treated in the manner described in the previous section.

Table 3.30 Whether legal costs included disbursements

	Percentage of cases
Yes – amount known	53
Yes – amount not known	21
No	1
Do not know	25

Source: NIESR survey.

The average value of disbursements among the 53 per cent of cases where the amount was known was £5,138 (in 2012 prices) (Table 3.31). Mean legal costs for these cases amounted to £28,731, and so disbursements accounted for 18 per cent of total legal costs on average in these cases.

¹⁹ One can note that average legal costs are slightly higher than is the case for all cases, for example.

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Table 3.31 Average disbursements (2012 prices)

	Value
Mean	£5,138
Median	£3,865
1% trimmed mean	£4,812
5% trimmed mean	£4,453

Source: NIESR survey.

If we combine the 53 per cent of cases where the amount was known with those one per cent where there were no disbursements (giving those cases a value of zero), the average across all cases where complete information was given was £5,042. Average legal costs for these cases amounted to £28,556. Consequently, our best estimate is that disbursements account for 18 per cent of total legal costs, on average, across all cases.

3.8.3 ATE insurance costs

ATE costs were known to be included in the legal costs in 52 per cent of cases. They were known not to be included in 16 per cent, while in the remaining 33 per cent the respondent did not know whether they were included or not. Again, inconsistencies were treated in the manner described for success fees.

Table 3.32 Whether legal costs included ATE insurance costs

	Percentage of cases
Yes – amount known	40
Yes – amount not known	12
No	16
Do not know	33

Source: NIESR survey.

The average value of ATE costs among the 40 per cent of cases where the amount was known was £2,468 (in 2012 prices) (Table 3.33). Mean legal costs for these cases amounted to £33,698, and so ATE costs accounted for seven per cent of total legal costs, on average, in these cases.

Table 3.33 Average ATE insurance costs (2012 prices)

	Value
Mean	£2,468
Median	£1,904
1% trimmed mean	£2,431
5% trimmed mean	£2,285

Source: NIESR survey.

If we combine the 40 per cent of cases where the amount was known with those 12 per cent where there were no ATE costs (giving those cases a value of zero), the average across all cases where complete information was given was £1,769. Average legal costs for these cases amounted to £30,501. Consequently, our best estimate is that ATE costs account for 6 per cent of total legal costs on average across all cases.

3.8.4 ‘Base’ legal costs

The preceding sections have noted that success fees typically accounted for 13 per cent of total legal costs in those cases where the value of the success fee was known and after including cases in which there was no success fee. Disbursements typically accounted for 18 per cent and ATE costs for six per cent. The overall average value of total legal costs (computed on all available cases) was £28,407 (see Table 3.3). We can, therefore, estimate that base legal costs averaged £17,896 before any success fee, disbursements or ATE costs were included (this figure being 63 per cent of total legal costs) (see Table 3.34). This estimate should be treated with caution however, as it is clear from the preceding sections that many respondents could not provide information on the value of any success fee, disbursements or ATE costs and so the percentages noted above may not be fully representative of the average case.

An alternative means of arriving at an estimate for base legal costs is to sum the individual cost elements for those cases which provided a valid figure for all three cost elements. This alternative approach arrives at an estimate of £19,325 (see Table 3.34); however, it is computed from only 37 per cent of those cases with a value for total legal costs and is, therefore, subject to even more caution than the figure cited in the previous paragraph. Nevertheless, it is possible under this approach to also compute a median and trimmed means and these are shown in Table 3.34.

Table 3.34 Average base legal costs (2012 prices)

	Value
Deduced from all available cases	
Mean	£17,896
Computed from all cases with valid information on all three cost elements	
Mean	£19,325
Median	£14,364
1% trimmed mean	£17,504
5% trimmed mean	£15,990

Source: NIESR survey.

Note: these figures should be treated with caution for the reasons stated in the text.

Appendix A

Method

A.1 Survey design

The scoping study identified the CRU database as the only comprehensive sampling frame for mesothelioma settlements. The structure and content of the CRU database affected the survey design and this is described in this section.

Claims are registered with the CRU by the defendant (normally the insurance company or the employer) or their representative (normally a law firm) and it is the contact details of this registrant that the database holds. Therefore the survey, whilst of a sample of claims, was conducted through registrants, with registrants providing details of the claim.

The number of claims registered by each registrant varied from one to several hundred, with the distribution highly skewed to a small number of organisations.

- To minimise the burden on each registrant, the number of claims requested per registrant was capped at 300.
- To increase the cost-effectiveness of the survey, the survey was limited to registrants registering at least five claims. This resulted in the exclusion of 3.2 per cent of registered claims. There is the possibility that registrants handling few cases handle different claims than other registrants²⁰. However, because these registrants account for so few cases in total, their exclusion would have a negligible effect on the estimates of compensation levels.

Structuring of the sample was considered necessary for two reasons: Firstly, the CRU database had relatively few cases where the victim was aged under 65. Secondly, the number of cases falling under Scottish jurisdiction was expected to be low (because of the size of the population). Cases are not identified by country of jurisdiction in the CRU database, but we assumed that claimants residing in Scotland and registrants which were law firms with a Scottish address were likely to fall under Scottish jurisdiction and there were relatively few of these cases. Therefore, both under-65s and those estimated to fall under Scottish jurisdiction were oversampled through structuring the sample in organisations with more than 300. Details are given in the next section.

The questionnaire was designed as an Excel spreadsheet. For each registrant, the questionnaire listed their cases in the sample, using the defendant case reference number and giving no other details of the case.

²⁰ Some stakeholders in the scoping study suggested that registrants with few cases were more likely to have white-collar victims and so receive higher compensation. However, at three per cent of the sample (and fewer still of the achieved sample, if our expectations about response rates being lower amongst the organisations dealing with fewer mesothelioma cases), their impact on estimates of average compensation would be negligible.

A.2 Sampling

Based on the CRU data, the following cases were included in the sample population:

- settled employer liability claims in the private sector (i.e. excluding government, local authority, NHS and unknown);
- claims settled between 2007 and 2012²¹.

'Special' cases (i.e. 'Turner and Newell' cases and those falling under the Financial Services Compensation Scheme) were excluded.

This gave a total of 4,216 eligible cases.

Eligible claims were grouped according to the CRU claim registrant (i.e. defendants and their representatives).

As described already, organisations registering fewer than five claims were excluded from the sample. This meant that 97 organisations were excluded, accounting for 142 claims (3.2 per cent of the total). The sample was drawn from the remaining 43 organisations.

Where organisations were the registrant for no more than 300 cases, all cases were selected in the sample. For the three organisations which had registered more than 300 claims, their sample was capped at 300 (see Section A.1). For each of these three organisations, a sample of 300 cases was drawn, as follows:

- all cases in Scotland were selected (cases were allocated to Scotland if, according to CRU data, either the claimant was resident in Scotland or the registrant was located in Scotland);
- all cases where the claimant was under 65 at the time of the claim were selected;
- a random sample of remaining cases was selected, to take the total up to 300 per organisation.

This selection was taken into account in the weighting.

In total, 3,477 cases were selected.

A.3 Fieldwork process

Contact was made with the organisations sampled to explain the survey and to make arrangements for receipt of the questionnaire. The Association of British Insurers provided extensive assistance, with their members contacting their representatives to encourage them to assist in the survey and through identifying appropriate contacts in their representative organisations.

Owing to confidentiality concerns, in each organisation, a person was identified to receive the questionnaire. The questionnaire was then emailed, with phone contact maintained until confirmation of receipt. Respondents were instructed to remove their own case reference number prior to returning the completed questionnaire (but retain the NIESR case identifier).

²¹ The questionnaire also asked for date of settlement. For three cases, the survey respondents gave the settlement year as 2005/06. These cases were retained in the sample.

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The survey was in the field from 22 January 2013 to 8 March 2013. A helpline was maintained to assist respondents. Respondents initially received two reminders at approximately two-week intervals. In addition, respondents received further reminders until they had returned the questionnaire or declined to participate.

A.4 Weighting

The weighting comprised:

- a probability of selection weight, to reflect the cap on the three largest organisations and the over-sampling of Scotland and of claimants aged over 65;
- a non-response weight: cases were weighted by year of settlement. Separate weights were applied for analysis of total compensation paid and for total legal costs (because the total number of cases differed); and
- separate weights were constructed to take into account the organisations that had not given permission to link their responses with CRU data: a weight for analysing overall figures only (covering all cases) and a weight for analysing sub-groups derived from the CRU data (excluding those who had not given permission).

All findings have been weighted with the appropriate weight.

A.5 Questionnaire

Your case reference PLEASE DELETE THIS ROW BEFORE RETURNING TO NIESR		a
CRU reference number PLEASE DELETE THIS ROW BEFORE RETURNING TO NIESR		a
NIESR survey case ID (DO NOT DELETE)		a
Please complete the spreadsheet only for cases where total compensation has been agreed. If total compensation has not been agreed , please indicate 'not agreed' on this line and leave the rest of the column blank.	not agreed	
1. What was the total compensation paid? i.e. the actual amount of damages paid to the claimant, plus any amount repaid to CRU in respect of benefit recovery	amount in £s	
2. What were the total claimant legal costs paid? i.e. the total of all sums paid by the compensator(s) to the claimant's legal representatives in respect of legal costs, success fee, Court fees, and all other disbursements: a) including VAT b) excluding VAT	amount in £s amount in £s	
3a. Did the agreed total claimant legal costs include: a) a success fee? b) disbursements? c) after-the-event insurance costs?	yes no don't know	
3b. If known, what was the cost (excluding VAT) of: a) a success fee? b) disbursements? c) after-the-event insurance costs?	amount in £s amount in £s amount in £s	
4. Which jurisdiction did the claim (against the main defendant) fall under? i.e. which was the jurisdiction in which litigation was brought or the perceived jurisdiction that would have been utilised had litigation ensued a) England and Wales b) Scotland c) Northern Ireland d) other/unknown	E&W S NI don't know	
5. Was there a formal service of court proceedings in the case?	yes no don't know	
6. When did the claimant first lodge a claim for damages?	dd/mm/yyyy don't know	
7. Date of victim's diagnosis of mesothelioma^b	mm/yyyy don't know	

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8. Date of award of compensation i.e. the specific date of the: – formal Court Order – signed Consent Order – formal acceptance of a settlement offer by the Claimant or Defendant (if pre-litigation)	dd/mm/yyyy don't know	
9. Had the victim died prior to settlement?	yes no don't know	
10. If the victim had died prior to settlement, date of death	dd/mm/yyyy don't know	

- a A column was allocated to each case sampled for the respondent. Each case was identified by the respondent's case reference and the CRU reference number and given a NIESR survey case ID.
- b This data was not used in the analysis, due to concerns over variability in definition and estimation of the date amongst respondents.

Appendix B

England and Wales, descriptive findings

This appendix replicates the tables in Chapter 3 for cases decided in England and Wales only. The table number in brackets indicate the corresponding table in Chapter 3. Descriptive tables only are included. Data has been weighted to make the survey findings more representative of all claims in England and Wales. See Appendix A for details.

Table B.1 Measures of average compensation (2012 prices), England and Wales
(Table 3.1)

Measure	Value	<i>n</i>
Arithmetic mean	£149,704	2,123
Median	£134,903	2,123
1% trimmed mean	£142,844	2,080
5% trimmed mean	£139,466	1,902
Interquartile mean	£134,849	1,036
Trimean	£135,777	2,123

Note: Mean values do not match those shown in Table 3.15 (and Table B.15) since the analyses presented in Section 3.6 are conducted only on the subset of cases that could be linked to the CRU database, which provided data on the age of the claimant (a key part of the regression analysis conducted towards the end of that section).

Source: NIESR survey.

Table B.2 Percentiles of the distribution of compensation values (2012 prices), England and Wales (Table 3.2)

Percentile	Value (rounded to nearest £1,000)
1st	£15,000
5th	£43,000
25th	£95,000
75th	£178,000
95th	£287,000
99th	£421,000
<i>n</i>	2,123

Source: NIESR survey.

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Table B.3 Measures of average legal costs including VAT (2012 prices), England and Wales (Table 3.3)

Measure	Value	<i>n</i>
Arithmetic mean	£29,266	1,995
Median	£22,673	1,995
1% trimmed mean	£27,387	1,954
5% trimmed mean	£25,465	1,794
Interquartile mean	£23,320	1,006
Trimean	£23,578	1,995

Note: Mean values do not match those shown in Table 3.23 (and Table B.23) since the analyses presented in Section 3.7 are conducted only on the subset of cases that could be linked to the CRU database, which provided data on the age of the claimant (a key part of the regression analysis conducted towards the end of that section).

Source: NIESR survey.

Table B.4 Percentiles of the distribution of legal costs (2012 prices), England and Wales (Table 3.4)

Percentile	Value (rounded to nearest £1,000)
1st	£2,500
5th	£8,000
25th	£15,000
75th	£33,000
95th	£64,000
99th	£165,000
<i>n</i>	1,995

Source: NIESR survey.

Table B.5 Age of claimant at the time of the claim, England and Wales (Table 3.5)

Age band	Percentage of cases
Under 65	23
65-69	18
70-74	22
75-79	19
80-84	12
85 and over	7
<i>n</i>	1,876

Source: NIESR survey.

Table B.6 Year of award, England and Wales (Table 3.6)

Year	Percentage of cases
2005/06	<1
2007	7
2008	19
2009	20
2010	19
2011	20
2012	17
<i>n</i>	1,876

Source: NIESR survey.

Table B.7 Whether court proceedings were issued, England and Wales (Table 3.8)

Any court proceedings	Percentage of cases
No court proceedings	44
Formal service of court proceedings	53
Not known	2
<i>n</i>	1,876

Source: NIESR survey.

Table B.8 Whether claimant was alive or deceased at the time of the award, England and Wales (Table 3.9)

Alive or deceased at time of award	Percentage of cases
Alive	32
Deceased	57
Not known	11
<i>n</i>	1,876

Source: NIESR survey.

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Table B.9 Length of case, England and Wales (Table 3.10)

Length of case	Percentage of cases
0-6 months	28
7-12 months	27
13-18 months	17
19-24 months	10
25+ months	16
Not known	2
<i>n</i>	1,876

Source: NIESR survey.

Table B.10 Average compensation (2012 prices), by age of claimant (when the claim was registered) (Table 3.11)

Age band	Mean award	<i>n</i>
Under 65	£189,718	509
65-69	£154,682	303
70-74	£132,548	370
75-79	£125,278	330
80-84	£105,916	204
85 and over	£91,726	118

Source: NIESR survey.

Table B.11 Average compensation (2012 prices), by year of award (Table 3.14)

Year	Mean award: all cases	Mean award: 1st-99th percentiles	Median award: all cases	<i>n</i> all cases	<i>n</i> 1st-99th percentiles
2007	£139,954	£138,759	£129,226	92	88
2008	£146,794	£135,865	£129,999	311	303
2009	£155,165	£141,874	£133,213	408	402
2010	£149,423	£145,665	£139,586	365	356
2011	£147,105	£144,559	£137,144	387	381
2012	£154,248	£143,984	£132,500	310	301

Source: NIESR survey.

Note: Excludes three cases from the full dataset where the award was made in 2005/06.

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Table B.12 Average compensation (2012 prices), by jurisdiction (Table 3.15)

Jurisdiction	Mean award	Mean award: 1st-99th percentiles	Median award: all cases	<i>n</i> all cases	<i>n</i> 1st-99th percentiles
England and Wales	£149,787	£142,132	£133,926	1,876	1,834

Source: NIESR survey.

Note: Excludes 11 cases from the full dataset where the jurisdiction was unknown.

Table B.13 Average compensation (2012 prices), by whether court proceedings were issued (Table 3.16)

Any court proceedings	Mean award	Mean award: 1st-99th percentiles	Median award: all cases	<i>n</i> all cases	<i>n</i> 1st-99th percentiles
No court proceedings	£134,493	£134,423	£130,000	848	839
Formal service of court proceedings	£161,300	£148,175	£138,845	987	956

Source: NIESR survey.

Note: Excludes 42 cases from the full dataset where it was not known whether court proceedings were issued.

Table B.14 Average compensation (2012 prices), by whether claimant was alive or deceased at the time of the award (Table 3.17)

Alive or deceased at time of award	Mean award	Mean award: 1st-99th percentiles	Median award: all cases	<i>n</i> all cases	<i>n</i> 1st-99th percentiles
Alive	£157,774	£156,773	£144,146	618	608
Deceased	£149,557	£137,629	£129,999	1,073	1,047

Source: NIESR survey.

Note: Excludes 197 cases from the full dataset where it was not known whether the claimant was alive at award.

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Table B.15 Average compensation (2012 prices), by length of case (Table 3.18)

Length of case	Mean award	Mean award: 1st-99th percentiles	Median award: all cases	<i>n</i> all cases	<i>n</i> 1st-99th percentiles
0-6 months	£137,416	£139,231	£132,840	513	507
7-12 months	£153,894	£145,532	£136,543	504	493
13-18 months	£161,000	£134,936	£123,973	331	318
19-24 months	£150,062	£141,201	£139,651	207	205
25+ months	£151,861	£148,317	£139,586	295	286

Source: NIESR survey.

Note: Excludes 27 cases from the full dataset where the length of the case could not be determined.

Table B.16 Average legal costs (2012 prices), by total value of compensation (Table 3.20)

Compensation	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
Under £100,000	£19,768	£20,949	£16,515	444	376
£100,000-£149,999	£27,432	£24,605	£22,321	567	542
£150,000-£199,999	£31,955	£27,498	£26,000	391	365
£200,000 and over	£47,594	£32,633	£34,685	347	294

Source: NIESR survey.

**Table B.17 Average legal costs (2012 prices), by age of claimant
(at time of claim registration)** (Table 3.21)

Age band	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
Under 65	£40,425	£30,172	£30,079	502	439
65-69	£31,508	£25,880	£24,168	286	255
70-74	£27,780	£25,247	£22,202	347	319
75-79	£25,654	£23,393	£21,539	313	286
80-84	£21,149	£22,849	£18,000	193	174
85 and over	£20,941	£21,829	£18,872	115	107

Source: NIESR survey.

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Table B.18 Average legal costs (2012 prices), by year of award (Table 3.22)

Year	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
2007	£24,566	£21,848	£17,915	88	75
2008	£26,373	£25,187	£22,106	304	278
2009	£29,337	£25,843	£24,112	400	363
2010	£35,030	£27,016	£25,245	359	316
2011	£30,743	£26,155	£22,625	369	332
2012	£28,468	£24,822	£22,000	233	213

Source: NIESR survey.

Note: Excludes cases from the full dataset where the award was made in 2005/06.

Table B.19 Average legal costs (2012 prices), by jurisdiction (Table 3.23)

Jurisdiction	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
England and Wales	£29,643	£25,455	£22,673	1,756	1,580

Source: NIESR survey.

Note: Excludes cases where the jurisdiction was unknown.

Table B.20 Average legal costs (2012 prices), by whether court proceedings were issued (Table 3.24)

Any court proceedings	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
No court proceedings	£20,540	£19,984	£16,969	796	739
Formal service of court proceedings	£37,421	£30,464	£29,541	927	808

Source: NIESR survey.

Note: Excludes cases from the full dataset where it was not known whether court proceedings were issued.

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Table B.21 Average legal costs (2012 prices), by whether claimant was alive or deceased at the time of the award (Table 3.25)

Alive or deceased at time of award	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
Alive	£29,372	£23,481	£20,559	578	525
Deceased	£31,521	£27,389	£25,507	996	899

Source: NIESR survey.

Note: Excludes cases from the full dataset where it was not known whether the claimant was alive at award.

Table B.22 Average legal costs (2012 prices), by length of case (Table 3.26)

Length of case	Mean legal costs: all cases	Mean costs: 5th-95th percentiles	Median costs: all cases	<i>n</i> all cases	<i>n</i> 5th-95th percentiles
0-6 months	£23,209	£20,634	£18,043	485	445
7-12 months	£29,236	£24,637	£22,202	473	424
13-18 months	£29,415	£24,841	£25,000	303	275
19-24 months	£33,591	£24,712	£25,000	195	178
25+ months	£38,398	£30,275	£30,853	276	237

Source: NIESR survey.

Note: Excludes cases from the full dataset where the length of the case could not be determined.

Table B.23 Whether legal costs included a success fee (Table 3.28)

	Percentage of cases
Yes – amount known	40
Yes – amount not known	32
No	2
Do not know	26
<i>n</i>	1,995

Source: NIESR survey.

Table B.24 Average success fees (2012 prices) (Table 3.29)

	Value	<i>n</i>
Mean	£4,763	781
Median	£3,788	781
1% trimmed mean	£4,510	764
5% trimmed mean	£4,229	702

Source: NIESR survey.

Table B.25 Whether legal costs included disbursements (Table 3.30)

	Percentage of cases
Yes – amount known	53
Yes – amount not known	21
No	1
Do not know	25
<i>n</i>	1,995

Source: NIESR survey.

Table B.26 Average disbursements (2012 prices) (Table 3.31)

	Value	<i>n</i>
Mean	£4,951	1,091
Median	£3,687	1,091
1% trimmed mean	£4,681	1,071
5% trimmed mean	£4,338	980

Source: NIESR survey.

Table B.27 Whether legal costs included after-the-event (ATE) insurance costs (Table 3.32)

	Percentage of cases
Yes – amount known	43
Yes – amount not known	12
No	11
Do not know	33
<i>n</i>	1,995

Source: NIESR survey.

Table B.28 Average ATE insurance costs (2012 prices) (Table 3.33)

	Value	<i>n</i>
Mean	£2,470	865
Median	£1,905	865
1% trimmed mean	£2,433	856
5% trimmed mean	£2,287	796

Source: NIESR survey.

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Table B.29 Average base legal costs (2012 prices) (Table 3.34)

	Value	<i>n</i>
Deduced from all available cases		
Mean	£18,610	<i>n/a</i>
Computed from all cases with valid information on all three cost elements		
Mean	£20,218	678
Median	£15,274	678
1% trimmed mean	£15,274	662
5% trimmed mean	£15,370	610

Source: NIESR survey.

Note: these figures should be treated with caution for the reasons stated in the text.