REPORT OF THE CASE PROFILING STUDY

PERSONAL INJURY LITIGATION IN PRACTICE

Pascoe Pleasence

LEGAL AID BOARD RESEARCH UNIT

1998
Acknowledgements.

I would like to thank all those firms which took part in the study for providing their time. Without their help, along with the efforts of Legal Aid Board franchise auditors and liaison managers, this project would not have been possible. Special thanks are due to Sarah Maclean, of LABRU, and Roger Bowles, of the University of Bath. I would also like to thank Neil McKay, Les Peirce, Ben Harrison, Geraldine Neville, Alexy Buck, Hazel Genn and Joanna Shapland for their help and support.

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1. Introduction

Background

The case profiling study represents the first major research project undertaken by the Legal Aid Board Research Unit. Its goal has been to inform the policy development and implementation of block contracting for civil legal aid services in England and Wales. It has formed a part of the information strategy at the heart of Legal Aid Board’s reform implementation programme.

It was decided at the outset of the study, in late 1995, to restrict attention to the fields of family and personal injury work. This was on the basis that they together account for three quarters of the total number of cases conducted under legal aid certificates. They also represent two very different fields of legal endeavour, in terms of legal frameworks, legal cultures, client aspirations and objectives.

Since that time, however, the Government has decided to restrict the availability of legal aid in personal injury cases and promote conditional fees as the principal method of facilitating access to justice in this area of the law.* The findings set out in this report continue to be of great importance in relation to those types of personal injury case that will remain within the scope of legal aid. They also continue to be of wider importance, as they shed new light upon the risks, costs and general form of personal injury litigation. An understanding of these matters will be crucial for the legal profession, insurance industry, other legal expense funding bodies and consumers of legal services if a real success is to be made of the Government’s reforms.

The case profiling study has taken over 2 years to complete: It is believed to be the largest study of its kind yet undertaken. Details of other relevant works have largely been set out within the literature review which formed part of the first report.3

This final report contains the main findings of the study along with some commentary on their implications. It is made up of two volumes, one dealing with each of family and personal injury work. This volume is concerned with the study’s findings in relation to personal injury work. It is comprised of four

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1. In 1996-7, for example, 77.8% of all civil legal aid certificates were issued in the course of family or personal injury cases.
2. Provisional findings were made available to the Lord Chancellor’s Department to aid in their deliberations on this matter. These have also been made available to other interested parties, such as the Law Society, when requested. It is hoped that this final report will be of great use to those charged with seeing reforms successfully introduced.
principal chapters, each dealing with the central findings from one of the four data sets constructed for the purposes of the study, and a summary.\textsuperscript{4}

Details of the research objectives and methodology are set out below.

Objectives

At the outset of the case profiling study a number of key objectives were set out. It was appreciated that in order to implement informed policy and proceed with any scheme of block contracting a thorough understanding must be obtained as to:

(i) how different cases are structured, in terms of work elements, cost elements and time-scale; and,
(ii) how the different structures are distributed, both in terms of their frequency within any identifiable case categories and their frequency within individual solicitors' firms.

Without such an understanding, it is not possible to best determine:

(i) the descriptions of cases that should be contracted for; and,
(ii) the minimum number of cases contracts should relate to in order to distribute fairly the risks associated with the uncertainty of legal processes between the Legal Aid Board and individual solicitors' firms.

The case profiling study therefore centred upon the exploration of case profiles (i.e. the pathways, costs, durations and distributions of legal aid certificated cases) and category profiles (i.e. the distribution of case profiles within case categories).

In short, the ultimate objective of the study was to identify coherent forms of case and category profile, to map their characteristics and distribution, and establish their determinants.

The principal research questions were therefore:-

(i) Are there any identifiable standard or common case profiles?
(ii) If so, what are their characteristics and how do they relate to possible case categories, based either on internal or external case characteristics?
(iii) What are the cost drivers affecting cases and how are they distributed between and within cases?
(iv) With what reliability can aggregate costs be predicted in relation to cases within particular case categories?

In the changed situation of today the objectives and questions set out above remain pertinent. Block contracts, fixed fees, conditional fees and legal expenses insurance all depend for their success on an understanding of the form and cost of the claims process. They all involve the balancing of the risks inherent in the process between consumer, service provider and funder. Their implementation must therefore be based on an appreciation of the steadily growing knowledge base which exists in relation to civil litigation, to which this report makes a further contribution.

Methodology

It was clear from the outset of the study that no individual set of available or obtainable data would be sufficient to answer the research questions set out above in a thorough manner. It was therefore decided that the study should adopt a triangulated methodology and use a number of limited, but complementary, data sets as the building blocks for a cohesive and sturdy analytical design.

Four complementary data sets have therefore been compiled for the purposes of answering the research questions. These appear in figure 1.1 below.

**Figure 1.1**
The Four Personal Injury Data Sets

<table>
<thead>
<tr>
<th>Data Source</th>
<th>Sample Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. LAB Electronic Data Systems (low detail)</td>
<td>81,142 cases</td>
</tr>
<tr>
<td>2. Solicitors' Files (medium detail)</td>
<td>762 cases</td>
</tr>
<tr>
<td>3. Solicitors' Files (high detail sub-sample of 2)</td>
<td>150 cases</td>
</tr>
<tr>
<td>4. Interviews with Solicitors</td>
<td>15 interviews</td>
</tr>
</tbody>
</table>
The first three are largely quantitative. The fourth is essentially qualitative. There are both quantitative and qualitative elements in both the third and fourth.

The largest data set was derived from the Legal Aid Board's own electronic data systems. The Board maintains two basic systems to facilitate issuing legal aid certificates and paying lawyers' bills. For any individual certificated case, these systems contain information including the date the legal aid certificate was issued, the date any bills were paid, the amounts of profit costs, disbursements and counsel fees, the basic nature of the case, the method of case disposal and the amount of any damages obtained.

The largest data set provided excellent opportunity to examine macro costs and disposal patterns, regional variations in case types and take up, and verify the integrity of data collected from other sources.

The medium detail data set was collected from solicitors' case files. This data set represents those ordinary cases which make up the bulk of cases funded by the Board. Most of the data for this data set were collected by legal aid franchise auditors in the course of routine franchise audits. Data collection occurred throughout the second half of 1996. Where auditors collected data, they selected files from a randomised list produced specifically for the audit. Despite this fact, however, it became apparent during the course of the data collection exercise that the sample being obtained by auditors was biased towards shorter cases. As a consequence, the sample was limited to ordinary cases in which profit costs did not exceed £5,000.

To enable auditors to collect data effectively and efficiently a detailed questionnaire was produced. This was done after the completion of an exhaustive literature review and consultation with academic researchers, lawyers and the auditors themselves. It was hoped that the questionnaire would contain useful and explanatory information whilst remaining easy to understand and

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5 The Legal Aid Board has now introduced a new unified information system to serve all its activities. The data used in this study was, however, obtained exclusively from the old systems - insufficient data being available in time from the new system.

6 Franchising forms the centre-piece of the Legal Aid Board's quality assurance initiative. As a part of the franchising process, franchise auditors visit firms and collect data relating to, inter alia, a set of 'transaction criteria'. Firm's files must comply with these criteria if they are to be awarded a franchise. Franchised firms (or those applying for a franchise) were used in this study as they are most likely to be future contract holders. Prior to data collection, consent was secured from all firms from which additional case profiling data was obtained.

7 On exploring the causes of this bias with the auditors concerned, it became apparent that it was a product of a number of operational concerns. For example, auditors are principally interested in recent work, especially in the case of new or applicant franchisees. Further, they are most interested in examining routine work. Also, they aim to look at a significant number of files within each firm. This means large files are often overlooked.

8 The questionnaires benefited particularly from detailed discussions with auditors, who brought with them their expertise in reading and extracting information from solicitors files in a short space of time.
relatively quick to complete. After some initial teething problems, questionnaires were successfully completed in 762 cases.

In short, the questionnaire included questions relating to the details of the parties, the details of disputes, the use of experts, the use of formal and informal procedures, the dates of key events and processes, the details of disposal methods and outcomes, and the details of case costs. Some problems were encountered as might be expected with such large quantities of data. For example, auditors often experienced difficulty in establishing the period of time a claimant was or was likely to be unable to work. Reasons behind such problems include the difficulty in finding such information in solicitors' files and the incomplete nature of some firms' files. In the main, however, the quality of data collection was good, having been designed and collected by specialists. A copy of the final version of the questionnaire is attached at Appendix 1.

The 762 personal injury cases come from over 200 solicitor accounts scattered right throughout England and Wales. The distribution of cases across the 13 legal aid administrative areas is set out in figure 1.2.

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### Figure 1.2

**The Geographical Distribution of the Medium Detail Sample Cases**

<table>
<thead>
<tr>
<th>Legal Aid Area</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. London</td>
<td>65</td>
<td>9</td>
</tr>
<tr>
<td>2. Brighton</td>
<td>69</td>
<td>9</td>
</tr>
<tr>
<td>3. Reading</td>
<td>55</td>
<td>7</td>
</tr>
<tr>
<td>4. Bristol</td>
<td>43</td>
<td>6</td>
</tr>
<tr>
<td>5. Cardiff</td>
<td>69</td>
<td>9</td>
</tr>
<tr>
<td>6. Birmingham</td>
<td>60</td>
<td>8</td>
</tr>
<tr>
<td>7. Manchester</td>
<td>58</td>
<td>8</td>
</tr>
<tr>
<td>8. Newcastle</td>
<td>28</td>
<td>4</td>
</tr>
<tr>
<td>9. Leeds</td>
<td>84</td>
<td>11</td>
</tr>
<tr>
<td>10. Nottingham</td>
<td>82</td>
<td>10</td>
</tr>
<tr>
<td>11. Cambridge</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>12. Chester</td>
<td>42</td>
<td>6</td>
</tr>
<tr>
<td>15. Liverpool</td>
<td>72</td>
<td>9</td>
</tr>
<tr>
<td>Unknown</td>
<td>25</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>762</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

The high detail data set was collected as a sub-sample of the medium detail data set, although this time by researchers rather than auditors. Data collection was carried out throughout the second half of 1996.

> The firms visited were selected to provide a range of sizes, specialism and geographical location. Files were selected either from audit lists or by taking

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Most solicitors' firms have one account number. However, if two firms have merged they will have two, or if a number of sole practitioners have merged they can have several.
those most recently closed (or waiting to be archived). There were no grounds to limit the sample on a cost basis.\textsuperscript{10}

The high detail data contains, in addition to the medium detail data elements, a complete breakdown of case expenditure. Every item of correspondence was recorded, along with every activity and disbursement noted on the file. Records were also kept of interesting and anomalous case details or practices.

The fourth data source is made up of 15 in-depth interviews with solicitors. These were used to explore issues arising from a preliminary analysis of the medium and high detail data sets. They covered matters ranging from lawyers' goals and strategies, through their perceptions of their clients and the legal process, to their views of the current legal aid reform programme.

All the interviewees worked in firms which had co-operated in the high detail data collection exercise. The interviewees were selected primarily according to their geographical location. This was to ensure that the views of practitioners from all over England and Wales from both rural and urban, wealthy and less wealthy areas were represented.

The interviews were semi-structured to allow scope for points of interest to be explored at greater depth whilst maintaining the basis for comparison between responses. Most interviews were recorded and then transcribed. Those that were not recorded were noted in detail. All the interviews were carried out in the second half of 1997. They took an average time of around an hour and a quarter. Around half were conducted in person, with the remainder conducted over the telephone.

The precise form of the questions used in interviews evolved during the course of the interview programme. This was an inevitable consequence of a developing understanding. It was also essential in order to keep abreast of the changing political landscape. For example, the Lord Chancellor announced his intention to greatly restrict the availability of legal aid in personal injury cases mid-way through the programme. A copy of the final version of the interview questionnaire is attached at Appendix 1.

\textit{Data Analysis}

The medium detail data set was analysed at a number of levels. Some simple cross-tabulations, correlations and basic statistical descriptions were undertaken using the Excel and SAS software packages. However, the data was also subjected to more sophisticated statistical analysis. Multiple

\textsuperscript{10} As a consequence the high detail data set is not a true sub-set of the medium detail data set. It includes some cases which have been excluded from the medium detail data set on cost grounds.
regression analysis was performed using the LIMDEP software package.\textsuperscript{11} The objective was to identify any cost, duration and outcome drivers which may be distinguishable ex ante and which could therefore be used to aid the construction of a credible case categorisation system.

This type of econometric modelling of cases produces an $R^2$ value, which is adjusted for the number of degrees of freedom in the model, and z- and t-ratios.\textsuperscript{12} The ratios indicate the likelihood of a particular relationship between an independent and dependant variable being the product of mere chance. The closer to zero the ratio, the greater the likelihood of such being the case. On the other hand, high ratios can indicate close links. If the ratio is over 2.58, for example, then the relationship can be said to be significant at the 1\% level (i.e. there is just a 1\% chance that the result is a product of pure chance).

For the high detail data set a GDP inflator was used to update all profit costs, disbursements and counsels' fees to 1997 levels. This was necessary to allow comparisons to be made between cases which ran through different years.

As solicitors record the amount of time they spend on cases within case files, and as the dates of disbursement and counsels' fees also appear, it was felt it would be of more benefit to completely re-cost cases rather than simply inflate the aggregate costs charged. This had the dual benefit of allowing for a uniform charging method and ensuring all specific cost items became comparable.\textsuperscript{13} This mode of data analysis also allows future comparative work.

Where different charging rates were appropriate for different types of work, the appropriate rates were used for each, irrespective of how they were actually charged. Allowable correspondence items (including telephone calls) were costed at 1/10 of the standard rates per item.

It did not prove possible to vary rates in accordance with the standing of the fee earner. The reliability of the data was questionable in relation to this matter.

It was not possible to re-cost all the cases in the sample. Some files were not in sufficient order to allow for any costing beyond guess work. As a result, as is indicated in the main text, the sample size was reduced in respect of the

\textsuperscript{11} The authors would like to acknowledge the data analysis carried out by Roger Bowles, Director of Fiscal Studies, University of Bath, on this project.

\textsuperscript{12} The number of degrees of freedom being the number of observations in the model minus the number of explanatory variables. For example, if there are 500 records or observations in the model and 50 variable which are being tested, the number of degrees of freedom is 450.

\textsuperscript{13} A similar approach was taken by Armstrong, N. and Peysner, J. (1996) Costs in Personal Injury Litigation, Report to the Association of Personal Injury Lawyers.
main costs analysis. A temporal analysis of the build up of costs within cases was also performed, allowing for the production of stage cost profiles.

Qualitative analysis of the high detail data set was also carried out in an attempt to gain more of an insight into the attitudes and intentions of the solicitors concerned and their clients. Particular note was made of irregularities and unusual practices.

The Legal Aid Board data was analysed using standard statistical techniques to form a basic descriptive overview of legal aid certificated personal injury work. The information from the semi-structured interviews was coded and collated. The analysis of the interviews therefore includes some quantitative elements, although this is very much secondary to the qualitative analysis.

Structure of this Volume

As noted above, this volume of the final report is comprised of four principal chapters and a summary. The four chapters deal with the findings from each of the data sets. They run in the order set out in figure 1.1 above. To as great an extent as possible, they have been written so as to stand independently of each other.
2. Executive Summary

Introduction

This volume sets out the principal findings of the case profiling study in relation to personal injury litigation. The four sections below provide a summary of these findings in relation to each of the four main data sets utilised within the study. The “low detail” data set is drawn from the Legal Aid Board’s electronic data systems and is comprised of 81,142 legal aid certificated personal injury cases closed in the 1996-7 financial year. The “medium detail” data set is drawn directly from solicitors’ case files and is comprised of 762 legal aid certificated personal injury cases. The “high detail” data set is a sub-set of the medium detail data set incorporating additional data elements and is comprised of 150 legal aid certificated personal injury cases. The interview data is drawn from 15 in-depth interviews with solicitors working within the firms which participated in the high detail data collection exercise.

Findings from the Low Detail Data Set (Chapter 3)

Costs

The average plaintiff costs incurred in bringing a legal aid certificated personal injury claim were found to be £3,362. Mean costs were, however, greatly distorted by a few very expensive cases. If the 5.6% of cases which had total costs in excess of £10,000 were excluded, the mean figure moved from £3,362 to £2,270.

The costs of medical cases are higher than those of any other category of personal injury work. Given that most medical cases proceed no further than initial investigation of their merits, this masked an even greater margin of difference in respect of cases which proceed past investigation.

Despite the average and median costs varying greatly between categories, the proportion of total costs associated with each of the three basic cost elements (profit costs, disbursements and counsel’s fees) remained constant between categories. Just over two-thirds of total costs were accounted for by the profit cost element, around one-fifth by the disbursements element, and around one-eighth by counsel’s fees.

The mean cost of successful cases appeared to be around twice that of unsuccessful ones. Again, though, there was little movement in the proportion of total expenditure associated with the three basic cost elements.
Total plaintiff costs in legally aided personal injury cases over the 1996-7 period were £272,785,772. That works out to an average of £3,362 per case. The total cost of all of the 81,142 certificated cases to the Legal Aid Board was £48,242,127. That works out to an average of just £595 per case. The vast majority (85%) of all cases cost less than £5,000 in total. Indeed, nearly two-thirds of all cases cost less than £2,500.

80% of the unsuccessful cases cost less than £2,500, whereas only around half of the successful cases cost less than £2,500. Over one-quarter of the successful medical cases cost more than £10,000. Over 10% cost more than £20,000.

There were significant regional variations in the cost of personal injury cases, even when Legal Aid Board case categories were looked at individually. For example, work cases in the Bristol Legal Aid Board administrative area cost substantially more than in the Newcastle administrative area. Something of a north-south divide seems to suggest itself.

Disposal and Damages

The overall success (recovery of damages) rate of cases was found to be 63%, although there were great variations between case types. Road cases, for example, were successful over 80% of the time. By way of contrast, medical cases were successful less than 20% of the time.

The average amount of damages obtained (in cases where damages were obtained) was just over £11,000. However, the figure reduced to around £7,000 when the 5.6% of cases which involved total costs of more than £10,000 were excluded, reflecting the fact that a small number of high costs and damages cases greatly distort the overall picture. The median figure was just £2,500.

The amount of damages varied greatly between cases of the different Legal Aid Board case categories. Medical cases saw the highest mean damages (£33,285), reflecting their likely general greater seriousness. 'Other' cases, on the other hand, netted just £5,556 when successful.

Almost 70% of all successful cases saw damages of less than £5,000. Over 80% saw damages of less than £10,000. Just 2% of cases resulted in damages of £100,000 or more.

As with costs, there was found to be a significant regional variation in the level of damages obtained in personal injury cases. Again there seems to be something of a north-south divide.
Duration

The mean duration of a case, in months, from the issue of a legal aid certificate to the payment of a final bill was found to be just over 2 years.

Unlike with costs and damages, when cases costing in excess of £10,000 were excluded from the analysis there was only a relatively slight change in mean case durations.

Supplier Base

Work is far from being evenly distributed between solicitors' firms. Over 20% of all legally aided personal injury work would appear to be undertaken by firms individually undertaking 10 or less certificated cases each year.

More than 3,500 firms would seem to be conducting 5 or less legal aid certificated personal injury cases per year. It is not clear from the Legal Aid Board data, though, how this legal aid work links with work funded from other sources.

Findings from the Medium Detail Data Set (Chapter 4)

Claimant Characteristics and Injuries

Just over one third of accident victims in the sample were employed (34.6%), just over a quarter either minors (14.5%) or retired (14.1%), just under a quarter unemployed (24.8%), and the remainder students (5.2%), self-employed (4.4%) or ‘other’ (2.4%).

In one third of cases the claimant was hospitalised and the average initial stay in hospital was 8 days. Victims of medical accidents tended to be hospitalised for around twice as long as those of other types of accident. In contrast, those few claimants hospitalised as a result of falls tended to spend just 5 days as inpatients.

A six-point scale was used to characterise the seriousness of a claimant’s injuries (1. minor injury, full recovery within 1 year; 2. minor injury, full recovery within 1 to 2 years; 3. moderate injury, full recovery within 3 years; 4. moderate injury, persistent problems; 5. severe injury, moderate permanent disability; 6. severe injury, severe permanent disability). Nearly two-thirds of claimants suffered only ‘minor’ injuries and fully recovered within two years. Only around one claimant in twenty suffered ‘severe’ injuries.
Those injured by falls tended to be injured less severely. Medical accident victims, on the other hand, were four times as likely to have suffered 'severe' injuries.

**Process**

Nearly all the cases fell within the County Court (rather than High Court) jurisdiction. However, only one-third of cases actually saw proceedings issued. Only 5 of the 762 cases made their way to trial.

Liability was admitted in around one-third of cases, and denied in just over one-third. In the remaining one-third of cases liability was either simply not admitted or the question of liability did not arise as the claim was never put to the other side.

It was often difficult to determine whether or not liability was admitted or not. Much of the conduct of cases would seem to be set against a backdrop of assumptions shared between solicitors.

Where there was a denial of liability it took the form of a total denial in 56% of cases and of an allegation of contributory negligence in the remaining 44%.

**Witnesses**

Non-expert witnesses were used in only a quarter of all cases, and far less still in medical cases. Two or more non-expert witnesses were used in less than 10% of cases.

Expert reports were commissioned in well over 90% of cases. The average was 1.6 reports per case, the median was 1. In only 1% of cases were more than 5 reports commissioned.

Most expert reports were medical reports. Police accident reports were common in road cases, but extremely rare in other cases. Counsel was used in just over half the cases.

**Cost**

The average cost of cases in the sample was £1,839, this compares to an average of £3,362 for all certificated personal injury cases (£2,270 if cases costing in excess of £10,000 are excluded; £1,550 if cases costing in excess of £5,000 are excluded).

The highest cost case cost £8,443 and the lowest a mere £76. Needless to say, the lowest cost case was withdrawn. Medical cases were the most expensive major category, averaging £2,344. This was despite the fact that medical cases
were far less successful than others. Fall (£1,582) and occupier's liability cases (£1,463) were all relatively inexpensive.

As would be expected, successful cases were, on average, found to be more expensive than unsuccessful ones. The costs of cases also varied with the severity of the injuries suffered by the plaintiff. Cases involving severe injuries tended to be significantly more expensive.

The average cost of the sample cases also varied between Legal Aid administrative regions. A possible explanation might be that different proportions of cases of the different categories are to be found within different regions. This was the case. However, cost variations were seen within case categories as well as over the sample as a whole.

When the costs of cases of similar severity were analysed regional variations became far less clear. Indeed, in the case of the most minor injuries, the means were all found to be within the normal error range at the 95% confidence level. Severity does not, though, provide a full explanation of regional cost variations.

Around three-quarters of the total costs were again found to be made up of the profit costs element, one-fifth by disbursements and the remainder by counsel.

**Disposal and Damages**

Damages were awarded in over three-quarters of cases. Almost all cases in which no damages were obtained were withdrawn. There appeared, though, to be variations in the reasons for withdrawal as between different case categories. So, for example, medical cases were more likely to be withdrawn because initial investigations resulted in claims being found to be unsustainable.

Success rates differed markedly as between different case categories. For example, whilst road cases enjoyed a success rate of 92%, medical cases were successful only 19% of the time.

Success rates also differed as between different levels of severity of injury. Cases relating to minor injuries enjoyed greater success rates than those relating to severe injuries. However, the progression was not neat and linear, and it should be noted that the sample, because of its costs profile, is likely to be biased towards unsuccessful severe injury cases. Nevertheless, there was some support for the notion that defendants will sometimes settle cases of low value to avoid the costs of fighting them.

The mean award of damages amounted to £4,545, although the figure was quite a bit higher in work cases (£5,570), and significantly lower in fall (£2,491) and occupier's liability cases (£2,406).
Damages increased with the severity of injuries sustained by the plaintiff. They were also found to vary on a regional basis.

As was expected some correlation between damages and costs was observed, though no normal damages to costs ratio was found. The reason is that the damages to costs ratio increased as the level of damages increases. Thus, low value cases incurred disproportionate costs. Indeed, costs exceeded damages in a staggering 22% of cases. At the other extreme, damages were more than five times costs in 5% of cases.

**Duration**

The median duration of personal injury cases which did not see issue was found to be around one and a third years. In contrast, the median duration of those cases in which proceedings were issued was just over two years.

Whereas around 30% of cases which saw issue concluded more than 3 years after first instruction, less than 5% of cases concluding prior to the issue of proceedings stretched beyond the 3 year mark. Within both groups of cases, however, the main bulk settled between 1 and 2 years from first instruction.

Medical and work (especially industrial disease) cases lasted substantially longer than road, trip or occupier's liability cases. This was irrespective of whether proceedings were issued or not. Occupier's liability cases were the shortest.

**Costs, Duration, Outcome and Damages Drivers**

Medical cases aside, there appeared to be no direct link between case category and costs, result or damages. This was despite the fact that the average costs of cases of different categories were quite different.

These differences seem to stem not from the mere fact that the cases were of different categories, but rather from the fact that cases of different categories are commonly associated with quite different presenting variable profiles.

The most significant costs and damages driver in personal injury cases appeared to be the severity of the claimant's injuries. The more severe were the injuries, the greater the costs and damages.

Another significant costs and damages driver was client gender. Cases involving female clients were less costly than those involving their male counterparts. Female clients also gained significantly lower damages.

Severity of injury seemed to play some part in determining the duration of a case. However, its significance was greatly reduced in this case. More important
seemed to be the employment status of the client and whether or not offers were rejected.

Curiously, outcome also seemed to be linked to severity of injury, although on this occasion it was found that the relationship was inverted. Where severe injuries were sustained there was a far lesser likelihood of a case resulting in a payment of damages.

Traditional case categories did seem to be useful indicators of likelihood of success. For example, medical cases, in which it is often difficult to ascertain likely fault at the outset, were found to be far less likely to succeed than cases of other categories. However, unless the fact of whether or not liability was expressly denied by the defence was entered into the analysis of outcomes, results were disappointing.

Findings from the High Detail Data Set (Chapter 5)

Summary Quantitative Analysis

Half of the 150 high detail data sample cases related to road accidents. The remainder were made up of trip (16), occupier’s liability (16), work accident (14), industrial disease (7), medical negligence (13), product liability (2) and ‘other’ (6) cases. The 16 occupier’s liability cases were mostly trip cases in which the accident had occurred on private property. 7 of the 16 trip cases originated from two Merseyside firms.

Damages were successfully obtained in 78% of the sample cases. As with the medium detail data set, this rate varied dramatically as between case categories. Just 7 of the 76 road cases failed. In contrast, 10 of the 13 medical cases failed.

Of the 33 cases which saw no damages recovered, 11 might be termed non-starters. These 11 cases were withdrawn at a very early stage and incurred very low costs. There were basically three reasons for a case becoming a non-starter. First, because the client had a swift change of heart. Second, because initial investigations demonstrated the claim was unlikely to succeed. Third, because the client’s story failed to truly disclose a cause of action.

Not one of the sample cases was decided by a court. All successful cases concluded with a settlement. Two cases, though settled after a trial had commenced, one settled within a week of a trial being due to commence, and a further 9 after a trial date had been set. Around two thirds of the cases were either settled or withdrawn before proceedings were issued. In a couple of cases, though, statements of claim were drafted, but they then settled before proceedings were issued.
Counsel was used in 47% of cases. Although most of the firms made occasional use of counsel, a few used counsel in almost all cases and a few hardly ever did so.

The mean green form cost in successful cases (£87.66) was slightly lower than in unsuccessful cases (£98.23). The mean value of pre-certificate work undertaken in certificated cases amounted to £110.

The mean cost of cases in the sample was £2,775. This was composed of £1,900 profit costs, £600 disbursement costs and £275 counsel's fees. Again, the mean costs of successful and unsuccessful cases were very different. The mean cost of successful cases was £3,214, as compared to £2,477 for unsuccessful cases.

The average settlement was £8,631.55, although the median, as expected, was a much lower £2,650. The sample included one settlement of £195,000 and one where just £35 damages were obtained.

16 successful cases concluded with settlements of under £1,000. 4 settled at £400 or less. Interestingly, over half of the sub-£1,000 settlements were found in the files of two firms within which the practise seemed to be routine. In fact, in one of the firms, the dozen sample cases saw no settlements of over £2,500.

It was a noticeable finding that the defendants agreed to pay the plaintiff's costs in every one of the cases which settled for less than £1,000, including four cases which settled for £400 or less.

As well as these low settlement cases, there was other evidence that legal aid was sometimes being used to pressurise defendants to settle weak or trivial cases. However, especially where large insurance companies were involved, it seems curious that greater challenge was not sometimes made. The additional pressure to settle brought about by legal aid was often expressly recognised by defendants.

A tactic sometimes utilised in the context of legally aided cases was the delayed discharge. It seemed to be fairly common practice, amongst the sample firms in general, to delay informing the Legal Aid Board about changes in the evidential picture or the contents of adverse opinions so as to make time for a quick and low settlement whilst retaining the powerful backing of the legal aid certificate.

In-Depth Quantitative Analysis of Costs

An exercise was undertaken to re-cost the sample cases at 1997 legal aid rates, although the state of the sample files and the existence of a number of anomalous cases meant that only 85 cases could be thoroughly re-costed.
Of the 85 cases, 42 settled prior to proceedings being issued and 28 settled after issue. The remaining 15 cases were withdrawn. 8 of them could be described as having been non-starters.

The average cost of the 85, at mid-1997 levels, was just over £2,400. The figure is slightly lower than that for the whole sample of 150 cases. This is partly explained by the higher incidence of non-starter cases and the non-appearance of the most expensive case within the sample.

Expenditure within cases is distributed both between different types of cost element and over time. Three-quarters of overall expenditure went on profit cost items. Correspondence was a major contributor to this, accounting for around one-third of all expenditure. Expert evidence accounted for just under 16% of expenditure and counsel for just over 6%.

Successful cases in which proceedings were issued (here limited to those cases in which a first offer was made after the issue date) tended to see a far smaller proportion of costs go on attendances. This would seem to be because there was more contact with clients at the start of a case and such cases seemed to last significantly longer than others. On the other hand, and as would be expected, a far greater proportion of costs went on the drafting of court documents and the use of counsel. Counsel also seemed to be used both more often and to a greater extent in cases which saw issue.

The proportion of expenditure on correspondence stayed more or less constant between unsuccessful and successful cases, irrespective of whether or not they saw issue. This is particularly interesting given the marked difference in each of their average costs. Cases in which damages were obtained after proceedings were issued averaged over £4,000, those in which damages were obtained without issue averaged just over £1,500 and the lost cases averaged around £1,000. It might be conjectured that the activities and disbursements within a case are set against a fairly uniform backdrop of correspondence items.

In addition to being unevenly distributed between different types of cost element, costs were also unevenly distributed over time. Units of cost devoted to correspondence, drafting, perusal and attendances tended to be concentrated at particular times. As a consequence, in one example case work items (excluding correspondence) were actually recorded on only 22 days out of the 335 working days for which the case ran. Correspondence emanating from the claimant's solicitor was also concentrated on a small proportion of available days. As would be anticipated, the drafting of court documents was concentrated in the period just before issue (pleadings) and around settlement (consent order).
Delay in the Claims Process

Each element of the claims process inevitably involves some delay. However, delay cannot always be attributed to structural causes. In fact, throughout the sample files examples were found of unnecessary delay. Instances of delay were attributable to every participant in the process. There were as many causes of delay within the files as there were files themselves!

At the outset of cases claimants were sometimes extremely unsure as to whether or not they actually wanted to enter the formal claims process. As a result, claims sometimes stuttered rather than pushed ahead.

As a general rule, after initial instructions had been taken all work ceased for whatever period of time it took to obtain a legal aid certificate. The normal delay in waiting for a legal aid certificate is perhaps structural in its nature. However, legal aid applications occasionally take longer to process than the 'some weeks' referred to above. In one case 'some months' would have been a more appropriate description! Of course, delays in the legal aid certification process are not always the fault of the Legal Aid Board. In one case it took the client and solicitor 3 months to fill in the application forms correctly. Subsequent legal aid matters can also be a source of delay. For example, the process of having a legal aid certificate amended can be time consuming.

Experts and expert reports are often blamed for adding delay to the claims process. Within the cases examined medical examinations generally took a month or so to arrange, as there were often waiting lists for appointments with consultants. Sometimes, though, delays ran into many months.

The situation was worsened by the behaviour of some clients who failed to attend medical examination appointments, not only prolonging their own cases, but also lengthening the periods other claimants had to wait for examinations.

Where a medical prognosis was clearly uncertain at the outset of a case, solicitors sometimes wait a considerable time before instructing a medical expert. Even where final medical reports had been obtained, delays still sometimes resulted from a need to clarify certain points within them. Also, defendants sometimes wished to obtain their own medical reports, although this was not usual.

In cases involving multiple experts, the delays attributable to the process of obtaining expert evidence can clearly be quite substantial. In some cases 5 or more experts were instructed, thereby almost ensuring some collateral delay.

The most common source of delay seemed to be the failure to respond to or send out items of correspondence expeditiously. Generally the resulting delays
were not great, and when they were great they may often have been reasonably regarded as tactical.

However, not all of the worst examples of communication delay were capable of explanation on tactical grounds. Moreover, even where the initial failure stemmed from the defence side, as was more usual, they could often be regarded as being as much the fault of the plaintiff side in not pressing.

The issue or threat of issue of proceedings often seemed to animate insurance companies that had previously been static.

Conversely, multiple potential or actual defendants in a case seemed to slow progress significantly.

Other notable instances of unusual delay found in the sample cases included a delay resulting from complications over the applicability of the social security benefits claw-back, delays waiting for the outcome of related criminal cases, delays resulting from the conduct of the individual defendant (such as not notifying an insurance company of an accident when requested to do so), and delays consequent upon taxation.

Delay would regularly cause great distress to clients, even if being promoted in their best interests. For example, where a solicitor urged a client to reject an offer which the client wanted to accept just to end the claims process. It is sometimes difficult to establish who is in control of the settlement process in such circumstances.

Miscellaneous Observations from the Sample Files

It was common for clients to have received their initial advice in a free consultation with a solicitor. Often firms used free first consultations as a marketing tool, and perhaps to meet client expectation or as a social service

As was expected, a fair proportion of unsuccessful cases never proceeded past the legal aid green form stage. Remarkably, though, some successful cases never proceeded past the green form stage either. There was clear indication, however, that the practice was confined to straightforward and low value claims.

The benefit of avoiding the administrative burden of the legal aid certification process was clearly not inconsiderable. Quite a few firms seemed to regularly work on spec for clients who were clearly eligible for legal aid, treating an application for legal aid as a fall back position to be adopted if a claim started to look less assured.

Although most claims were initiated by the solicitors who concluded them, some claims were already advanced at the point of first instruction. This could either be
as a result of a client being unhappy with the work of a previous solicitor, a
consequence of a previous firm not having the requisite expertise to conclude
the claim properly, or because the client had commenced the claim privately
before instructing a solicitor.

There was a fair amount of administrative incompetence to be found within the
sample cases. All parties were found wanting on some occasion. Often these
instances of administrative incompetence also served as further examples of
unnecessary delay to the claims process.

In one case the plaintiff's solicitors were forced to organise a duplicate
conference because the statement taken in the original conference had been
lost. In another case the Legal Aid Board lost records of a series of letters and
telephone calls, resulting in the need for a further series of letters and telephone
calls. In another case part of a police accident report went missing. In another a
plaintiff solicitor forgot to enclose the medical report in correspondence to an
insurance company.

Some administrative errors were dramatic in their consequences. In one case
the plaintiff's solicitor accidentally accepted the wrong amount of damages. In
another the insurers accidentally sent a letter stating their offer to be 10 times as
great as it in fact was. Another case was struck out as a result of a diary error. It
was later reinstated. In another case judgment in default was granted, which was
also subsequently set aside.

In addition to cases of administrative error and in addition to some of the
questionable claims observed, some files contained evidence of unprofessional
practice. Some may have been instances of carelessness or oversight, but some
appeared systematic and necessitated some degree of specific intention.

A prime example was provided by three firms who routinely filled in the CLA26
form (No Claim on the Legal Aid Fund) with green form expenses noted less of
V.A.T., resulting in reduced amounts being recovered by the Legal Aid Board.

In one case the work was done under green form after an application for a legal
aid certificate had been turned down. The case was eventually withdrawn as
costs began to mount and the client became fearful of the potential costs of the
case. In another case, disbursements incurred by a private client were charged
to the Legal Aid Fund under another claimant's legal aid certificate. On a few
occasions there was evidence that solicitors had over-zealously sought to have
their experts amend their reports so as to omit findings prejudicial to their client.

There was ample evidence of legitimate costs boosting. It was extremely
common practice for solicitors to send a number of letters to their client on the
same day, each dealing with a different matter. Similarly, sometimes many
copies of the same letter would be sent to different people.
In relation to experts, it was common to find that firms maintained lists. It was also common for the reports of experts to be reviewed using specially designed forms, for the purposes of maintaining and expanding the details contained on lists.

A number of cases were observed where clients either turned down a legal aid certificate or withdrew a case because they were unable to afford the contributions.

Finally, it was found to be extremely common for negotiations over costs to linger on well past any settlement date. This often resulted in delay to the client's receipt of a damages cheque. The work involved in conducting these negotiations was sometimes quite substantial, involving dozens of letters and many months delay. Of course, there was invariably no remuneration in respect of the extra work necessitated.

Findings from the Interviews (Chapter 6)

Work Types

Of the personal injury work undertaken by the respondents' firms, it appeared that around one half was legally aided, though the proportions of differently funded work varied dramatically between firms.

As might be expected, the 3 firms that undertook trade union did considerably less legal aid work (as a proportion of total volume) than the others. They also undertook proportionately less conditional fee work.

There seemed to be some polarisation in relation to conditional fee work. Generally speaking, either firms undertook very little or they undertook a great deal. There was, however, a general interest in developing conditional fee practice.

A couple of firms reported that they undertook some legal expenses insurance cases. Only one firm conducted defence work as well as plaintiff work.

As would be expected, the main category of personal injury work within most firms was road cases, followed by work cases and tripping cases. The principal exceptions were the trade union firms who undertook mostly work related cases.

Referral Routes

The most commonly mentioned referral route via which clients arrived at particular solicitors' firms was client recommendation. Other frequently cited
routes included telephone directory, press and hospital advertisements, and professional recommendation (by hospital staff, advice service staff, the police, etc).

It was the more specialist firms who seemed most likely to have developed sophisticated referral routes utilising professionals likely to come into contact with target accident victims.

Injuries

Around a third of respondents said that they dealt with the full range of injuries, but only a few firms seemed to have a significant number of serious injury cases within their ordinary caseload. All of the respondents accepted that the bulk of the cases they dealt with were at the minor end of the scale. What respondents regarded as constituting serious injuries seemed to be relative to what they experienced as typical severity.

Defendants

Respondents reported that defendants were rarely represented other than through insurance companies, the only exceptions being some public authorities and self insured companies.

Prediction

None of the respondents utilised formal costs, duration or outcome prediction systems in relation to new cases presented to them. This was so even when funding was likely to be on a conditional fee basis. A number of respondents did, though, make use of standard forms to aid their predictions, and one described his firm's system as "semi-formal".

The overwhelming consensus was that such predictions are "always ultimately subjective" and "mostly from the gut". Despite this, respondents generally seemed confident in their ability to accurately assess likely costs, duration and outcome.

In relation to costs and duration prediction, the nature and extent of a client's injuries was the most common specific and identifiable factor referred to. Other reported cost drivers were the traditional case category, the types of expert reports necessary, the clarity of prognosis and the likely level of damages. Other duration drivers were the likelihood of liability being denied and the existence of a related criminal prosecution.

In relation to outcome prediction, respondents seemed to have causation and evidential matters more in mind.
Specific case factors which were said to make liability difficult to assess included the number and identity of witnesses, discovery problems (especially in tripping cases), inspection problems (especially in work cases), the day of the week and time of day of the accident (especially in road cases).

**Process**

Respondents reported issue rates ranging from 20% to 95%, the mean being around 50%. Almost all respondents remarked that very few cases go to trial. Of those who put a figure on it, the great majority suggested that less than 1% of cases do so. Only two respondents gave a figure above 1%. Both estimated the figure at 10%

Although most respondents reported very few trials, they did generally report that up to 10% of cases settle close to the trial date, some actually at the door of the court.

Where insurance companies are involved in the litigation process, it seems clear that standard practice is for the insurance companies themselves to deal with all matters up to the point of proceedings being issued. At that point they will generally instruct solicitors. However, a number of respondents reported that negotiations would sometimes continue directly with insurance companies even after this point, with only the formalities being dealt with by solicitors.

**Counsel and Witnesses**

There was no clear pattern to the use of counsel within personal injury cases. A number of respondents seemed reluctant to instruct counsel unless they absolutely had to, either because of a requirement under a Legal Aid certificate or because of a need to settle complicated proceedings.

Settling proceedings was the most common occasion upon which respondents felt the use of counsel was appropriate.

There was a consensus of opinion that the average number of medical reports obtained in a case would be around one and a half. The number would be dictated by the nature and extent of injuries along with the certainty of prognosis.

The experience of the respondents varied greatly on the question of how often defendants wished to obtain their own medical report. Some said it was rare, others that it was fairly common. However, it would certainly seem to occur in only a minority of cases, perhaps around a fifth.

The cost of medical reports was generally put at between £200 and £300. Senior consultants used in medical negligence cases might, though, charge many times these amounts.
The most expensive expert reports were identified as non-medical reports. Employment consultants (£500-£1,000), accident reconstruction experts (£250-£1,500), forensic accountants (£500-£1,000), engineers (£200-£1,500), residual earnings consultants (£750-£1,000), detectives and architects (£750-£1,000) were all mentioned as potential sources of expert evidence.

Costs

When asked to identify the most expensive element of personal injury cases respondents tended to refer to expert evidence in general and medical reports in particular.

Just one of the respondents referred to profit costs as being the most expensive element of personal injury litigation, although this may be because respondents were generally trying to think of particular things or activities, rather than broad types of expenditure.

Delay

The most frequently cited cause of delay was the obtaining of medical reports. This provides an easy answer, as it is usually a discrete process with a clear and determinable delay associated with it.

A number of respondents observed that the work they undertook could be dictated in quite a large part by the manner in which the other side approached a case. Delays could result from such things as following up unanswered correspondence and dealing with strategic applications to the court.

Strategy

Slightly more respondents characterised their general negotiating style as "aggressive" as opposed to "cordial". 4 respondents regarded themselves very much as "hard bargainers". Underlying their attitude seemed to be the belief that insurance companies are bureaucratic bodies which take claims seriously only when they are given reason to do so, and the best reason to give them is the push to trial.

The most aggressive respondents by no means presented themselves as having the best understanding of the claims process. The most sophisticated approach to the claims process seemed to be adopted by a small group of highly specialist solicitors. This group included two trade union solicitors, a solicitor from a firm that specialised in serious injury cases and a solicitor from a large urban firm with a high volume personal injury department.
The guiding principle of this group of respondents was that "individual cases call for different strategies". Clients are different, cases are different, insurance companies are different and claims adjusters are different. All these differences have to be made to work rather than worked over. They placed great emphasis on the twin dangers of predictability and unreasonableness. The former because it was perceived as simply leading to a mechanised and less favourable response from the other side. The latter because it too would elicit less favourable responses and would become inefficient as a negotiating tactic if used often.

In the light of this, it is interesting to note that a number of respondents stated they always rejected the first offer, commonly characterising the negotiation process in the simple terms of a game in which high and low demands from the respective parties were eventually split down the middle.

Most respondents stated that the source of a case's funding had no bearing upon its conduct. However, there were three clear exceptions to this. One was the general acceptance that greater caution was necessary in (particularly the early stages of) conditional fee cases. A few respondents also seemed to suggest there was greater reflection over the need for disbursements within privately funded cases. There was great reluctance, however, to accept any marked difference of "attitude" or "approach" in these types of cases. The most radical exception was in the case of a trade union firm respondent who admitted to taking a completely different approach to union work as a consequence of the vastly different fee and incentives structure within which he operated in such cases.

Most respondents noted an additional "anxiety" as to the speed of a case's progress on the part of legally aided clients who were required to make contributions under the terms of their legal aid certificate. This was attributed to the fact that contributions are payable monthly and are independent of actual expenditure incurred within a case.

**Complexity**

Medical negligence cases were universally regarded as being more complicated than other personal injury cases. This was principally attributed to the complexity of the expert evidence and, particularly, the question of causation.

Industrial disease cases were also mentioned as being more difficult than most. Again, evidential complexity was the prime concern, although the more intricate structure of the law in the context of workplace injuries was also cited.

At the other end of the scale, road traffic cases were generally regarded as being relatively straightforward. More so than tripping cases, where discovery of
council documentation, such as inspection and repair records, could more often give rise to problems.

Determining special damages, especially loss of future earnings, was generally regarded as the most complicated aspect of personal injury work. Thus, many respondents routinely instructed counsel to draft special damages schedules, especially in high value cases. Expert evidence was also mentioned as being complex.

**Delegation**

It seemed to be common practice for respondents to delegate what one of them described as "the legwork" to clerks, paralegals, legal executives or trainees. When asked what type of work this included the most common answer was the taking of witness statements.

**Conditional Fees and other Funding Schemes**

It was generally the case that clients entering into conditional fee agreements had themselves to pay for any disbursements incurred, a cost that respondents were quick to point out could be substantial. Just two respondents mentioned the possibility of their own firm covering disbursement costs. However, one of them then suggested that only a small number of "very high" prospects of success cases would be regarded as appropriate for such treatment.

There was a split between respondents in relation to arrangements for using counsel in conditional fee cases. Some saw counsel as merely another disbursement, but most seemed to be developing arrangements with specific barristers who would also work on a conditional fee basis.

When asked what types of cases were unsuitable for conditional fee arrangements a variety of answers were forthcoming. There was general agreement that medical cases were unsuitable. The basic problem was identified as being predictability. Respondents stated that it was generally not possible to form a view as to the risks associated with medical cases prior to having completed a substantial amount of investigation work. Industrial disease cases were regarded as often being similar.

Other types of case that were mentioned as being unsuitable for conditional fee work were those valued at under £5,000 and those with high disbursements.

When asked to estimate the proportion of current legal aid cases that they would have agreed to undertake on a conditional fee basis had legal aid not been available, there was little variation from the figure of 80%.
In deciding which claimants could be offered conditional fee arrangements, standard practice was for a senior solicitor or panel of senior solicitors to assess claims. No firm utilised any objective formula to make or even aid these determinations. A great deal of time, though, seemed to be spent making determinations and there were indications that some firms were starting to feel a need to develop more standardised and “objective” approaches.

None of the respondents had any experience of undertaking contentious work for fixed fees. Apart from one respondent from a large urban practice, there was neither any experience of bulk purchased legal services. The exception was in the context of commercial work.

Despite the lack of experience, however, a few respondents said that even in the private sphere they were open to developing new payment mechanisms.

Around half of the respondents said their firms had computerised case management systems which allowed for some determination of time spent on cases, the cost to the firm of those cases and the fees recovered.

Those respondents interviewed after the Lord Chancellor’s announcement of the extension of conditional fees seemed most unhappy at having been encouraged to prepare for one set of reforms only to find that those reforms were superseded by fresh proposals. This was irrespective of their views on the withdrawal of most personal injury litigation from the legal aid scheme. Those respondents from firms undertaking little conditional fee work were, understandably, the most aggrieved.
3. Findings from the Low Detail Data Set

Introduction

The findings set out in this chapter are derived from data relating to all legal aid certificated personal injury cases closed in the 1996-7 financial year. The data has been derived exclusively from the Legal Aid Board’s electronic data systems, full details of which have been set out elsewhere. In short, these systems contain information such as the amounts of profit costs, disbursements and counsel fees charged in individual cases, the method of case disposal and the amount of any damages obtained, and basic case category details.

As can be seen from figure 3.1, over 80,000 cases are included in this data set. The case categorisation system used is different from, but compatible with, that used elsewhere in this report. However, it is not as extensive. Thus, over 40% of cases are classed merely as ‘other’. These ‘other’ cases can be expected to include mostly pavement trip cases, occupier’s liability cases and product liability cases. They can, though, relate to matters as diverse as dog bites, assaults and negligent cosmetic treatments.

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Number</th>
<th>% of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Accidents</td>
<td>15,056</td>
<td>18.5</td>
</tr>
<tr>
<td>Work Accidents</td>
<td>19,247</td>
<td>23.7</td>
</tr>
<tr>
<td>Medical Accidents</td>
<td>11,160</td>
<td>13.8</td>
</tr>
<tr>
<td>Other</td>
<td>35,679</td>
<td>44.0</td>
</tr>
<tr>
<td>Total</td>
<td>81,142</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Cost

As is shown in figure 3.2, the mean plaintiff costs of legal aid certificated personal injury cases closed in 1996-7 were found to be £3,362. The median figure is substantially less, at £1,800, indicating a bottom heavy costs distribution pattern. Medical cases involve higher costs than any other category of personal injury work. Given, as is explained below, that most medical cases proceed no further than initial investigation of the merits, this masks an even greater margin.

14 The total number of cases in the sample (81,142) excludes a number of phantom cases which are recorded, but in relation to which the data is unreliable. For example, all cases with total costs of less than £10 have been excluded. Figures used in setting out regional variations are derived from cases closed in 1994-5.
15 See, for example, Pleasence, P. and Maclean, S. (1996) The Future of Contracting Legal Aid in England and Wales, Report produced for the Legal Aid Board. It should be noted that the Legal Aid Board is currently introducing a replacement system which will, in future, allow for a more thorough analysis of legally aided cases at the macro level.
of difference in respect of cases which proceed past investigation. If only successful cases are looked at, the average cost of a medical case rises almost 150% to £11,627. In contrast, the average cost of a road case rises just 13% to £4,949.

Far and away the cheapest cases are those in the 'other' category. This is entirely in keeping with the findings set out in the next chapter, which indicate that trip and occupier's liability cases are generally far less costly than the cases in the substantive categories adopted by the Legal Aid Board.

It is interesting that, despite the average and median costs varying greatly between categories, the proportion of total costs associated with each of the three basic cost elements remains constant between categories. Just over two-thirds of total costs are accounted for by the profit cost element, around one-fifth by the disbursements element, and around one-eighth by counsels' fees.

The substantial discrepancy between the mean and median figures suggests an unsymmetrical costs distribution pattern with the heavy bulk of cases being of relatively low cost. That this is the case can be seen from figures 3.6 to 3.8 below.

*Figure 3.2*

*Mean and Median Cost of Cases by LAB Case Category, 1996-7*

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Profit Costs (£)</th>
<th>Disbursements (£)</th>
<th>Counsel Fees (£)</th>
<th>Total (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Median</td>
<td>Mean</td>
<td>Median</td>
</tr>
<tr>
<td>Road Accidents</td>
<td>3,060</td>
<td>1,570</td>
<td>780</td>
<td>356</td>
</tr>
<tr>
<td>Work Accidents</td>
<td>2,501</td>
<td>1,375</td>
<td>693</td>
<td>315</td>
</tr>
<tr>
<td>Medical Accidents</td>
<td>3,109</td>
<td>1,310</td>
<td>981</td>
<td>641</td>
</tr>
<tr>
<td>Other</td>
<td>1,662</td>
<td>1,140</td>
<td>449</td>
<td>280</td>
</tr>
<tr>
<td>Overall</td>
<td>2,320</td>
<td>1,271</td>
<td>641</td>
<td>329</td>
</tr>
</tbody>
</table>

As would be expected where mean costs are greatly distorted by a few very expensive cases, the picture looks very different if those few cases are removed. As can be seen in figure 3.3, if the 5.6% of cases which had total costs in excess of £10,000 are excluded, the mean figures make a substantial move (almost 40% of value) towards the median figures. The median figures, by contrast, move by just 6% of value.

Still, though, the very great differences that exist between the costs of successful and unsuccessful cases are masked, especially in relation to medical cases.
As is indicated by figures 3.4 and 3.5, the mean costs of successful cases appear to be around twice those of unsuccessful ones. Again, though, there is little movement in the proportion of total expenditure associated with the three basic cost elements. There is some increase in the ratio of profit costs to other costs in successful cases, but it is not great and is presumably reflective of the fact that, as is shown in chapter 5 below, the accumulation of disbursement costs tends to trail off in the latter stages of personal injury cases.

The one major difference of note is the increase from one-fifth to almost one-third in expenditure on disbursements in unsuccessful medical cases. This must reflect the fact that most of these cases are investigations only and will involve unusual reliance on expert evidence.

The median cost of counsels’ fees in figure 3.5 indicates that counsel is used in only a minority of unsuccessful cases. In medical cases this is again presumably a consequence of investigations centring upon medical opinion, rather than pure legal opinion.
The median disbursement costs in figures 3.4 and 3.5 might be taken to indicate, as is consistent with the findings set out elsewhere in this report, that basic medical reports cost something in the region of £200. This is also confirmed by an analysis of legal aid payments on account in respect of medical reports.

**Figure 3.5**

*Mean and Median Costs in Unsuccessful Cases by LAB Case Category, 1996-7 (Cases Costing in Excess of £10,000 Excluded)*

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Profit Costs (£)</th>
<th>Disbursements (£)</th>
<th>Counsel Fees (£)</th>
<th>Total (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mean</td>
<td>Median</td>
<td>Mean</td>
<td>Median</td>
</tr>
<tr>
<td>Road Accidents</td>
<td>904</td>
<td>523</td>
<td>270</td>
<td>115</td>
</tr>
<tr>
<td>Work Accidents</td>
<td>907</td>
<td>514</td>
<td>330</td>
<td>190</td>
</tr>
<tr>
<td>Medical Accidents</td>
<td>1,428</td>
<td>988</td>
<td>699</td>
<td>579</td>
</tr>
<tr>
<td>Other</td>
<td>822</td>
<td>488</td>
<td>279</td>
<td>165</td>
</tr>
<tr>
<td>Overall</td>
<td>1,028</td>
<td>610</td>
<td>414</td>
<td>235</td>
</tr>
</tbody>
</table>

Total plaintiff costs in legally aided personal injury cases over the 1996-7 period were £272,785,772. That works out to an average of £3,362 per case.

However, the net expense to the Legal Aid Board was less than one fifth of this, as 63% of cases involved no net cost to the Legal Aid Board. Also, many unsuccessful cases involved only minor expenditure, as they were quickly withdrawn. The total cost of all of the 81,142 certificated cases to the Legal Aid Board was £48,242,127. That works out to an average of just £595 per case.

The distribution of case costs is set out in figures 3.6 to 3.10. As is immediately apparent from figures 3.6 and 3.7, the vast majority (85%) of all cases cost less than £5,000 in total. Indeed, nearly two-thirds of all cases cost less than £2,500.

There is little difference between case categories in this respect. Although, whereas around 80% of road, work and medical cases cost below £5,000, the figure rises to 92% in respect of 'other' cases.
Figure 3.6
Distribution of Case Costs, 1996-7
(All Cases - Large Scale)

Figure 3.7
Distribution of Case Costs, 1996-7
(All Cases - Small Scale)
A clear difference between cost distribution patterns can be seen if successful and unsuccessful cases are looked at separately. As is indicated by figures 3.9 and 3.10, unsuccessful cases are more concentrated towards the low cost end of the scale. 92% of unsuccessful cases cost less than £5,000. Almost 80% of them cost less than £2,500 and over a quarter cost less than £500. In contrast, whereas around 80% of successful cases cost less than £5,000, only around half cost less than £2,500 and just 2.5% cost less than £500. If cases costing less than £1,000 are ignored the basic pattern of the cost tail is similar as between successful and unsuccessful cases, perhaps suggesting that once a solicitor and client are committed to a case it is likely to take a similar path irrespective of eventual outcome.

The mean cost of successful cases was £4,077, compared to £2,146 for unsuccessful cases.

Figure 3.8
Distribution of Case Costs by LAB Case Category, 1996-7
(All Cases)
It should be observed that medical cases follow a slightly different pattern to cases of other categories. Figure 3.11 sets out the distribution of costs in medical cases. As can be seen, over one-quarter of successful medical cases cost more than £10,000. Indeed, over 10% cost more than £20,000. Just 1.5% cost less than £500, 20% less than £2,500 and just over 40% less than £5,000.
The cost distribution is clearly flatter than in other categories (although the scale of the graph exaggerates the difference to some extent).

The costs distribution was more normal in relation to unsuccessful cases, but again there were differences worthy of note. For example, the £0-500 band was not the largest £500 band, as it was in all other cases. It represented around 10% of cases, rather than a third. This is presumably a consequence of two major factors - the far lower proportion of such cases which are withdrawn other than on the merits (e.g. because of a change of heart on the part of the claimant) and the greater expense of initial medical reports and allied medical evidence in such cases.

In addition to varying by category, case costs also vary, as Sherr et al.\textsuperscript{16} have previously observed, on a regional basis.

\begin{figure}
\centering
\includegraphics[width=\textwidth]{distribution_of_case_costs_by_result_1996-7_medical_cases_only}
\caption{Distribution of Case Costs by Result, 1996-7 (Medical Cases Only)}
\end{figure}

Figure 3.12 sets out the variation that exists between the cost of personal injury cases as between the Legal Aid Board administrative areas.\textsuperscript{17} Very high cost cases have been excluded as they disproportionately affect the mean.


\textsuperscript{17} Key to Legal Aid Board administrative areas - 1: London 2: Brighton 3: Reading 4: Bristol 5: Cardiff 6: Birmingham 7: Manchester 8: Newcastle 9: Leeds 10: Nottingham 11: Cambridge 12: Chester 15: Liverpool. The maximum and minimum mean figures indicate the standard error range at the 95\% confidence level.
As can be seen, the variation seems to be more than a mere product of chance. However, it might be expected that such regional variations would exist if there were also regional variations in the proportions of cases of the different categories presenting in each of the administrative regions, and such is indeed the case. For example, there are many times as many road cases per thousand of the population in the Newcastle administrative area than there are in the Liverpool administrative area. There are many more work cases per thousand of the population in the Leeds administrative area than the London administrative area.

Figures 3.13, 3.14 and 3.15 set out the variations in cost of specific categories of personal injury case as between the Legal Aid Board administrative areas.

As can be seen, the variation is still fairly marked, and still seems to be more than the product of mere chance. Of course, the case categorisation system being used here is a fairly blunt tool and may mask many more subtle differences in the types of case presenting in the different administrative areas. However, the possibility presents itself that there are significantly different legal cultures operating within different areas.

As has been commented by Sherr et al., something of a north-south divide seems to begin to suggest itself, with cases seemingly costing more in the south, and especially in the south-east. This possible north-south divide is returned to below and in later chapters. The north-south analysis seems to hold in the case of each of the categories represented.

---

18 Supra. n.16 (1996)
Figure 3.13
Regional Variations in Road Case Total Costs
Where Costs < £10,000 (all cases)

Figure 3.14
Regional Variations in Work Case Total Costs
Where Costs < £10,000 (all cases)

Figure 3.15
Regional Variations in Medical Case Total Costs
Where Costs < £10,000 (all cases)

Figure 3.16 sets out the success (recovery of damages) rates for each of the Legal Aid Board case categories. As can be seen, the rates vary markedly as...
between different categories. For example, over four out of every five road cases are successful and result in a payment of damages to the claimant. On the other hand, only one in five medical cases sees any damages paid. The reason for the low success rate experienced in medical cases is, as has been suggested above, the general need to investigate them in order to establish their true merits. The merits of medical cases are generally indeterminable at the outset. In order to establish them it is necessary to grant limited legal aid in order to allow preliminary investigations to be carried out. Most investigations conclude in claims being withdrawn. If only those cases which are allowed to proceed past the initial investigation stage are looked at, then the success rate increases dramatically.

**Figure 3.16**

*Success Rates by LAB Case Category, 1996-7*

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Success Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Accidents</td>
<td>80.3</td>
</tr>
<tr>
<td>Work Accidents</td>
<td>63.3</td>
</tr>
<tr>
<td>Medical Accidents</td>
<td>19.5</td>
</tr>
<tr>
<td>Other</td>
<td>69.1</td>
</tr>
<tr>
<td>Overall</td>
<td>63.0</td>
</tr>
</tbody>
</table>

The figures set out in figure 3.16 are based on the number of cases in which solicitors report damages as having being obtained. It is likely that they underrepresent the true success rates.

**Damages**

As can be seen from figure 3.17, the average amount of damages obtained (in cases where damages were obtained) was just over £11,000. However, the figure reduced to around £7,000 when the 5.6% of cases which involved total costs of more than £10,000 were excluded, reflecting the fact that a small number of high costs and damages cases greatly distorted the overall picture. Thus, the median figure was just £2,500, the same as was obtained from the medium detail data set.

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19 The higher figures set out in Pleasence, P., Maclean, S. and Morley, A. (1996), *Supra*, n.3, paragraph 2.11.2, are based on cases which are not described by solicitors as having been lost or withdrawn. True success rates are to be found somewhere between the two sets of figures. It is suggested that the figures included here are the more reliable.
### Table: Mean Damages in Legally Aided Personal Injury Cases

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Damages (£)</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All Cases</td>
<td>Successful Cases Only</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mean</td>
<td>Median</td>
<td>Mean</td>
<td>Median</td>
<td>Mean</td>
</tr>
<tr>
<td>Road Accidents</td>
<td>14,429</td>
<td>2,750</td>
<td>17,976</td>
<td>4,000</td>
<td></td>
</tr>
<tr>
<td>Work Accidents</td>
<td>7,582</td>
<td>1,500</td>
<td>11,985</td>
<td>2,500</td>
<td></td>
</tr>
<tr>
<td>Medical Accidents</td>
<td>6,841</td>
<td>0</td>
<td>33,285</td>
<td>6,500</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>3,839</td>
<td>1,500</td>
<td>5,556</td>
<td>2,500</td>
<td></td>
</tr>
<tr>
<td>Overall</td>
<td>7,055</td>
<td>1,500</td>
<td>11,206</td>
<td>2,500</td>
<td></td>
</tr>
</tbody>
</table>

As can also be seen, the damages obtained varied greatly between cases of the different Legal Aid Board case categories. Medical cases saw the highest mean damages (£33,285), reflecting their likely general greater seriousness. ‘Other’ cases, on the other hand, netted just £5,556 when successful. As is indicated in later chapters, such a finding should be expected given the nature of the cases which seem to make up the bulk of the ‘other’ category.

The uneven distribution of damages is set out more fully in figure 3.18. Almost 70% of all successful cases saw damages of less than £5,000. Over 80% saw damages of less than £10,000. Just 2% of cases resulted in damages of £100,000 or more.

### Figure 3.18

*Distribution of Damages Obtained, 1996-7 (Successful Cases Only, n=51,089)*
Figures 3.19 and 3.20 show the distribution of damages in road and medical cases respectively. Whereas around one-sixth of successful road cases resulted in damages of £20,000 or more being obtained, over one-quarter of successful medical cases did so. At the other end of the scale, more than half of successful road cases saw damages within the range £1,000-£4,999, compared to just a third of successful medical cases. ‘Other’ cases, as indicated above, saw an even greater proportion of damages in this range (69%).

Figure 3.19
Distribution of Damages Obtained in Road Cases, 1996-7
(Successful Cases Only, n=12,085)
As with costs, significant regional variations were found in relation to damages. As can be seen from figure 3.21, there again seems to be something of a north-south divide.

Again, also, as can be seen from figures 3.22 and 3.23, the regional variations persist even when the different case categories are looked at separately.
As Sherr et al. have noted,20 the aggregate costs to damages ratios are more uniform between regions. However, significant differences can still be found. The findings from the medium detail data set are entirely consistent with this.

### Duration

Although the Legal Aid Board data is extremely limited in this respect, it is possible, as Sherr et al.21 demonstrated, to gain some insight into the duration of personal injury cases from it. This can be done by measuring the time taken from the issue of a legal aid certificate to the payment of a final bill in respect of that certificate or notification of a case result. This is, however, an extremely unreliable form of calculation. The issue of a legal aid certificate can be some time after the commencement of a case, either because it might initially proceed under the green form or some other scheme or because of the effect of administrative inertia upon its progress. Further, the submission of a final bill in no way follows automatically upon the conclusion of the substantive elements of a case. As will be noted in relation to the high detail data set, some bills are not

---

20 Supra, n.16
21 Supra, n.16
submitted for a period of years after cases conclude. However, despite these problems, duration calculations are presented here to enable comparison with those derived from the other data sets.

Figure 3.24 shows the mean time, in months, from the issue of a legal aid certificate to the payment of a final bill. As can be seen, ‘other’ cases seem to take substantially less time to complete than road, work or (especially) medical cases. This would seem to accord with their being generally cheaper to conduct and concerned with lesser value claims.

As can be seen, when the most expensive 5.6% of cases are excluded from the analysis there is only a relatively minor change in the mean case durations. This contrasts with the situation as regards costs and damages.

**Figure 3.24**

*Mean Duration of Legally Aided Personal Injury Cases, (1994-5)*

<table>
<thead>
<tr>
<th>Case Category</th>
<th>Case Duration (Months)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All Cases</td>
</tr>
<tr>
<td>Road Accidents</td>
<td>29.2</td>
</tr>
<tr>
<td>Work Accidents</td>
<td>29.8</td>
</tr>
<tr>
<td>Medical Accidents</td>
<td>32.7</td>
</tr>
<tr>
<td>Other</td>
<td>21.1</td>
</tr>
<tr>
<td>Overall</td>
<td>26.9</td>
</tr>
</tbody>
</table>

**Service Provider Base**

Work is far from being evenly distributed between firms. As can be seen from figure 3.25, over 20% of all legally aided personal injury work would appear to be undertaken by firms individually undertaking 10 or fewer certificated cases each year. Amazingly, medical cases would seem most often to be undertaken by firms with only a small turnover of such cases.

Over half of all certificated medical cases were undertaken by firms individually undertaking 10 or fewer such cases each year. Over a third were undertaken by firms conducting fewer than 5 a year, and 15% by firms who did just one.

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22 See, further, chapter 5 below.
23 From Sherr et al. (1996), Supra, n.16.
24 Legal Aid account numbers have been used as a proxy for firms. It should be noted, though, that some firms have more than one account number. Thus, the results set out here present a slightly more dramatic picture than is actually the case.
### Figure 3.25

**Distribution of Work Between Firms by LAB Case Category, 1996-7**

(All Cases)

<table>
<thead>
<tr>
<th>Number of Cases</th>
<th>Proportion of All Certificated P.I. Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Road</td>
</tr>
<tr>
<td>1</td>
<td>12.5</td>
</tr>
<tr>
<td>2</td>
<td>12.0</td>
</tr>
<tr>
<td>3</td>
<td>10.0</td>
</tr>
<tr>
<td>4</td>
<td>9.0</td>
</tr>
<tr>
<td>5</td>
<td>6.7</td>
</tr>
<tr>
<td>6-10</td>
<td>19.9</td>
</tr>
<tr>
<td>11-20</td>
<td>17.4</td>
</tr>
<tr>
<td>21-25</td>
<td>4.0</td>
</tr>
<tr>
<td>26-50</td>
<td>6.7</td>
</tr>
<tr>
<td>51-100</td>
<td>1.0</td>
</tr>
<tr>
<td>101-150</td>
<td>0.8</td>
</tr>
<tr>
<td>151-200</td>
<td>-</td>
</tr>
<tr>
<td>200+</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
</tr>
</tbody>
</table>

### Figure 3.26

**Distribution of Work Between Firms by LAB Case Category, 1996-7**

(All Cases)

<table>
<thead>
<tr>
<th>Number of Cases Undertaken (1 yr)</th>
<th>Number of Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Road</td>
</tr>
<tr>
<td>1</td>
<td>1,548</td>
</tr>
<tr>
<td>2</td>
<td>747</td>
</tr>
<tr>
<td>3</td>
<td>411</td>
</tr>
<tr>
<td>4</td>
<td>280</td>
</tr>
<tr>
<td>5</td>
<td>166</td>
</tr>
<tr>
<td>6-10</td>
<td>325</td>
</tr>
<tr>
<td>11-20</td>
<td>151</td>
</tr>
<tr>
<td>21-25</td>
<td>22</td>
</tr>
<tr>
<td>26-50</td>
<td>25</td>
</tr>
<tr>
<td>51-100</td>
<td>2</td>
</tr>
<tr>
<td>101-150</td>
<td>1</td>
</tr>
<tr>
<td>151-200</td>
<td>-</td>
</tr>
<tr>
<td>200+</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,678</td>
</tr>
</tbody>
</table>

In numerical terms, as can be seen from figure 3.26, more than 3,500 firms would seem to be conducting 5 or fewer legally aided personal injury cases per year. Of course, it is not clear from the Legal Aid Board data how this legal aid work links with work funded from other sources.
4. Findings from the Medium Detail Data Set

Introduction

The data described in this chapter has been drawn from the medium detail sample of 762 legally aided personal injury cases, collected from over 200 legal aid franchised firms throughout England and Wales. The data was collected directly from closed solicitors' case files. The cases were all concluded between June 1992 and November 1996, with the great majority being concluded in 1995 and 1996. Only 15 concluded prior to 1994. Details of the methods of data collection used are set out in the introduction. Details of the data elements collected appear in Appendix 1. In outline, for each case they include details of the parties, the cause and extent of injuries complained of, the extent of dispute, the use of witnesses, the case outcome, the case duration and cost, and the dates of the principal stages of the litigation process.

General

As explained elsewhere, the medium detail sample excludes cases with profit costs exceeding £5,000. In most cases profit costs were under £2,500. It is hoped that the sample is representative of ordinary personal injury claims.

The cases were classified into 8 basic categories. The number of cases falling into each is set out in figure 4.1.

Figure 4.1
Categories of Work in the Sample

<table>
<thead>
<tr>
<th>Case Category</th>
<th>%</th>
<th>n</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Traffic Accident</td>
<td>38.6</td>
<td>294</td>
</tr>
<tr>
<td>Accident at Work</td>
<td>17.5</td>
<td>133</td>
</tr>
<tr>
<td>Trip, Slip or Fall (Public Authority)</td>
<td>17.2</td>
<td>131</td>
</tr>
<tr>
<td>Medical Negligence</td>
<td>8.6</td>
<td>65</td>
</tr>
<tr>
<td>Occupier’s Liability</td>
<td>7.8</td>
<td>59</td>
</tr>
<tr>
<td>Work Acquired Condition</td>
<td>2.4</td>
<td>18</td>
</tr>
<tr>
<td>Product Liability</td>
<td>1.0</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>6.9</td>
<td>52</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>762</td>
</tr>
</tbody>
</table>

25 Including firms in the process of becoming franchised.
It can immediately be observed that the proportions set out in figure 4.1 differ markedly from those that were set out in the previous chapter which related to all legal aid certificated personal injury cases closed in 1996-7.

In explaining this difference it is important to remember that this sample of cases is of ordinary claims and not the universe of all claims. If one looks at Legal Aid Board figures relating to cases costing less than £5,000, the proportion of road claims jumps to around a quarter, as also do work claims. Medical claims, on the other hand, decrease to around an eighth.

Second, one might expect medical cases and, to a lesser extent, work cases, because of their referral paths, relative complexity and consequent solicitor specialism, to be concentrated amongst fewer firms than road cases. If this were so, a sample made up of a small number of cases drawn from a relatively large number of firms might very well under-represent such cases. As was shown in the previous chapter, Legal Aid Board data indicate that far fewer firms undertake medical cases than personal injury cases in general.

The Parties

Within the sample, just over half the claimants were women, though the proportion would have been far greater but for the overwhelming predominance of male claimants in work cases. These disproportions probably reflect the different employment and earnings patterns of the sexes.

As can be seen from figure 4.2, a sizeable proportion of claimants were minors or retired, although the picture was clearly different in respect of work claims! Thus, only around 70% of claimants were of working age. Of these, 55% were in

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27 See also Legal Aid Board (1997) Legal Aid Board Annual Report, London: HMSO.
29 For example, victims of accidents in the workplace will often be advised to visit a particular solicitors' firm by their trade union. See, for example, Harris, D. et al. (1984), supra, n.28.
work, 35% were out of work and the remainder were otherwise occupied (e.g. as students).

**Figure 4.2**

*Occupation of Claimants*

<table>
<thead>
<tr>
<th>Claimant Occupation</th>
<th>%</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed</td>
<td>34.6</td>
<td>262</td>
</tr>
<tr>
<td>Unemployed</td>
<td>24.8</td>
<td>188</td>
</tr>
<tr>
<td>Non-Employed Minor</td>
<td>14.5</td>
<td>110</td>
</tr>
<tr>
<td>Retired</td>
<td>14.1</td>
<td>107</td>
</tr>
<tr>
<td>Student</td>
<td>5.2</td>
<td>39</td>
</tr>
<tr>
<td>Self-Employed</td>
<td>4.4</td>
<td>33</td>
</tr>
<tr>
<td>Other</td>
<td>2.4</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>757</td>
</tr>
</tbody>
</table>

Perhaps reflecting their greater vulnerability, those at either end of the age scale were more likely to have been injured in falls.31

In less than one half of a percent of cases was the opposing party legally aided, and in all but a handful of cases insurance companies defended the action.32

**The Injuries**

In one third of cases the claimant was hospitalised and the average initial stay in hospital was 8 days. The maximum was 4 months. Victims of medical accidents tended to be hospitalised for around twice as long as those of other types of accident. In contrast, those few claimants hospitalised as a result of falls tended to spend just a few days as inpatients.

A six-point scale was used to characterise the severity of a claimant’s injuries. As can be seen from figure 4.3, nearly two-thirds of claimants suffered only ‘minor’ injuries and fully recovered within two years.33 Only around one claimant in twenty suffered ‘severe’ injury.

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31 This includes those who did so on private premises.
32 A number of medical and trip cases will have been defended by public authorities in their own right.
33 The seriousness of a claimant’s injury was ascertained with reference to the medical reports contained in the file and any supplementary file notes. It has not been possible to follow up the claimants and determine the accuracy of any prognosis contained therein. It is possible, therefore, that some claimants might ultimately have been misclassified.
Figure 4.3
Seriousness of Claimants' Injuries

<table>
<thead>
<tr>
<th>Seriousness of Injury</th>
<th>%</th>
<th>n</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Minor, full recovery within 1 year</td>
<td>42.0</td>
<td>262</td>
</tr>
<tr>
<td>2. Minor, full recovery within 1 to 2 years</td>
<td>19.1</td>
<td>188</td>
</tr>
<tr>
<td>3. Moderate, full recovery within 3 years</td>
<td>11.4</td>
<td>110</td>
</tr>
<tr>
<td>4. Moderate, persistent problems</td>
<td>22.1</td>
<td>107</td>
</tr>
<tr>
<td>5. Severe, moderate permanent disability</td>
<td>4.2</td>
<td>39</td>
</tr>
<tr>
<td>6. Severe, severe permanent disability</td>
<td>1.2</td>
<td>33</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>737</td>
</tr>
</tbody>
</table>

As indicated by the average duration of hospital stays, those injured by falls tended to be injured less severely. Over 50% sustained minor injuries, often broken bones, with full recovery in less than a year. Medical accident victims, on the other hand, were four times as likely to have suffered 'severe' injuries. Those suffering from conditions acquired at work were also more likely to suffer permanently. These two categories of claimants were also much more likely to require future care.

It should be noted, though, that a significant proportion of medical negligence and industrial disease claims were withdrawn after initial investigations showed there to be an insufficient likelihood of success. These cases included many of the severe injuries.

Figure 4.4 sets out the frequency of injuries of the different severities within the most common case categories

Figure 4.4
Severity of Injuries Sustained in Principal Case Categories

<table>
<thead>
<tr>
<th>Case Category</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road</td>
<td>41</td>
<td>26</td>
<td>14</td>
<td>16</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Work</td>
<td>32</td>
<td>16</td>
<td>15</td>
<td>30</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Fall</td>
<td>55</td>
<td>14</td>
<td>14</td>
<td>16</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Occ. Liability</td>
<td>50</td>
<td>28</td>
<td>5</td>
<td>17</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Med. Neg.</td>
<td>34</td>
<td>6</td>
<td>6</td>
<td>34</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Other</td>
<td>61</td>
<td>19</td>
<td>4</td>
<td>16</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

It can be observed from the above figures that the incidence of the fourth level of severity disrupts what otherwise appears to be a fairly coherent pattern of injury severity.

It would seem that this is at least partly a result of ambiguity in the definition of the fourth level of severity. After conferring with those who collected the data it
became clear that the fourth level includes a number of cases in which 'minor' or 'niggling', yet persistent, problems followed from what would otherwise probably be described as a minor injury. This explanation appears entirely consistent with the findings set out below.

**Process**

Given the nature of the injuries complained of, it is not surprising that nearly all the cases fell within the County Court (rather than High Court) jurisdiction. However, only one-third of cases actually saw proceedings issued. This is in contrast to Armstrong and Peysner's finding that almost two-thirds of a sample of 119 untaxed personal injury cases worth between £1,000 and £15,000 saw proceedings issued. Some of the difference is due to the absence of medical negligence cases in their sample. Of more importance, though, their sample was heavily biased towards specialist firms and the cases included were self-selected by those firms. Amazingly, only one case in their sample resulted in no damages being obtained for the claimant.

Issue of proceedings was less likely in road cases, perhaps because there was a far greater likelihood of liability being admitted in such cases. It was also less likely in medical negligence cases, as a result of many claims being dropped after the initial receipt of expert evidence, and product liability cases, although the sample was too small to draw any conclusions in the latter case. Interestingly, Armstrong and Peysner found road cases to be very much more likely to see issue. Less than 25% of cases in their sample were resolved prior to issue.

Quite a number of those cases in which proceedings were issued involved minors, thus sometimes rendering issue little more than a formality.

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34 It was appreciated at the design phase that some injuries might be difficult to classify on the six-point scale, as the description and recovery duration combinations are not entirely exhaustive. However, it was felt the combinations represented the most manageable compromise of subjective and objective elements and would best promote reliability of classification. See, further, Pleasence, P., Maclean, S. and Morley, A. (1996), Supra, n.3 and Pleasence, P. (1997) "The Nature of State Aided Personal Injury Litigation in England and Wales", Paper presented at the Law and Society Conference, St. Louis, Missouri, 31 May 1997.

35 68% of the Armstrong and Peysner sample was made up of cases funded otherwise than by legal aid. See, further, Armstrong, N. and Peysner, J. (1996), Supra, n.28.

36 Here taken as meaning firms with a substantial personal injury caseload.

37 Liability was admitted in 46.5% of road cases, compared to 24% of work cases and 5.5% of medical negligence cases. Overall the figure was 31.5%. Further, only 28.5% of road cases were actively disputed, compared to 50% of work and medical negligence cases.
Only 5 of the 762 medium detail sample cases made their way to trial. Previous studies gave rise to an expectation that few cases would reach trial, especially given the ordinary nature of the sample, although a figure of less than 1% was a surprise. The Oxford study, for example, found that just 3% of personal injury cases went to trial, and most other English studies have found similarly. Armstrong and Peysner's recent study put the figure at 7%.

Providing further evidence of a very low trial rate, as will be suggested in chapter 6, it seems that most firms do actually report very low rates. However, a relatively small number of firms see their cases go to trial a far greater proportion of the time, thus increasing the overall rate. Given the broad spread of firms in the sample, therefore, the trial rate might again be expected to be low.

Liability was admitted in around one-third of cases, and denied in just over one-third. In the remaining one-third of cases liability was either simply not admitted or the question of liability did not arise as the claim was never put to the other side. The latter occurrence was rare. An exception, though, was the medical case category, in which legal aid certificates were often limited to obtaining expert evidence for the purpose of ascertaining the likelihood of success. If the evidence demonstrated no cause of action, then the case was dropped, without there necessarily having been any contact between the parties' solicitors.

It was often difficult to determine whether or not liability was admitted or not. Much of the conduct of cases would seem to be set against a backdrop of assumptions shared between solicitors.

Where there was a denial of full liability it took the form of a total denial in 56% of cases and of a mere allegation of contributory negligence in the remaining 44%. However, a very different picture emerged in relation to medical cases, in which, perhaps not surprisingly, there was not one allegation of contributory negligence at all. In road cases, on the other hand, only a third of denials were total.

Witnesses

As can be seen from figure 4.5, expert reports were commissioned in well over 90% of cases. The average was 1.6 reports per case, the median was 1. In only 1% of cases were more than 5 reports commissioned.

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38 Of the 5 cases that made their way to trial, 4 reached verdict. 3 of those that reached verdict lost.
39 Harris, D., et al. (1984), Supra, n.28.
Most expert reports were medical reports. Engineering and safety reports were not uncommon, especially in work cases. Employment reports were also sometimes obtained. Police accident reports were common in road cases, but extremely rare in other cases.41

In addition to full medical reports, supporting and general medical evidence was regularly obtained by claimants' solicitors.

There was no significant variation in the number of expert reports obtained as between cases of different categories. This might seem surprising, but can be readily explained by the nature of the sample. As noted above, for example, the medical cases included were generally withdrawn after an initial investigation or, if they were successful, related to a less severe range of injuries than would be found across the general population of such cases.

As was expected, there was some correlation between the number of expert reports obtained and severity of injury. The more severe the claimant's injuries, the more reports were obtained. In the most minor cases, just 1.3 reports were obtained on average. In severe cases, by way of contrast, this rose to almost 2.5.

Non-expert witnesses were used in only a quarter of all cases, and far less still in medical cases. Two or more such witness were used in less than 10% of cases.

Counsel

Counsel was used in just over half the cases. On rare occasions two or more counsel were used. The maximum was 4. There was some indication that firms which conduct more cases use counsel less frequently. This may be a reflection of a lesser need to seek external advice on the merits and conduct of claims on

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41 Police accident reports were obtained in over half the road cases.
the part of specialist solicitors. Use of counsel also appears less frequent in road cases.

Costs

The average cost of cases in the sample was £1,839, this compares to an average of £3,362 for all certificated personal injury cases.\(^{42}\) The highest cost case was £8,443 and the lowest a mere £76. Needless to say, the lowest cost case was withdrawn. The distribution of case costs is set out in figure 4.6. The average cost of £1,839 was made up of £1,428 profit costs, £362 disbursement costs and £121 counsel's fees.

\[\text{Figure 4.6: Total Costs}\]

As can be seen from figure 4.7, medical cases were the most expensive major category, averaging £2,344.\(^{43}\) This was despite the fact that medical cases were far less successful than others, and saw proceedings issued on fewer occasions. Work cases were also relatively expensive, at an average of £2,029. As Genn\(^ {44}\) found, both these types of case seem to be regarded by solicitors as more complex than other personal injury cases. The statutory framework is more complicated than in other case categories. Also, loss of future earnings are more likely to figure in work cases - not least because pensioners will tend to be excluded from the category!

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\(^{42}\) A sample of all 1995-6 certificated cases costing up to £5,000 in total, yielded an average of £1,550. My figure of £1,839, given that it relates to cases with profit costs up to £5,000, would seem about right.

\(^{43}\) Cases relating to conditions acquired at work were more expensive still, averaging £3,086, although the sample size was only 18.

\(^{44}\) Genn, H. (1987), Supra, n.30.
The costs of work cases were also more polarised than those of road and, especially fall cases, which were heavily concentrated at the low end of the cost scale.

Road (£1,775), fall (£1,582) and occupier's liability cases (£1,463)\(^{45}\) were all relatively inexpensive.

As would be expected, successful cases were, on average, found to be more expensive than unsuccessful ones. Figure 4.8 shows the distributions of successful and unsuccessful case costs. Although the two distributions are fairly different, much of the difference may be attributable to the significant number of claims withdrawn at an early stage. It is not clear whether the costs of successful and unsuccessful cases are much different where there is no early withdrawal.
Overall, cases involving serious injuries cost over twice as much as those involving minor ones.

Figure 4.9
Total Costs in Minor, Moderate and Severe Injury Cases

The average cost of the sample cases also varied between Legal Aid Board administrative regions. Figure 4.10 shows the extent of these variations. As can be seen, some of the variation may be accounted for by potential sampling error and chance. However, this would not appear to provide a full explanation.

Figure 4.10
Regional variations in Total Case Costs

One possibility, of course, might be that different proportions of cases of the different categories are to be found within different regions. As can be seen from figure 4.11, this was so in respect of the sample cases.

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46 This was expected in the light of Sherr et al’s (1996), Supra, n.16, earlier finding that legally aided case costs varied dramatically between Legal Aid regions.
Regional variations in Case Category Proportions

Three times as many fall cases were found within the Manchester and Liverpool samples than the Reading sample. Almost twice as many road cases were found in Reading than Leeds and Liverpool.

However, regional variations in case costs were also found to exist within case categories. Figure 4.12 shows, by way of example, the variations found in road cases. Again, some but not all of the difference might be accounted for by sampling error. Further explanation, though, would again seem to be needed. Three real possibilities remain:

(i) differing regional legal cultures and working practices;

(ii) regional differences in the types of accidents suffered or presented to solicitors, but such as could not be identified from the data collected (e.g. as a result of different driving or working environments);

(iii) differences in the types of injuries presented to solicitors.

Each of these possibilities would be expected to have some role in a full explanation of regional cost variation. Clearly the sample data cannot shed further illumination upon the first two. However, further analysis is possible in respect of the third.

As can be seen from figure 4.13, when the costs of cases of similar severity were analysed regional variations became far less clear. Indeed, for the first time the means are all within the normal error range at the 95% confidence level. If there were no significant differences between the costs of similar severity cases as between regions, then overall regional variations in costs might be attributable to variations in the mix of injury severities.

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However, such a conclusion should be treated with caution, as although regional variations were indeed found in the severity of injuries presenting to solicitors they were not nearly as marked as the costs variations. Also, the variation patterns, although not so dissimilar to those set out above, were different. For
example, figure 4.14 illustrates the regional variation in the severity of injuries in road cases.

Around three-quarters of total case costs are made up of the profit costs element, one-fifth by disbursements and the remainder by counsel. A lower proportion of the costs of industrial disease and medical cases was accounted for by the profit costs element (two-thirds rather than three-quarters). There was a corresponding rise in counsels’ fees in industrial disease cases and experts’ fees in medical cases.

Although greater proportionate expenditure on counsel and experts might be expected in industrial disease and medical cases, the differences were not of sufficient magnitude to allow a confident conclusion that they were not chance findings.

**Damages**

Damages were awarded in over three-quarters of cases. Figure 4.15 illustrates the paths that cases took to their eventual disposal. As can be seen, the success rate of cases concluding prior to the issue of proceedings (73%) is substantially lower than that of cases concluding post-issue (89%).

Such a difference is to be expected. Cases which see issue will generally have been properly investigated by the time of issue. Consequently, fewer cases will fail after that stage as a result of the claim not being reasonably sustainable. In medical cases in particular, as has been seen, legal aid will initially be granted for the purposes of investigation only. As most such cases will also be found to be inappropriate for the extension of legal aid, most will fail, and this will usually be at that early stage. So, whereas 91% of road cases disposed of prior to the issue of proceedings were found to have been successful, only 11% of medical negligence cases were.

Curiously, a third of trip cases concluded prior to the issue of proceedings were unsuccessful. Given their commonly low value, this may suggest a greater proportion of exaggerated claims.
Figure 4.15
Final Case Disposal Pattern

![Diagram showing the final case disposal pattern.]

Figure 4.16 sets out the reasons indicated on case files for the withdrawal of claims. There appeared to be variations in reasons as between different case categories. So, medical cases were more likely to have been withdrawn because investigations resulted in claims being found to be unsustainable. However, the small numbers did not allow for any conclusions to be drawn on this matter.

Figure 4.16

<table>
<thead>
<tr>
<th>Reason for Withdrawal</th>
<th>% of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client wishes</td>
<td>25.0</td>
</tr>
<tr>
<td>Claim unsustainable</td>
<td>56.3</td>
</tr>
<tr>
<td>Client death</td>
<td>1.3</td>
</tr>
<tr>
<td>Legal Aid revocation</td>
<td>6.9</td>
</tr>
<tr>
<td>Other</td>
<td>5.6</td>
</tr>
</tbody>
</table>

As has already been indicated, success rates differed markedly as between different case categories. For example, whilst road cases enjoyed a success rate of 92%, medical cases were successful only 19% of the time.\(^{48}\) The success rates of each case category are set out in figure 4.17 below.

\(^{48}\) If medical cases are excluded from the sample, the success rate rises to 83%.
Success rates also differed as between different levels of severity of injury. Cases relating to minor injuries enjoyed higher success rates than those relating to severe injuries. However, the progression was not neat and linear, and it should be remembered that the sample is likely to be biased towards unsuccessful severe injury cases. Nevertheless, there was some support for the notion that defendants will sometimes settle cases of low value to avoid the costs of fighting them.

**Figure 4.17:** Overall Success rates

<table>
<thead>
<tr>
<th>Case Category</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road Traffic Accident</td>
<td>92</td>
</tr>
<tr>
<td>Occupier's Liability</td>
<td>83</td>
</tr>
<tr>
<td>Accident at work</td>
<td>82</td>
</tr>
<tr>
<td>Trip, Slip or Fall</td>
<td>77</td>
</tr>
<tr>
<td>Work Acquired Condition</td>
<td>72</td>
</tr>
<tr>
<td>Medical Negligence</td>
<td>19</td>
</tr>
<tr>
<td>Other</td>
<td>75</td>
</tr>
</tbody>
</table>

The average award of damages was £4,545, although the figure was a fair bit higher in work cases (£5,570), and significantly lower in fall (£2,491) and occupier’s liability cases (£2,406). As has already been suggested, there seemed to be little difference between fall and occupier’s liability cases. Figure 4.18 shows the overall distribution of damages.

**Figure 4.18: Damages Obtained**

Presumably as a result of the social security benefit claw-back rules, a staggering 11% of all settlements were for a figure of £2,500. As would be expected there was some clustering on neat figures such as £1,000 (5%), £2,000 (4%), and £3,000 (4%).

49 Product liability cases have been excluded as only 8 were recorded within the sample.
As was also found in relation to costs incurred, damages increased with the severity of injuries sustained by the plaintiff. Figure 4.19 sets out the average damages within each severity band.

**Figure 4.19**

*Average Damages by Severity of Injury*

<table>
<thead>
<tr>
<th>Severity of Injury</th>
<th>Number</th>
<th>Median (£)</th>
<th>Mean (£)</th>
<th>Std. Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>235</td>
<td>1,800</td>
<td>2,266</td>
<td>113</td>
</tr>
<tr>
<td>2</td>
<td>124</td>
<td>2,846</td>
<td>3,734</td>
<td>256</td>
</tr>
<tr>
<td>3</td>
<td>70</td>
<td>3,563</td>
<td>5,132</td>
<td>526</td>
</tr>
<tr>
<td>4</td>
<td>118</td>
<td>3,678</td>
<td>5,511</td>
<td>463</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>16,536</td>
<td>26,917</td>
<td>6,292</td>
</tr>
<tr>
<td>Total</td>
<td>563</td>
<td>2,500</td>
<td>4,545</td>
<td>294</td>
</tr>
</tbody>
</table>

Damages were also found to vary on a regional basis, although as with costs, it is difficult to be clear as to the extent this is a result of case rather than cultural differences. Damages in the Brighton area (£6,839), for example, averaged over twice those in the Cardiff area (£3,285). Again, there was something of a north-south divide.

Curiously, the regions were ordered very similarly in relation to both average costs and average damages. The only notable exception was the Manchester area, which was in the top four regions as regards costs, but bottom in the damages table. Regional variations are returned to in later chapters.

**The Relationship Between Costs and Damages**

As was expected some correlation between costs and damages was observed, though no *normal* damages to costs ratio was found. The reason, as can be seen from figure 4.20, is that the damages to costs ratio increases as the level of damages increases. Thus, low value cases incur disproportionate costs. Indeed, costs exceeded damages in a staggering 22% of cases. Costs were more than double damages in 3.3% of cases. At the other extreme, damages

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50 Coefficient=0.43138, p>0.0001 (n=550).
51 Coefficient =0.80939, p<0.0001 (n=550). It should be remembered that in the context of legal aid this phenomenon is subjected to a moderating force. The costs protection afforded legally aided claimants might result in defendants being quicker to make offers in respect of their claims. As the sample included only legally aided cases, this can not be demonstrated here.
52 This holds between and within case categories.
Figure 4.20
The Relationship Between Damages and the Damages to Costs Ratio

[Scatter plot showing the relationship between damages and the damages to costs ratio with a grid for scale.]
were more than five times costs in 5% of cases, and more than twice costs around 40% of the time.

The question of whether there are inevitable expenditure items inherent within the claims process will be addressed in the next chapter. The fact that costs exceeded damages in 22% of successful cases would seem to suggest that there are.

A consequence of the damages to costs ratio increasing with damages is that the ratio tends to be greater in relation to categories of case which involve higher settlements. So, the mean ratio was 2.44:1 in work cases (where damages averaged £5,570), but only 1.41:1 in trip cases (where damages averaged £2,491). Overall, the mean ratio was 2.27:1.

The worst example of a case's costs exceeding damages was a claim in respect of a road accident where just £1,000 of damages were obtained through an outlay of £5,632 in plaintiff's costs. This was despite the fact that liability was not in issue. The costs escalated as a result of uncertainty as to the level of injury sustained. 5 expert reports were commissioned, although the file suggested little likelihood that the injuries would turn out to be regarded as anything other than minor.

At the other extreme, in another road accident case £100,000 was recovered for an outlay of just £1,928. This included the cost of counsel and 3 expert reports concerning what were indisputably serious and permanent injuries!

**Duration**

When looking at the duration of cases it is important to differentiate between those cases which are resolved pre- and post-issue of proceedings. This is because cases which see issue take substantially longer than those that do not. To treat them together masks some of the subtler differences between cases of different categories.

The median duration of personal injury cases which do not see issue is around one and a third years. In contrast, the median duration of those cases in which proceedings are issued is just over two years.

Figures 4.21 and 4.22 set out the cumulative duration of cases as they progress through a number of specific case stages. The left hand figures relate to cases which are resolved pre-issue, the right hand figures to those which see issue. As can be clearly seen, there is little difference in the length of time spent in obtaining a first medical report as between the different forms of case. Also, despite the fact that the unsuccessful cases are slightly shorter, the difference is

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53 The difference between the two means is unlikely to be the product of chance: p>0.01.
not so great as might have been expected, given that around 10% of unsuccessful cases are withdrawn soon after first instruction. Ordinarily, by the time those cases in which proceedings are issued have seen issue their non-issue counterparts have settled or been withdrawn. As is suggested in chapter 6, it seems that proceedings are often issued where insurance companies or defence solicitors are perceived to be being sluggish in progressing the case towards settlement. The issue of proceedings, in such circumstances, being intended to “focus the mind”.

Figure 4.21
The Duration of Successful Legally Aided Personal Injury Cases
(Excluding Medical Cases)

<table>
<thead>
<tr>
<th>Period</th>
<th>Median duration in months (non-issue)</th>
<th>Median duration in months (issue)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First instruction to first medical report</td>
<td>5.9</td>
<td>6.7</td>
</tr>
<tr>
<td>First instruction to issue of proceedings</td>
<td>-</td>
<td>14.9</td>
</tr>
<tr>
<td>First instruction to settlement</td>
<td>14.1</td>
<td>23.6</td>
</tr>
<tr>
<td>First instruction to receipt of damages</td>
<td>15.6</td>
<td>24.0</td>
</tr>
<tr>
<td>First instruction to last work on the case</td>
<td>15.9</td>
<td>24.4</td>
</tr>
</tbody>
</table>

Non-issue cases: n=308-345. Issue cases: n=166-198

In the light of this, the similarity of the duration to issue and the duration to settlement in non-issue cases may be illuminating. As is shown in the next chapter, settlements often manifest themselves over a very short space of time. Often, implicit negotiations crystallise rapidly at the culmination of cases. It may be that issue is ordinarily precipitated by the approach of the anticipated point of settlement in the absence of the prospect of imminent settlement.

Figure 4.22
The Duration of Unsuccessful Legally Aided Personal Injury Cases
(Excluding Medical Cases)

<table>
<thead>
<tr>
<th>Period</th>
<th>Median duration in months (non-issue)</th>
<th>Median duration in months (issue)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First instruction to first medical report</td>
<td>5.8</td>
<td>5.9</td>
</tr>
<tr>
<td>First instruction to issue of proceedings</td>
<td>-</td>
<td>15.7</td>
</tr>
<tr>
<td>First instruction to settlement</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>First instruction to receipt of damages</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>First instruction to last work on the case</td>
<td>14.7</td>
<td>24.2</td>
</tr>
</tbody>
</table>

Non-issue cases: n=62-78. Issue cases: n=8-10.

As can be seen from figures 4.23 to 4.26 below, whereas around 30% of cases which see issue conclude more than 3 years after first instruction (whether the

54 Figures 23 to 26 show that almost ten times as many unsuccessful cases conclude within 6 months of first instruction as do successful cases.
56 Supra, n.55
case is ultimately successful or unsuccessful), fewer than 5% of cases concluding prior to the issue of proceedings stretch beyond the 3 year mark. Within both groups of cases, however, the main bulk settle between 1 and 2 years from first instruction.

**Figure 4.23**  
*Case Duration: First Instruction to Last Work*  
*Successful Cases In Which Proceedings Were Issued (n=188)*

Claimants in road, tripping and occupier’s liability cases were quick to instruct solicitors - the majority doing so within one month of their accidents. Claimants in medical negligence cases, on the other hand, generally took between one and two years to instruct a solicitor.

Curiously, work cases which did not see proceedings issued saw solicitors instructed within around a month. However, those which did see proceedings issued took much longer to come within the control of a solicitor. The median figure in the latter case was 8 months. The difference cannot be explained by the
inclusion of more of the complicated industrial disease cases in the 'cases which saw issue' category (which would seem to be defended far more vigorously), as these were treated as a separate category.

Figure 4.25
Case Duration: First Instruction to Last Work
Successful Cases In Which Proceedings Were Not Issued (n=328)

Figure 4.26
Case Duration: First Instruction to Last Work
Unsuccessful Cases In Which Proceedings Were Not Issued (n=107)

It may be that issue is more likely to be necessary in cases which do not present themselves to solicitors within a short time, as defendants are more likely to procrastinate in such circumstances, as the evidential wasting effect of the passing of time may sometimes serve to muddy the issue of liability.57

Perhaps not surprisingly, medical and work (especially industrial disease) cases lasted substantially longer than road, trip and occupier's liability cases. This was so irrespective of whether proceedings were issued or not. Occupier's liability

57 See, further, Harris, D. et al (1984), Supra, n.28.
Perhaps not surprisingly, medical and work (especially industrial disease) cases lasted substantially longer than road, trip and occupier’s liability cases. This was so irrespective of whether proceedings were issued or not. Occupier’s liability cases were the shortest. The median duration was 11 months where resolution was pre-issue and 20 months where it was post-issue.

Following on from this, case duration increased along with severity of injury. Severe injury cases took around twice as long as minor injury ones. For the reasons set out above, such as the general need for a greater number of medical reports in severe injury cases, this finding was in line with expectation.

There was a moderate correlation between case duration and case cost. This was in line with expectation. However, as is shown in the next chapter, there are many causes of delay which do not have quantity of work at their heart!

Predicting Costs, Results, Delay and Damages

Any attempt to predict costs, results, delay and damages in legal cases requires a knowledge of the factors which tend to drive them. Some such factors have been suggested in the preceding discussion.

However, in order to reliably ascertain which factors truly act as drivers, it is necessary to try to unravel their effects. Simple correlations may indicate cause or merely association.

Further, prediction should ideally be at the outset of cases. The further the litigation process is advanced at the point of prediction, the more likely the prediction may be little more than description. So, for example, it would be of far lesser utility to find that costs could be accurately predicted from the number of expert reports commissioned in a case than from, say, the nature of a claimant’s injuries. The reason is simple. Expert reports are items of expenditure. Also, the number of such reports is determinable only after the last report has been commissioned.

Figure 4.27 sets out the broad groupings into which potential cost drivers might best be grouped. It also sets out their principal paths of influence.

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58 Coefficient=0.43138, p>0.0001 (n=550)
input factors. For example, a claimant’s solicitor will impress a legal analysis upon a set of presenting factors and the legal analysis may form the basis of a claim at law. Following from this, the solicitor will conduct the claim in a certain way. Certain hours of work and certain legal techniques will be fed into the process. Experts or other third parties may be called upon to participate, formal legal processes may come into play and, of course, once a claim is made the other side’s solicitor will react and act and thus also input into the process.

**Figure 4.27**

*Principal Paths of Influence in Personal Injury Cases*

To the right appear case results, which can be broken down into output factors. These include such matters as the nature of settlements, awards and orders.

Also to the right can be found factors relating to case cost and duration, which might be termed either input or output, depending upon the precise form of analysis being undertaken. These might best be termed hybrid factors. To take cost as an example, one possible analysis could treat it as an input and explore its relationship with, say, settlement terms. Another possible analysis could treat it as an output and explore its relationship with, say, severity of injury.

The multiple regression techniques used in the econometric modelling exercises have been set out in the introduction. Figure 4.28 sets out the variables used in relation to the three dependent variables explored.
Findings

Medical cases aside, there appeared to be no direct link between case category and costs, damages or delay. This was despite the fact, as shown above, that the average cost and duration of cases of different categories were quite different.

These differences, though, seem to stem not from the mere fact that the cases are of different categories, but rather from the fact that cases of different categories are commonly associated with quite different presenting variable profiles. For example, work related conditions which have developed over time tend to be of a relatively serious nature. Tripping cases, on the other hand, tend to result in relatively minor injuries. It is these other presenting variables which seem to be more important to the manner in which cases proceed and conclude. These other variables are therefore also of greater predictive importance.

Medical cases, though, were different. They tended to cost around £1,000 more than other personal injury cases, other factors remaining the same. Given that medical negligence cases enjoyed a success rate of just 19%, compared to 85% for the remaining categories combined, this is particularly notable, as, as has already been noted, in most unsuccessful cases work would have been limited to obtaining an initial expert report and/or counsel’s opinion. When unsuccessful cases were excluded from the costs model, it therefore came as no surprise to find that medical negligence cases tended to cost over £2,000 more than other case types.

Once the low success rate of medical cases was accounted for, however, they were not found to be associated with different levels of damages. This is

\( z = 2.008, p < 0.05, \text{coefficient} = 931.32 \)
consistent with the principled (and intuitive) proposition that damages relate to
the nature and effect of injuries sustained rather than evidential complexities and
legal constructions emanating from within a claim.

The most significant cost driver in personal injury cases appears to be the
severity of the claimant’s injuries according to the six point scale set out in
figures 4.29 and 4.30. As can be seen, cases involving severe injuries tended to
cost around three times as much as those involving the most minor.

**Figure 4.29**
Cost Effect of Severity of Injury in Personal Injury Cases
(All Cases)

<table>
<thead>
<tr>
<th>Severity of Injury</th>
<th>z</th>
<th>coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor, full recovery in 1 year (constant)</td>
<td>3.883</td>
<td>1431.70</td>
</tr>
<tr>
<td>Minor, full recovery in 2 years</td>
<td>1.260</td>
<td>299.25</td>
</tr>
<tr>
<td>Moderate injury, full recovery in 3 years</td>
<td>1.405</td>
<td>403.68</td>
</tr>
<tr>
<td>Moderate injury, persistent problems</td>
<td>3.794</td>
<td>886.77</td>
</tr>
<tr>
<td>Severe injury, moderate disability</td>
<td>5.918</td>
<td>2874.20</td>
</tr>
<tr>
<td>Severe injury, severe disability</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

n=762, **bold**=significant at 95%

When only successful cases were included, the results were even more
dramatic.

**Figure 4.30**
Cost Effect of Severity of Injury in Personal Injury Cases
(Successful Cases Only)

<table>
<thead>
<tr>
<th>Severity of Injury</th>
<th>z</th>
<th>coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor, full recovery in 1 year (constant)</td>
<td>2.792</td>
<td>1382.70</td>
</tr>
<tr>
<td>Minor, full recovery in 2 years</td>
<td>1.624</td>
<td>456.46</td>
</tr>
<tr>
<td>Moderate injury, full recovery in 3 years</td>
<td>1.961</td>
<td>670.96</td>
</tr>
<tr>
<td>Moderate injury, persistent problems</td>
<td>5.000</td>
<td>1423.70</td>
</tr>
<tr>
<td>Severe injury, moderate disability</td>
<td>6.815</td>
<td>4086.50</td>
</tr>
<tr>
<td>Severe injury, severe disability</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

n=597, **bold**=significant at 95%

There are a number of possible explanations for this finding. A greater volume of
medical evidence is generally necessary in relation to more severe injuries. The
medical prognosis in the more severe injury cases may also be less clear and
therefore require additional time to be taken in concluding it.\(^{61}\) Also, future loss
of earnings and future care calculations may well be more complicated and
therefore more drawn out. Additionally, there may be greater resistance from the
other side when the potential stakes are raised. Furthermore, there may be a

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\(^{61}\) Although, in the most severe cases, as Harris *et al.* (1984) have suggested, determining
prognosis may become less complicated.
greater willingness to run up costs on the claimant’s side where the benefit to cost ratio is higher.

Severity of injury was also found to be the principal predictive presenting case factor in respect of damages, and again the results were most dramatic when only successful cases were included in the model (figure 4.31).

Figure 4.31

*Damages Effect of Severity of Injury in Personal Injury Cases (Successful Cases Only)*

<table>
<thead>
<tr>
<th>Severity of Injury</th>
<th>z</th>
<th>coefficient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor, full recovery in 1 year (constant)</td>
<td>2.179</td>
<td>4140.90</td>
</tr>
<tr>
<td>Minor, full recovery in 2 years</td>
<td>0.821</td>
<td>885.13</td>
</tr>
<tr>
<td>Moderate injury, full recovery in 3 years</td>
<td>2.341</td>
<td>3073.40</td>
</tr>
<tr>
<td>Moderate injury, persistent problems</td>
<td>4.918</td>
<td>5373.60</td>
</tr>
<tr>
<td>Severe injury, moderate disability</td>
<td>12.725</td>
<td>29276.50</td>
</tr>
<tr>
<td>Severe injury, severe disability</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

n=597, bold=significant at 95%

Severity of injury seemed to play some part in determining the duration of a case. However, its significance was much reduced in this case. More important seemed to be the employment status of a client and whether or not offers were rejected.

Another significant cost driver was client gender. Cases involving female clients were less costly than those involving their male counterparts. Again, gender also affected damages levels. Female claimants were found to gain significantly less damages than their male counterparts. There were clear differences in employment and injury patterns between the sexes, but the model was designed to account for these. Both employment status and injury severity were included in the models. However, it could be that subtler forces are at work here. For example, although the models included details of whether or not a claimant was employed, they did not include details of the type of work undertaken, rates of pay or hours of work. It is, therefore, not possible to draw any hard conclusions as to what these findings signify. There remains the possibility, however, that female claimants present themselves differently or are treated differently within the claims process.

Whether or not claimants were required to contribute towards the cost of their case was also found to be significant as regards both case costs and damages levels. Both were deflated by such a requirement. One might expect

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62 Coefficient=-374.72, z=2.012, p<0.05
63 Coefficient=-1847.70, z=2.41, p<0.05
64 Coefficient=-1.24, z=-2.436, p<0.05
65 Coefficient=-14.93, z=-7.102, p<0.0001
those with a direct financial stake in their case to exert greater pressure on solicitors to conduct their case as efficiently as possible. Of course, the fact that legally aided parties pay fixed monthly amounts rather than a proportion of actual costs as they arise means that their principal incentive is to speed the process along, rather than reduce its overall cost. A quick expensive case being preferable to a slow inexpensive one. Thus, any cost effect would not necessarily be expected to be great. In fact, it was found to be very small. The damages effect was also small. Curiously, no significant duration effect was found.

Likewise, small costs\textsuperscript{66} and damages\textsuperscript{67} effects were attributed to the number of offers rejected by the plaintiff's side. As the rejection of an offer is bound to result in some extension to the claims process, some effect would seem likely. As is suggested below, however, it may be that the claims process is of a different form in cases where the rejection of offers is probable. As regards damages, these findings are consistent with the proposition that solicitors who routinely reject offers do not obtain higher damages levels than those who do not.

In relation to the basic outcome (i.e. success or lack of it in terms of gaining damages) model severity of injury again seemed to play a significant part, although on this occasion it was found that the relationship was inverted. Where severe injuries were sustained there was a far lesser likelihood of a case resulting in a payment of damages.

This might be partly a consequence of an \textit{administrative approach} to settlement. It has been shown that the costs of low value claims often exceed the amount of any damages recovered. It has also been shown that at the other end of the scale damages can dwarf costs. Further, it has been suggested that insurance companies, especially in the light of the costs protection afforded legally aided clients, sometimes settle low value claims simply to avoid the costs of fighting them. Each of these would be expected to advance an inverse relationship between severity and success.

Unlike with costs, damages and duration, case categories seemed to be useful indicators of likelihood of success. As noted above, medical cases, in which it is often difficult to ascertain likely fault at the outset, were found to be far less likely to succeed than road cases, which were found to be the most likely to succeed. In road cases it could be that clients largely self select in relation to fault. Where fault is fairly clear, the party at fault would presumably be far less likely to instruct a solicitor to claim against their victim.

\textsuperscript{66} Coefficient=1.37, z=5.747, p<0.0001
\textsuperscript{67} Coefficient=4.93, z=5.002, p<0.0001
However, unless the fact of whether or not liability was expressly denied by the defence was entered into the outcome model, its results were disappointing. Without its inclusion the number of unsuccessful cases predicted to be such was low. When it was included, though, the model was 86% accurate overall, with 95% accuracy in respect of successful cases and 52% in unsuccessful cases.
5. Findings from the High Detail Data Set

Introduction

This chapter relates to an analysis of 134 solicitors’ files, drawn from 22 firms around the country. The selection process and data extraction methods have been set out in the introduction. In short, the firms were selected to include various firm sizes and geographical locations. The data were extracted direct from case files. Every item of work was logged, along with details of correspondence, disbursements and the use of counsel. Any unusual case details were also noted for explanatory purposes. A substantial number of additional files were also examined in each of the firms visited, although without full data sets being extracted. On occasion the impressions gained from these additional files are referred to below.

Over 90% of the files used were closed within the last 2 years. It should be noted, though, that recently closed cases are not always recently concluded. One case closed after payment of a bill submitted in mid-1996 had actually concluded 6 years earlier! None of the cases were closed more than 5 years ago.

The 134 files actually included 150 individual cases. Some files related to a number of connected cases. For example, a number of files included the claims of each member of a family involved in a road accident. Indeed, all bar one of the multiple case files related to road accidents.

140 of the cases were conducted under legal aid certificates. The remainder were either privately or insurance funded. One case started off under certificate, but ended as a private case. In another case the client, an actor, initially paid his own costs, then became legally aided and then, once again, became ineligible for legal aid and returned to paying his own costs.

Although the high detail data set is essentially a sub-sample of the medium detail data set, as will be seen below, the 150 cases were not limited to any specific costs range. Consequently, it includes a number of cases which do not also form part of the medium detail sample. The high detail data set can not, therefore, be regarded as a true sub-sample.

This chapter is made up of four principal sections. The first gives a general overview of the data set. The second explores the plaintiff side costs involved in the included cases. The third explores the levels of damages obtained. The fourth sets out a series of observations relating to matters ranging from the use of the various legal aid schemes to administrative competence on the part of the participants in the claims process.
General Overview

The categories of the 150 sample cases are set out in figure 5.1. The bulk of the cases related to road accidents. Despite all efforts to obtain a random sample of cases, it is clear from the above that road cases have been significantly oversampled. This is in part due to the phenomenon of multiple case files (road cases represented 46% of files). It is most likely also a partial consequence of the factors already set out in relation to the medium detail data set. However, the degree of bias is a matter of concern.

One of the road cases involved an allegation of negligent road layout and the work cases included two accidents at school.

The 'other' cases included an alleged negligent omission of supervision resulting in a sexual assault on a minor, an alleged negligent omission of a rail employee in not ushering an elderly woman away from a fight, a leap frog accident, an incident involving railings, an incident involving a boiler and an incident involving a beauty treatment.

\[
\begin{array}{|c|c|c|}
\hline
\text{Case Category} & \text{Number} & \% \\
\hline
\text{RTA} & 76 & 51 \\
\text{Trip, Slip and Fall} & 16 & 11 \\
\text{Occupier's Liability} & 16 & 11 \\
\text{Work} & 14 & 9 \\
\text{Medical Negligence} & 13 & 9 \\
\text{Work Acquired Conditions} & 7 & 5 \\
\text{Product Liability} & 2 & 1 \\
\text{Other} & 6 & 4 \\
\text{Total} & 150 & 100 \\
\hline
\end{array}
\]

The occupier's liability cases were mostly trip cases in which the accident had occurred on private property.

Interestingly, and as might be expected in the light of the findings set out in the previous chapter, 7 of the 16 trip cases originated from the two Merseyside firms visited. These cases represented over a third of the cases investigated in those firms. This manifestation of regional variation did not carry through to occupier's liability cases.

Damages were successfully obtained in 78% of the sample cases. As with the main data set, this rate varied dramatically as between case categories. As can be seen from figure 5.2, 10 of the 13 medical cases failed. In contrast, only 6 of
the 62 road cases failed. In the multiple case files, all results were the same in all cases. This last fact goes some way to explaining the very high success rate in the sampled road cases.

**Figure 5.2**

*Success Rates in the Sample Cases*

<table>
<thead>
<tr>
<th>Case Category</th>
<th>% Success Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slip, Trip and Fall</td>
<td>100</td>
</tr>
<tr>
<td>RTA</td>
<td>90</td>
</tr>
<tr>
<td>Work</td>
<td>88</td>
</tr>
<tr>
<td>Occupier's Liability</td>
<td>64</td>
</tr>
<tr>
<td>Other</td>
<td>50</td>
</tr>
<tr>
<td>Work Acquired Condition</td>
<td>43</td>
</tr>
<tr>
<td>Medical Negligence</td>
<td>23</td>
</tr>
<tr>
<td>Overall</td>
<td>78</td>
</tr>
</tbody>
</table>

n=148. The 2 product liability cases have been omitted from this table. Both were successful.

Of the 33 cases which saw no damages recovered, 11 might be termed *non-starters*. These 11 cases were withdrawn at a very early stage and, as is shown below, incurred very low costs.

There were basically three reasons for a case becoming a non-starter. First, because the client had a swift change of heart. Second, because initial investigations demonstrated a claim was unlikely to succeed. For example, three of the false starting road cases ended abruptly after a police accident report was obtained. Third, because the client's story failed to truly disclose a cause of action. Only one case didn't fall within these groups, and that was turned away because of a conflict of interest. It *may* be that a claim succeeded via another route.

Not one of the sample cases was decided by a court. All successful cases concluded with a settlement. Two cases, though settled after a trial had commenced, one settled within a week of a trial being due to commence, and a further 9 after a trial date had been set.

One of the cases that went to trial seemingly did so as a result of the multiple defendants being unable to resolve their respective positions at an earlier stage.

Around two thirds of the cases were either settled or withdrawn before proceedings were issued. In a couple of cases statements of claim were drafted but the cases settled before proceedings were issued.

Counsel was used in 47% of all cases. There was a slight difference in the rates in relation to successful and unsuccessful cases. The rate was slightly lower in
the latter. The difference seems to be accounted for by the 11 non-starter cases within the unsuccessful case group. When those were excluded, no significant difference remained.

Although most of the firms made occasional use of counsel, a few used counsel in almost all cases and a few hardly ever. Curiously, the firms which rarely instructed counsel seemed to be the same firms that submitted green forms in winning cases.

Costs

Although the sample comprises 134 files, it was not possible to conduct a detailed analysis of costs in respect of all the sample cases. The principal reason was the quality of information maintained in the solicitors' files. A number of the sample firms kept their files in such an incomplete state that it proved impossible to reliably reconstruct costs details. Any macro analysis presented is unaffected by this problem, as we were able to ascertain basic costs details in all cases.

A number of files also had to be excluded from the analysis because they involved more than one firm of solicitors and details of the work undertaken by the various firms were not available. Additionally, some files involved multiple certificates and it was thought best to exclude them, as the work undertaken could not sensibly be treated as pertaining to a single case, but nor could it be disentangled into a number of cases.

A curious finding, noted above, was that green forms are regularly submitted in relation to cases that eventually succeed and see full costs recovery. This was so in respect of 22% of the winning cases in the sample. On closer analysis it became clear that the practise was in no way randomly distributed between firms. Over half of these green forms were submitted by just two firms who submitted in every case. The very great majority of firms never did so, conforming to the economically rational proposition that firms will seek to obtain the maximum hourly rate in respect of the work they undertake. It was common practice, of course, to fill in a green form for later submission if necessary.

A quarter of all unsuccessful cases saw no green form submitted. The principal reason for this would seem to be that many firms offer initial advice for free as a marketing tool or perhaps, as Shapland et al. have suggested, to meet client expectations. In some instances it may also have been as a means of providing a community service.

The mean green form cost in unsuccessful cases (£98.23) was slightly higher than in successful cases (£87.66). It might seem attractive to attribute this difference to the additional work required to close unsuccessful cases at the

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68 Supra, n.55.
green form stage. However, the range of costs was actually greater in respect of unsuccessful cases and the number of cases in the sample was insufficient to draw any firm conclusions.

In relation to the successful cases a separate calculation was undertaken to estimate the value of the pre-certificate work at green form rates. The result of this exercise was a figure of approximately £110.

The mean cost of cases in the sample was £2,775. This was composed of £1,900 profit costs, £600 disbursement costs and £275 counsel’s fees. These figures are means over the full sample of 150 cases and some points should immediately be noted.

First, the mean costs of successful and unsuccessful cases were very different. Successful cases, reflecting the fact that they did not include any non-starters, tended to cost more. The mean cost of successful cases was £3,214, as compared to £2,477 for unsuccessful cases. However, the difference is not as straightforward as it first appears, for whilst profit costs were certainly higher in successful cases, disbursement costs were similar. This latter finding was in part due to the low success rate and high investigation costs of medical negligence cases and (to a lesser extent) work acquired condition cases. As 77% of medical negligence cases failed, and they tended to involve high disbursement costs, they had the effect of evening up the disbursement spend as between successful and unsuccessful cases. In fact, the median spend was actually far higher in unsuccessful cases than successful cases.

When medical negligence cases were excluded, the average disbursement cost of unsuccessful cases almost halved, from just over £600 to just over £350. If work acquired condition cases were also excluded, the figure fell far further still, to just over £250. Not surprisingly, counsel’s fees reduced in a similar fashion.

Second, as has been noted above, counsel was not used in all cases. The cost of employing counsel actually averaged £550 within those cases in which counsel was used. Counsel is generally used in one of three ways: for providing the early advice necessary to justify continuing a claim, to draft pleadings and to provide advice on offers. The figure of £550 is greatly distorted by the very few cases in which counsel received a brief fee in anticipation of trial. In these cases fees rose dramatically. In one case, for example, they amounted to £14,325! A better indication of the average cost of employing counsel is therefore provided by the median figure of £210. In general, as has been noted, there was seemingly little difference in the costs as between successful and unsuccessful cases.

Further to this summary analysis of the costs of the high detail data set cases, a detailed analysis of their constituent costs was also undertaken. The analysis was conducted in two parts. First, an exercise was conducted to recreate the
costs of the sample cases, at mid-1997 levels. This involved identifying all chargeable items on file and allowing their cost at legal aid rates. The arrived at case costs were then analysed to determine expenditure patterns within cases, or cost profiles and stage cost profiles.

Generally speaking the costs actually claimed by firms were similar to those determined through the re-assessment process - this despite the fact that there was a fair degree of fantasy in the costs negotiation process. The costs claimed were, therefore, generally reflected in the files. Interestingly, there seemed to be just as many undervalued claims as overvalued claims, suggesting that errors were more a result of carelessness of calculation (or lack of proper information on the file) than sharp practice. There was no evidence of any systematic overcharging.

For the reasons outlined above it was possible to undertake a full costs analysis of 85 of the sample cases, and some of the analysis was able to draw upon only an even lower number of cases. This is indicated where appropriate.

Of the 85 cases, 42 settled prior to proceedings being issued and 28 settled after issue, all but 4 of which saw issue before any offer had been made by the defendant. The remaining 15 cases were withdrawn. 8 of them could be described as being non-starters, in so far as they were withdrawn before either a medical report had been obtained or the defendant had sent a letter before action. The average cost of a non-starter case was just £230.

The average cost of the 85 cases used for this analysis, at mid-1997 levels, was just over £2,400. The figure is slightly lower than that for the whole sample. This is partly explained by the higher incidence of non-starter cases.

Expenditure within cases is distributed both between different types of cost element and over time. The following analysis provides some insight into the form both these distributions take.

69 The process used was similar to that adopted by Armstrong, N. and Peysner, J. (1996), supra, n.13.
70 A preliminary analysis at a slightly lower level of detail was able to utilise more cases. See, for example, Pleasence (1997), "The Nature of Personal Injury Litigation in England and Wales", paper presented at the Law and Society Annual Conference, St. Louis, Missouri, 31 May 1997.
71 The sample did not include the case with counsels' fees of over £14,000.
As can be seen from figure 5.3, three-quarters of overall expenditure went on profit cost items. Correspondence was a major contributor to this, accounting for around one-third of all expenditure. The percentage of overall expenditure going to counsel is, as has been explained already, slightly misleading, as counsel was not used in all cases.

The proportions set out in figure 5.3 vary slightly between cases which conclude in different manners. However, the degree of variance is not as great as might be expected.

Figures 5.4, 5.5 and 5.6 show the proportion of overall costs expended on the different cost elements within three differently concluding types of case. As can be seen, successful cases in which proceedings are issued (here limited to those cases in which a first offer was made after the issue date) tend to see a far smaller proportion of costs go on attendances. This is largely because, as will be shown below, there is more contact with clients at the start of a case and such cases seem to last significantly longer than others.

On the other hand, and as would be expected, a far greater proportion goes on the drafting of court documents and the use of counsel. Counsel also seems to be used both more often and to a greater extent in cases which see issue. As was indicated above, the general use to which counsel is put promotes this expenditure pattern. Cases which approach or go to trial can, as has also been indicated, see counsels' fees escalate dramatically.
The proportion of expenditure on correspondence stayed more or less constant between each of the three types of case. This is particularly interesting given the marked difference in each of their average costs. Cases in which damages were obtained after proceedings being issued averaged over £4,000, those in which damages were obtained without issue averaged just over £1,500 and the unsuccessful cases averaged around £1,000. It might be conjectured that the activities and disbursements within a case are set against a fairly uniform backdrop of correspondence items.

In relation to the greater proportion of costs devoted to the perusal of expert reports in unsuccessful cases, it could be argued that this is consequent upon the need to obtain such reports in many such cases. It should also be remembered that medical cases will again be distorting the picture.

**Figure 5.7**

*Example Cost Distribution*
In addition to being unevenly distributed between different types of cost element, costs are also unevenly distributed over time. As can be seen from figure 5.7, representing the cost distribution of a typical case which saw issue drawn from the sample, units of cost devoted to correspondence, drafting, perusal and attendances tend to be concentrated at particular times. The picture becomes even clearer still when one looks at weeks or days rather than months. In the case represented, work items (excluding correspondence) were actually recorded on only 22 days out of the 335 working days for which the case ran. Correspondence emanating from the claimant’s solicitor was also concentrated on only a small proportion of available days.

As was noted above, as the case proceeds less and less time is devoted to attending upon the claimant.

As would be anticipated, the drafting of work documents is concentrated in the period just before issue (pleadings) and around settlement (consent order).

Figures 5.8, 5.9, 5.10 and 5.11 show the expenditure patterns within the different stages of the sample cases. The two principal analytical case types are shown. Other case types were of insufficient number to produce meaningful results.

Figure 5.8
Stage Cost Profile of Average Successful Personal Injury Case (£)
No Proceedings Issued (n=42)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Instruction to LBA</td>
<td>38.4</td>
<td>121.0</td>
<td>68.9</td>
<td></td>
<td></td>
<td>1.2</td>
<td>1.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LBA to Medical Report</td>
<td>205.6</td>
<td>65.0</td>
<td>76.7</td>
<td>7.8</td>
<td>2.6</td>
<td>21.3</td>
<td>10.5</td>
<td>0.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical Report to Offer</td>
<td>152.0</td>
<td>52.0</td>
<td>104.0</td>
<td>55.9</td>
<td>1.3</td>
<td>239.1</td>
<td>19.9</td>
<td>2.1</td>
<td>32.1</td>
<td></td>
</tr>
<tr>
<td>Offer to Settlement</td>
<td>88.8</td>
<td>52.0</td>
<td>62.4</td>
<td>15.6</td>
<td></td>
<td>19.2</td>
<td>1.7</td>
<td></td>
<td>7.9</td>
<td></td>
</tr>
<tr>
<td>Settlement to Last Work</td>
<td>72.0</td>
<td>6.5</td>
<td>18.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8.8</td>
<td>0.9</td>
</tr>
<tr>
<td>TOTAL</td>
<td>556.8</td>
<td>295.5</td>
<td>330.2</td>
<td>79.3</td>
<td>3.9</td>
<td>280.8</td>
<td>21.6</td>
<td>22.8</td>
<td>41.3</td>
<td></td>
</tr>
<tr>
<td>TOTAL (£1,631.20)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,266.2</td>
<td></td>
<td>325.2</td>
<td></td>
<td>41.3</td>
</tr>
</tbody>
</table>

The example case was brought as a result of a road traffic accident. The claimant, a minor, sustained minor injuries and made a full recovery within 1-2 years. Proceedings were issued, but the case settled out of court after the claimant accepted a second offer of £10,000. All costs were recovered. Counsel was not instructed.

A unit of cost is equivalent to 6 minutes of charged time.

Similar findings were reported by Worthington (1991) in relation to civil cases in New South Wales.
As can be seen from the above, cases which see issue seem to involve more expenditure at each stage than do their non-issuing counterparts. This might suggest that solicitors more likely to issue proceedings are more likely to invest more in cases at an early stage (perhaps in anticipation of issue). This would seem to be supported by the increase in drafting work undertaken at an early
stage in issuing cases. It might, though, suggest only that the cases which see issue are of a different type to those which do not (in terms of category, seriousness, etc.). It should be noted, however, that the real divergence in the stage cost profile between the two types of case seems to really occur only in the run up to issue itself. This supports the suggestion that costs increase when issue is anticipated - although it is clear that many other factors are also at play.

Medical negligence cases which were withdrawn prior to the issue of proceedings seemed more homogenous than other losing cases. The cost breakdown presented in figure 5.12 below could reasonably be described as typical. Where counsel is instructed, it seems a typical cost would be £200 to £300 for advice as to merits and quantum:

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**Figure 5.12**

Costs Profile of Typical Medical Case Withdrawn Prior to Issue

<table>
<thead>
<tr>
<th></th>
<th>Profit Costs (£)</th>
<th>Disbursements (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start to Finish</td>
<td>350</td>
<td>270</td>
</tr>
</tbody>
</table>

As was noted above, in chapter 4, unsuccessful cases, once medical and non-starter cases have been accounted for, would seem to follow a similar pattern to successful cases.

**Damages**

The average settlement was £8,631.55, although the median, as expected, was a much lower £2,650. The sample included one settlement of £195,000 and one where just £35 damages were obtained. The latter was part of a settlement aimed at minimising the effects of a greatly changed evidential picture and also included full costs of over £3,000.

In addition to a few low settlement cases, such as that just outlined, in which the settlements were clearly entered into as a result of a complete shift in the balance of evidence, there were a number of cases in which very low amounts of damages were obtained for seemingly very different reasons.

16 *successful* cases concluded in settlements of under £1,000. 4 settled at £400 or less. Over half of the sub-£1,000 settlements were found in the files of two firms within which the practise seemed to be routine. In fact, in one of the firms, the dozen sample cases saw no settlements of over £2,500. Further, one of the ‘unsuccessful’ cases was in fact strategically withdrawn in the light of the fact the defendants would pay no more than £300 damages and refused to pay any

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75 See, further, chapter 4.
costs whatsoever. The client agreed to a discharge of the legal aid certificate and then personally issued proceedings in the small claims court. The object of the exercise was to avoid payment of the statutory charge. The medical report obtained under the legal aid certificate was, of course, used in the small claims court.

Some sub-£1,000 settlement cases were accounted for by administrative errors. For example, in a case in which just £350 was recovered there was a clear breakdown in supervision. A trainee solicitor (clearly) wrongly assessed a claim as being "probably worth more than £1,000". When the file was late reviewed by a more senior solicitor the value of the claim was re-appraised at £500 or less.

Other sub-£1,000 settlement cases, however, seemed to be advanced as a matter of particular firms' claims strategies. One case which centred upon mild sunburn acquired on a sun-bed was seemingly agreed by all parties to have been worth no more than £600 on a best view of the evidence. It settled for £250.

In another case counsel's advice was that the claim was worth less than £1,000. The firm responded by procuring a low offer and then accepting it.

It was a noticeable finding that the defendants agreed to pay the plaintiff's costs in every one of the cases which settled for less than £1,000, including the four cases which settled for £400 or less. It seems curious that insurance companies would allow a pattern of low settlements to develop with a particular firm, especially where full costs are being met. This must surely encourage further similar claims.

In promoting low settlement offers the payment of legal costs was presented to clients as a vital consideration. In one typical case a solicitor wrote to his client in the following terms.

"I have now received another letter from Y (insurance company) offering to increase the amount of compensation payable to Z (a minor) to £350. I think we need to discuss this because included with this offer is also an offer to pay Z's legal costs. As I mentioned before when I saw you Z's claim is worth less than £1,000 and normally if you settle a claim at less than £1,000 you do not get your legal costs paid as well and so you have to pay them yourself out of the compensation you receive. This means that the offer from Y is actually worth more than it appears to be worth on the face of it and it is one which I think you should probably consider accepting ...."

Of course, not all questionable claims were successful, even where significant costs were being built up. In one case, for example, over £1,000 was spent on a
claim which revolved around the distress of a course of intravenous treatments resulting from an infected grazed elbow from which a rapid and full recovery was made. The claim was withdrawn on the basis of liability problems!

Aside from low settlement cases, there was other evidence that legal aid was sometimes being used to pressurise defendants to settle weak or trivial cases. For example, in one case involving a minor injury arrived at as a result of apparently reckless behaviour on an adrenalin ride at a theme park the client’s evidence was clearly contradictory and a site visit by the solicitors established the accident could not have happened as suggested and that all appropriate safety notices and equipment were in place. Initial “token” offers, which eventually amounted to £500 were withdrawn, but the plaintiff solicitors pushed ahead, issued proceedings and soon thereafter settled for £2250. There is no doubt from the file that the solicitors saw little merit in their client’s case. The defendants seemed desperate not to have to claim against their insurance. Their insurers never became involved.

Again, especially where large insurance companies were involved, it seems curious that greater challenge was not sometimes made. In another case, in which legal aid was refused at first because the case was deemed not to be worth £1,000, the client only ever briefly visited a doctor and the medical report which was obtained after the Legal Aid Board’s refusal had been successfully appealed stated there was “no evidence of injury”. Despite this, a settlement of just over £1,250 was agreed.

The additional pressure to settle brought about by legal aid was often expressly recognised by defendants. For example, in one case an insurance company’s solicitor wrote,

“Our clients are conscious that your client is legally aided and there are inevitable risks and accordingly they have instructed us to put forward an offer of £…”

Another tactical rouse utilised in the context of legally aided cases was the delayed discharge. It seemed to be fairly common practice, amongst the sample firms in general, to delay informing the LAB about changes in the evidential picture or the contents of adverse opinions, so as to make time for a quick and low settlement whilst retaining the powerful backing of the legal aid certificate.

In one case an extremely negative opinion was followed by a letter from the Legal Aid Board to the solicitors asking if their client would consent to the discharge of the certificate. 13 months later the solicitors wrote to the client on the subject! In the meantime, however, they kept up pressure on the insurance company and managed to extract an offer of £2,650.
In another case, an unfavourable opinion was received from counsel, making the issue of proceedings impossible under the terms of the legal aid certificate. The solicitors struggled on with negotiations for some time in any event and eventually ended up winning £13,500 damages for their client.

In another case, conducted by one of the firms that routinely ran cases where the prospects of damages exceeding £1,000 seemed pretty remote, counsel's opinion suggested that damages would indeed not reach £1,000. A memorandum was put on the file noting that "we may need to report this to the Legal Aid Board".

In many of the cases set out above it is difficult to conclude whether what went on represented expert lawyering, sharp lawyering or incompetent lawyering. That such cases are seemingly so common does not aid in any determination.

**Observations from the Sample Files**

*Use of Legal Aid Schemes*

It was common for clients to have received their initial advice in a free consultation with a solicitor. Often firms used free first consultations as a marketing tool, and perhaps, as Shapland *et al.* have suggested, to meet client expectation. Some firms conducted them as part of their ordinary everyday business. A couple of firms, though, went further and also offered open surgery evenings - inviting local people in to discuss any matter that might have a legal dimension.

Solicitors from some respondent firms also offered free consultations within the context of local advice agencies and would, where a cause of action was disclosed, transfer a client to their firms.

As a result of these types of practices there were a substantial number of legal aid files in the sample which contained significant pre-certificate work undertaken other than on green form. The number would have been greater, but for the fact that some firms would routinely fill in green forms whenever it became clear that a client might be eligible, despite the fact the client had been offered a free consultation.

In most cases where green forms were filled in, they were only submitted to the Legal Aid Board in the event of an unsuccessful case outcome. This is a consequence of the costs indemnity principle which would otherwise prevent recoupment for the work undertaken 'on green form' at *inter partes* rates. The same practice has also been recently observed by Shapland *et al.* As has

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76 Shapland, J. *et al* (1998), *Supra*, n.55, p.17
77 *Supra*, n.55, p.17
been noted above, though, economic rationality did not always seem to prevail. There were firms which regularly submitted green forms even in successful cases.

As was expected, a fair proportion of unsuccessful cases never proceeded past the green form stage. Remarkably, though, some successful cases never proceeded past the green form stage either. Indeed one firm appeared to regularly conduct entire cases on green form, although not submitting them where successful. There was clear indication that the practice was confined to straightforward and low value claims. It might therefore have been regarded as a simple means of partially insuring straightforward low risk cases.

The benefit of avoiding the administrative burden of the legal aid certification process was clearly not inconsiderable. Quite a few firms seemed to regularly work on spec for clients who were clearly eligible for legal aid, treating an application for legal aid as a fall back position to be adopted if a claim started to look less assured.

In one case an early file note read:

"... Discussed legal aid and costs and I said that basically if I felt there were prospects of her not succeeding at all I would apply for legal aid."

This attitude might explain the couple of other cases in which clearly eligible clients seemed not to be informed about the availability and mechanics of legal aid. In one it was not until 6 months after first instruction that the solicitor explained about the possible availability of legal aid. In the other, involving a client on income support throughout the entire duration of her case, the solicitor suddenly decided, after 2 years, that "it may be worth applying for legal aid."

**The Point of First Instruction**

Although most claims were initiated by the solicitors who concluded them, some claims were already advanced at the point of first instruction. This could either be as a result of a client being unhappy with the work of a previous solicitor, a consequence of a previous firm not having the requisite expertise to conclude the claim properly, or because the client had commenced the claim privately before instructing a solicitor. In one instance of the latter two offers had already been made before solicitors became involved.

Needless to say, where there was a change of solicitor the replacement solicitor was sometimes critical of the work undertaken before becoming involved. This would not necessarily be confined to legal work. In one case a replacement solicitor was extremely critical of the quality of a medical report that had been obtained by the previous firm.
Delay in the Claims Process

Each element of the claims process inevitably involves some delay. However, delay cannot always be attributed to structural causes. In fact, throughout the sample files examples could be found of unnecessary delay attributable to every participant in the process. It should not be surprising, therefore, that there were as many causes of delay within the files as there were files themselves!

In the first place, claimants were themselves sometimes very unsure as to whether or not they wanted to enter the formal claims process. In some cases claimants went through numerous changes of heart before finally committing to the process. As a result, claims stuttered rather than pushed ahead. Even clear initial decisions to proceed sometimes appeared to have taken many months of anguish to arrive at. In one case, for example, it took over five months from the first consultation with a solicitor for the claimant to finally decide he wished to proceed.

After having decided to proceed there is then often a significant delay whilst a legal aid certificate is obtained. As a general rule, after initial instructions have been taken all work ceases for whatever period of time it takes to obtain a certificate. Consequently, clients often receive a first letter from their solicitors stating:

"Your legal aid application form has now been sent to the Legal Aid Board. The Board will take some weeks to process this form but I will contact you again as soon as I receive a response from them."

or

"There is nothing further I can do until I receive the result of the legal aid application."

The normal delay in waiting for a legal aid certificate is perhaps structural in its nature. However, legal aid applications occasionally took longer to process than the 'some weeks' referred to above. In one case 'some months' would have been a more appropriate description!

Of course, delays in the legal aid certification process are not always the fault of the Legal Aid Board. In one case it took the client 3 months to fill in the application forms correctly. This was not entirely the client's own fault. He was initially supplied with the wrong forms by his solicitor! In another case a legal aid application had to be resubmitted because the initial application was not submitted to the Legal Aid Board for over three months from the date of its signing, resulting in its becoming invalid.

Subsequent legal aid matters can also be a source of delay. For example, the process of having a legal aid certificate amended can be time consuming. On
one occasion there was a 7 month period in which nothing appeared on the file other than correspondence relating to the removal of a certificate limitation. Also, the receipt of expert reports may be delayed by the need for a solicitor to obtain a payment on account from the Legal Aid Board.

Experts and expert reports are often blamed for adding delay to the claims process. As has been seen above, for example, medical examinations generally take a month or so to arrange, as there are often waiting lists for appointments with consultants. Sometimes, though, delays can be much longer. In one case an appointment for a medical examination was not possible for over 5 months. Generally, it seemed that the more specialist the expert, the more likely significant delay in obtaining a report became.

The situation is worsened by the behaviour of some clients who fail to attend medical examination appointments, not only prolonging their own cases, but also lengthening the periods other claimants have to wait for examinations. 5 cases within the sample suffered unnecessary and sometimes long delays as a result of such behaviour. In 3 cases clients missed 2 or more appointments. In one of them, after 3 missed appointments, a consultant refused to allow a client to arrange any more. In addition to the delays of re-arrangements, therefore, delays can also result from a need to locate new experts.

In another of the three cases the client also missed an appointment with her solicitor. The reason for her pattern of behaviour seemed to be a belief that her solicitor, her doctor and the other side were all conspiring against her best interests. Clearly, such an attitude is bound to be reflected in the progress of a case.

In addition to the above, medical reports sometimes left the prognosis open and suggested a follow up months, or even years, later. In one case involving a minor a delay of 4 years was observed as a result.

For the same reason, where the medical prognosis was clearly uncertain at the outset of a case, solicitors sometimes waited a considerable time before instructing a medical expert. In one case, for example, it was a clear that a course of treatment should be allowed to conclude before a full medical report was obtained. In that case a year's delay was necessary. No accurate prognosis would have been possible beforehand.

Even where final medical reports have been obtained, delays can still result from a need to clarify certain points within them. Also, defendants sometimes wish to obtain their own medical reports, although this does not appear to be usual.

In cases involving multiple experts, the delays attributable to the process of obtaining expert evidence can clearly be quite substantial. In some cases 5 or more experts were instructed, thereby almost ensuring some collateral delay.
The most common source of delay seemed to be the failure to respond to or send out items of correspondence expeditiously. Generally the resulting delays were not great, and when they were great they may often have been reasonably regarded as tactical. Not surprisingly, the defence side, especially insurance companies, appeared to offend more in this manner. In fact, it appeared that insurance companies routinely took an age to reply to plaintiff solicitors' correspondence. In one case an insurance company started by taking over 2 months to simply acknowledge the letter before action!

Not all of the worst examples of communication delay were capable of explanation on tactical grounds. Moreover, even where the initial failure stemmed from the defence side, it could often be regarded as being as much the fault of the plaintiff side. In one case, for example, the defendant insurance company took over 7 months to reply to a letter sent along with the claimant's medical report. However, it was 6 months before the claimant's solicitor followed the matter up. There then followed a further period of 10 months during which the only thing to happened was a request by the insurance company for further details of the alleged negligence and medical position, both of which were easily provided (and to a large extent obvious). As a consequence of this slow progress, proceedings were eventually issued. A settlement followed one month later!

Clients were not always given a true picture of events such as these. So, for example, in another case a 5 month period elapsed during which the plaintiff's solicitor told his client, on a couple of occasions, that he was not getting far with the defendant as the defendant was not replying to his letters. In fact, only one letter had been sent and, furthermore, there was no evidence of any attempt to follow it up.

As suggested above, the issue or threat of issue of proceedings often seemed to animate insurance companies that had previously been static. In one case an insurance company waited 10 months before replying to a letter from the plaintiff's solicitor. Again the solicitor had taken 8 months to follow it up. When proceedings were threatened, however, a reply came within 14 days.

Even when there was good reason for delay in the inter-party communication process, sometimes little effort was made to keep the other party informed of what was happening. Thus, in one of the cases in which the client repeatedly failed to attend medical examination appointments, there was a letter from the defendant insurance company on the file which read:

"On reviewing our file of papers we are surprised to note that we have not heard from yourselves for more than twelve months on this matter. We note that offers were previously made in respect of
the claim put forward by your clients and we would be most grateful if you could please confirm the present position.”

On another occasion communication between the parties seemed to break down as a result of the restructuring of a defendant insurance company.

Clients are also sometimes a cause of communication breakdown. In one case, for example, the client took 3 months to reply to a simple letter asking whether she wished to claim for a particular item. In another case a client took many months to notify his solicitor of acceptance of an offer.

Thorough investigations into the circumstances of an accident can clearly be lengthy. Also, delays can result from a need to identify an appropriate defendant to an action. A number of cases in the sample included delays resulting from initial difficulties in establishing who the appropriate defendant was. For example, in one case some correspondence was necessary in order to determine which utility it was working on a road at the time of an accident. In another case, the solicitors were forced to correspond with 2 councils, 2 companies, 2 insurance companies and the Land Registry in order to determine the appropriate defendant. The bulk of the correspondence on the file was concerned with this single question! In another case it was unclear at first whether a doctor, hospital or health company, would represent the best defendant.

Where there are multiple actual defendants in a case this can slow proceedings down even more, as negotiations become extremely complex, involving not two but many parties.

Other notable instances of unusual delay found in the sample cases included a delay resulting from complications over the applicability of the social security benefits claw-back, delays waiting for the outcome of a related criminal case, delays resulting from the conduct of the individual defendant (such as not notifying an insurance company of an accident when requested to do so), and delays consequent upon taxation.

Surprisingly, obtaining discovery was found to be a significant cause of delay in just one case. There were some problems experienced in gaining access to the site of work accidents in order to mount inspections. However, the consequent delays were never substantial.

Delay would regularly cause great distress to clients, even if being promoted in their best interests. For example, where a solicitor urges a client to reject an offer which the client wants to accept just to end the claims process. In one of the sample cases a client was unable to cope with the process and accepted an offer contrary to his solicitor’s advice.
It is sometimes difficult to establish who is in control of the settlement process in such cases. In another case, for example, after two and a half years the client became impatient at the legal process and fearful of the outcome of the case and advised his solicitor that he wanted to settle for £5,500 (the amount of the first offer made by the defendants). He was advised that his claim was worth £14,000 and reluctantly agreed to wait further. A month later the client instructed his solicitor to offer the figure of £10,000 as appropriate for settlement. There was then nothing on the file for a further two and a half months, at which time the defendants made an improved offer of £15,000. This was accepted straight away.

Administrative Incompetence

There was a fair amount of administrative incompetence to be found within the sample cases. All parties were found wanting on some occasion. Often these instances of administrative incompetence also served as further examples of unnecessary delay to the claims process.

In one case the plaintiff's solicitors were forced to organise a duplicate conference because the statement taken in the original conference had been lost. In another case the Legal Aid Board lost records of a series of letters and telephone calls, resulting in the need for a further series of letters and telephone calls. In another case part of a police accident report went missing. In another a plaintiff solicitor forgot to enclose the medical report in correspondence to an insurance company. In another case, in which there was a change of solicitors on the plaintiff side, the defendants continued to correspond with the first solicitors two years after they had ceased representing the plaintiff. Also, and not so infrequently, documentation found in files was sometimes discovered to relate to other cases.

Some administrative errors were dramatic in their consequences. In one case the plaintiff's solicitor accidentally accepted the wrong amount of damages. In another, the insurers were forced to pay £500 after they accidentally sent a letter stating their offer to be 10 times as great as it in fact was. Another case was struck out as a result of a diary error. It was later reinstated. In another case judgment in default was granted, which was also subsequently set aside.

In one case, for no clear reason, a medical expert never cashed his payment cheque. In another, the plaintiff's solicitor accidentally requested two payments on account for the same disbursement. When he noticed, he quickly brought the matter to the attention of the Legal Aid Board. In another case the Legal Aid Board sent a disbursement cheque twice without being prompted!

Unprofessional Conduct

In addition to cases of administrative error and in addition to the questionable claims set out above in relation to low value claims, some files contained
evidence of unprofessional practice. Some may have been instances of carelessness or oversight, but some appeared systematic and necessitated some degree of specific intention.

A prime example was provided by three firms who routinely filled in the CLA26 form (*No Claim on the Legal Aid Fund*) with green form expenses noted less of V.A.T., resulting in reduced amounts being recovered by the Legal Aid Board.

One firm routinely charged for routine letters and preparation of routine letters separately.

In one case work was done under green form after an application for a legal aid certificate had been turned down. The case was eventually withdrawn as costs began to mount and the client became fearful of the potential costs of the case.

In another case, disbursements incurred by a private client were charged to the Legal Aid Fund under another claimant's legal aid certificate.

On a few occasions there was evidence that solicitors had over-zealously sought to have their experts amend their reports so as to omit findings prejudicial to their client. In one case, for example a solicitor sought to convince an expert to change the prognosis contained in a medical report. When the expert refused, he asked for the prognosis section to be removed from the report altogether! In another case a solicitor asked the doctor to “delete prejudicial areas” of a report. Although in this latter instance it was to tone the report down, as there was some suspicion that the plaintiff was exaggerating his injuries!

Finally, costs claimed from the defendants in one case seemed to have been something close to a pure fiction.

*Costs Inflation*

It was extremely common practice for solicitors to send a number of letters to their client on the same day, each dealing with a different matter. In this way, multiple letters could be charged for.

Similarly, in one case 15 identical letters were run off a word processor to 15 witnesses to an accident requesting their consent to the release of their police interview transcripts. 15 letters were charged for at the standard rate.

One client complained bitterly about the fact that she found identical paragraphs in a number of the letters she received. She clearly didn't appreciate the beauty of the administrative savings, and there was certainly no loss of effective meaning.
Another firm had all of their bills drawn up by professional costs draftsmen. They saw the administrative savings of not having to deal with billing and the greater leverage of a formalised bill to outweigh the cost of the practise.

**Medical Experts**

It was, of course, common to find that firms maintained lists of experts. It was also common for the reports of those experts to be reviewed using specially designed forms, for the purposes of maintaining and expanding the details contained on lists.

One firm, which did both plaintiff and defendant work, held a list which unambiguously defined a number of experts as either plaintiff or defendant favouring. One name was followed by the stark warning, "Do not use this expert if defendant". There were enough untarnished names on the list to suggest that in most cases there should not be too much difficulty in finding mutually acceptable experts under any future reforms in this area.

**Contributions**

A number of cases were observed where clients either turned down a legal aid certificate or withdrew a case because they were unable to afford the contributions.

On more than one occasion contributions comfortably exceeded the cost of the case. This was possible because contributions are related to income and paid monthly, irrespective of the actual costs incurred within a case.

Interestingly, in one case a conditional fee arrangement was also turned down on the basis that the insurance and disbursement costs were too great.

**Ultimate Conclusion of Cases**

It was extremely common for negotiations over costs to linger on well past any settlement date, and often this resulted in delay to the client's receipt of a damages cheque. The work involved in conducting these negotiations was sometimes quite substantial, involving dozens of letters and many months.

Sometimes, the work of the solicitor does not even finish with an agreement on costs. Clients may contact the solicitor on further occasions and raise questions in relation to their case. The medical report may be wanted in relation to another matter. Such things can happen years after the case has been closed. It is all additional work for the solicitor for which there will invariably be no remuneration.
6. Findings from the Interviews

Introduction

The observations in this section are based on the findings of 15 in depth interviews conducted after a provisional analysis of the quantitative data sets had been completed. The interviews were semi-structured, allowing for in depth coverage of matters that arose as well as broad indications as to the prevalence of the views expressed. A copy of the basic questionnaire is set out at Appendix 1. It should be noted, however, that the questions evolved during the course of the interview programme, especially after the Lord Chancellor’s announcement of changes to the scope of legal aid in relation to personal injury claims. As a consequence, not all topics were covered with all respondents.

As was stated in the introduction, the respondent solicitors were drawn from the firms visited for the purposes of high detail data collection. The firms ranged in size from 3 to 33 partners. The mean number of partners was 9. The firms were spread throughout the country. For the purposes of this chapter the firms from which the respondents were drawn have been described and coded using the prefixes S (Southern geographical location), O (Other geographical location), U (Urban location) and R (Rural location).

The amount of personal injury work undertaken by the individual solicitor respondents ranged from 5% (OU1) to 100% (OU2) of fee-earning time, averaging around 50%. However, the distribution of percentages was not even. 7 of the respondents undertook only personal injury work. As regards firms, the range was 10% (OU7) to 100% (OU2), although just one firm was exclusively concerned with personal injury work.

None of the respondents had less than 2 years experience of conducting personal injury litigation. A number had over a dozen years experience (e.g. SR1, OU3).

Of the personal injury work undertaken by the respondents’ firms, it appeared that around one half was legally aided, though the proportions of differently funded work varied dramatically between firms.

As might be expected, the 3 firms that undertook trade union work (SR1, OU4, OU5) did considerably less legal aid work (as a proportion of total volume) than others. They also undertook proportionately less conditional fee work. 2 of the trade union firm respondents undertook mostly trade union work. The other (OU4) did not undertake any trade union cases. She worked in a separate legal aid department.

See, further, the Lord Chancellor’s speech at the 1997 Law Society Conference.
The amount of conditional fee work ranged from very little (4 firms) to around two-thirds. There seemed to be some polarisation in relation to conditional fee work. Generally speaking, either firms undertook very little or they undertook a great deal. There was, however, even before the Lord Chancellor's announcement, a general interest in developing conditional fee practice. Respondents from the firms undertaking very little conditional fee work often described their firms as having recently embarked upon a programme of expansion of such work. The average proportion of conditional fee work undertaken was just under one-quarter.

A couple of firms (e.g. OU5) reported that they undertook some legal expenses insurance cases. Only one (OR4), though, conducted defence work as well as plaintiff work, although a few of others had undertaken defence work in the past. The firm that still undertook defence work had a caseload evenly split between plaintiff and defence work.

As would be expected the main category of personal injury work within most firms was road cases, followed by work cases and tripping cases. The principal exceptions were the trade union firms, which undertook mostly work related cases. Interestingly, this was also true in respect of their non-union work. One respondent (SR1) explained that union officials or members would often recommend union firms to non-union colleagues or friends.

The Clients

The client base of the mainly legal aid firms was, understandably, skewed towards the poorer elements of the community, although only a few respondents reported that they almost exclusively served this section of the community (e.g. OU6). However, 6 respondents stated that their clients were “evenly” drawn from the community. There was no clear link between the size of a firm and the social make up of its client base.

Four respondents stated that their firms specifically targeted certain types of claimant. One (OU2) targeted claimants who had suffered very serious injuries (drawn from a fairly large geographical area), one (OU6) targeted high profile cases, one (SU2) targeted those who would be eligible for legal aid (on the basis that middle class people will already have family solicitors) and one (OR2) firm targeted specific local post codes.

When asked about the numbers of claims involving minors and pensioners, there was a stark contrast between firms doing mostly work cases and firms doing mostly road cases. Clearly there are few minors or pensioners in the workplace, so specialism in work cases tends to exclude such claimants. It would seem that minors are generally associated with road traffic accidents (where they are passengers) and pensioners are generally associated with tripping accidents.
"Most OAPs tend to be trippers," observed one respondent. The three respondents (e.g. OU6) who stated that pensioners made up around one-third of their client base also did a large number of tripping cases.

When asked how potential claimants found out about their firms the various routes set out in figure 6.1 were identified. Most firms seemed to keep details of how clients had arrived at selecting them.

**Table 6.1**

*Referral Routes Utilised in Personal Injury Cases*

<table>
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<th>Referral Route</th>
<th>Number of References</th>
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<tr>
<td>Telephone directories</td>
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<tr>
<td>Advertisements in local press</td>
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<td>Hospital leaflets</td>
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</tr>
<tr>
<td>Charities</td>
<td>4</td>
</tr>
<tr>
<td>Trade union links</td>
<td>3</td>
</tr>
<tr>
<td>CABx</td>
<td>3</td>
</tr>
<tr>
<td>Repeat clients</td>
<td>3</td>
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<tr>
<td>Radio advertisements</td>
<td>2</td>
</tr>
<tr>
<td>Accident Line</td>
<td>2</td>
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<td>Police referrals</td>
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<tr>
<td>Legal Aid franchise</td>
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<td>Coroner referrals</td>
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</tbody>
</table>

Most respondents were keen to stress that the majority of their clients were obtained through “word of mouth”. Most also seemed keen to associate this with the idea that they provided a better than average service. There were surprisingly few references to repeat clients and, even more surprisingly, one of the few respondents who made reference to repeat clients suggested that such clients had generally suffered previous accidents, rather than used other legal services offered by the firm (SU2). This was not the story told by the others.

Although quite a number of respondents referred to the fact that they placed posters and/or leaflets and/or cards at local hospitals, it appeared that few were confident this was an efficient use of resources. Most respondents felt that only a small number of clients were obtained through this form of advertising. Also, as hospitals were “now far more commercially astute” and liable to impose significant charges in return for access, “the costs are now substantial compared to other forms of advertising" (SR1).

The more specialist firms (e.g. OU2, OR3) were more likely to have developed sophisticated referral routes utilising, for example, professionals likely to come into contact with target accident victims or charities offering services to them.
One respondent mentioned that for some clients the fact the firm had a Legal Aid franchise was important, although he went on to state that most clients had no idea what a legal aid franchise was or were indifferent to it.

Advertisements in the local press were generally regarded as being fairly effective, but the most effective form of advertising, albeit the most expensive, seemed to be radio advertising, which received glowing testimony from the two firms (SR1, OR4) which utilised it (both of whom did so in association with other local firms).

It is perhaps of little surprise that the more aggressive forms of advertising tended to be used by the seemingly more successful firms.

Although it was not mentioned in this context, as clients utilising the service are already regarded as being clients of the firm, a significant minority of firms operated free periodic legal surgeries to attract clients through their doors.

Perhaps the most surprising omission from the list of referral routes in table 1 is geographical location, despite the fact that a good proportion of the firms were positioned on the high street.

Injuries

Around a third of the respondents said that they dealt with the full range of injuries, but only a few firms seemed to have a significant number of serious injury cases within their ordinary caseload (e.g. OU2). Indeed, all of the respondents accepted that the bulk of the cases they dealt with were at the minor end of the scale. Interestingly, most characterised this as involving claims of less than £3,000 value. However, the firms doing the most serious cases characterised it as involving claims of less than £10,000 value. What respondents regarded as constituting serious injuries seemed to be relative to what they experienced as typical severity.

The Defendants

Respondents reported that defendants were rarely represented other than through insurance companies, the only exceptions being some public authorities and self insured companies. The possibility of non-institutional defendants was universally regarded as extremely remote. Even were the opportunity to claim against an individual personally to arise the general view seemed to be that most people would not be worth suing. "I wouldn't sue a man of straw," was a typical comment.
A few respondents reported that some institutional defendants would sometimes make use of professional loss adjusters. Most respondents, however, said that they rarely or never encountered loss adjusters. Those that did have more regular dealings with them seemed to be those with practices weighted towards work or tripping cases. It seems it is not uncommon for “certain factories to retain liability adjusters as they are self-insured” (SR1). Further, a couple of respondents reported that some local authorities use them in tripping cases, “being under the impression they are cheaper” (OR4).

As regards insurance companies using loss adjusters, the general picture was that they do not. However, one respondent (OR3) remarked that “some [smaller] insurance companies use them.” Another (SU1), though, asserted that smaller insurance companies tended to do such work themselves. The two respondents were from firms which are many hundreds of miles apart, suggesting that regional differences may exist within all the professions concerned with the claims process.

**Prediction**

None of the respondents utilised *formal* costs, duration or outcome prediction systems in relation to new cases presented to them, even when funding was likely to be on a conditional fee basis. A number of respondents did, though, make use of standard forms to aid their predictions, and one (SR1) even went so far as to describe his firm’s system as being “semi-formal”.

The overwhelming consensus was that such predictions are “always ultimately subjective” and “mostly from the gut”. This did not, however, stand in the way of a universal practice to make such predictions at the outset of cases, often because of an absolute requirement to do so (e.g. by the legal aid application process), but generally for the benefit of the client in any event.

Where any volume of conditional fee work was undertaken there tended to be a panel of senior solicitors or a designated partner who would vet cases as they presented and decide whether and on what basis they could be undertaken. Any standard forms that were used tended to be designed to summarise cases for this purpose.

The basic problem preventing objective prediction formulae being used was the perceived subtlety of the cases themselves, although it was rare for respondents to suggest that “every single case [they] see is completely different” (OU4).79 Thus, despite there being certain specific case factors that seemed to be looked

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79 This did not, though, detract from respondents’ general attitude that “no case is run of the mill, as no case is run of the mill for the client.”
to in forming prediction, they were not regarded as sufficient to be relied upon. It was always necessary to look at "the whole picture" (SU2).

Despite these difficulties, however, respondents generally seemed confident of their ability to accurately assess likely costs, duration and outcome. One even went so far as claiming that on most occasions he could do so "straight away" (OR3).

Despite prediction formulae not being used, there were some case factors that were mentioned as being important to the prediction of outcome, costs and duration. Interestingly, costs and duration were generally thought to "go together", and often damages were also regarded as being closely related. Given the findings set out in earlier chapters, this would be expected.

Predicting Costs

Figure 6.2 sets out those factors which respondents expressly referred to as being important to the prediction of costs. It is interesting that the most common reference was to the likelihood of liability being disputed. Although this must have some effect upon the work done within a case, it is not itself a true and specific case factor. It is, rather, something itself indicated by specific factors.

Figure 6.2
Factors Identified as Relevant to the Prediction of Case Costs

<table>
<thead>
<tr>
<th>Case Factor</th>
<th>Number of References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Likelihood of liability being disputed</td>
<td>8</td>
</tr>
<tr>
<td>Extent of injuries</td>
<td>6</td>
</tr>
<tr>
<td>Type of injuries</td>
<td>5</td>
</tr>
<tr>
<td>Case category (e.g. road traffic)</td>
<td>5</td>
</tr>
<tr>
<td>Likelihood of settlement being reached</td>
<td>4</td>
</tr>
<tr>
<td>Type of expert reports necessary</td>
<td>2</td>
</tr>
<tr>
<td>Clarity of prognosis</td>
<td>1</td>
</tr>
<tr>
<td>Level of likely damages</td>
<td>1</td>
</tr>
</tbody>
</table>

The nature and extent of injuries suffered by a claimant was the most common specific and identifiable factor referred to, although a number of these references were made only after respondents had been pressed for specific factors which would lead them to conclude that liability was likely to be disputed or that a settlement was likely to be reached.

It is perhaps not surprising, especially given the findings of previous chapters, that the nature and extent of injuries suffered by a claimant would be regarded as directly affecting case costs, as, as has been noted in earlier chapters, the number and type of medical reports needed within a case will largely be
determined by these factors. On the other hand, it might be thought surprising that the nature and extent of injuries would be regarded as indirectly affecting case costs, through their effect on the likelihood of liability being disputed. This is, after all, what a number of the respondents ended up suggesting.

However, one possible explanation for this finding, as has also been noted in earlier chapters, is that institutional defendants in personal injury cases respond to cases not only on the basis of legal merits, but also on the basis of administrative pragmatism. In legally aided cases, where plaintiffs are afforded a high degree of costs protection and defendants are consequently vulnerable to significant costs even in those cases they successfully defend, it might make little sense to defend defendable cases if the result would be to incur costs of a similar order to likely damages. It is likely that low value claims, which tend to relate to minor injuries, are occasionally settled purely on administrative grounds. A number of respondents believed this to be the case. A few (e.g. OU6) even appeared to make use of this by taking forward less meritorious cases.

Directly related to this point, one respondent (SR1) stated that, especially in relation to small claims, "it is not uncommon for insurers to pay a lot more than a claim is worth."

It is curious, in the light of comments set out below in relation to the strategies adopted in personal injury cases, that no references were made to the costs' implications of the identity of the effective defendant.

**Predicting Duration**

In relation to case duration respondents again tended to refer to the likelihood of liability being denied and the nature and seriousness of injuries. One aspect of the link between costs and duration was neatly summarised by one respondent (OU5) who stated:

"The more serious the injury, the more experts, the more delay."

As indicated above, the same factors were generally mentioned in relation to duration as had been mentioned in relation to costs. However, one factor identified only within the context of duration was that of an ongoing related criminal case. This particularly affects road traffic cases.

A large majority of respondents stated that they reviewed any costs and duration estimates every 6 months and also that this was so however cases were funded. A couple of respondents, however, stated that in privately funded cases reviews would be more frequent. One of these respondents mentioned 3 months as being the alternative period.
One respondent also observed that additional reviews would be undertaken at every limited stage in legally aid cases. This must represent the general position in such cases.

Interestingly, only one respondent (SR1) claimed to use costs and duration estimates as part of the strategic management of their business (e.g. to regulate the intake of new work), although a number of others did say that it might be possible to do so with the individual case management information they maintained.

The general attitude of respondents to case intake management was summed up by one, who stated, "It's a question of taking what you can get" (OU3).

Predicting Outcome

In predicting the outcome of cases a largely different set of factors came into play. Although, again, the first concern was whether liability is likely to be disputed, respondents seemed to have causation and evidential matters more in mind.

One explanation for this difference could be that respondents may have been focusing on successful cases in relation to costs and duration, but perhaps focusing on the relatively rare unsuccessful cases in relation to outcome. It seemed that they were seeking to explain what can go wrong in the latter case, as opposed to what generally happens in the former.

When asked whether any categories of work allow for greater accuracy of prediction a number of respondents stated that the outcomes of road traffic cases are generally easy to predict, especially if the claimant is a passenger. At the other end of the scale medical negligence cases were singled out. As one respondent (OU6) put it:

"It's established - You can't establish liability until you have an expert medical opinion."

Specific case factors which were said to make liability difficult to assess included the number and identity of witnesses, discovery problems (especially in tripping cases), inspection problems (especially in work accidents), the day of the week and time of day of the accident (especially in road traffic cases). In respect of the last of these, the suggestion was that "the possibility of drinking" can arise in certain contexts (e.g. SU2, OU4).
Process

Respondents were asked about the proportion of claims which would see proceedings issued and the proportion which would go all the way to trial. In relation to the former, answers ranged from 20% through to 95%, the average being around 50%. The distribution of answers was fairly even between the two extremes. Only three respondents claimed to issue proceedings in more than 75% of cases and only one in over 90%. There was no obvious commonality between the three respondents who issued the most often. They were from firms of different sizes, with different levels of involvement in personal injury work and they had different case make-ups. This is consistent with Shapland et al’s finding that “the proportion of cases in which firms would issue ... [varied] enormously, with no clear pattern relating to area, to size of firm, or to the amount of personal injury work being undertaken.”

Curiously, the reported issue rates were sometimes quite different from observations made during the high detail data collection exercise. There seemed to be some tendency to exaggerate the more extreme positions, perhaps along with simple miscalculations as to the realities of practice.

Almost all respondents remarked that very few cases go to trial. Of those who put a figure on it, the great majority suggested that less than 1% of cases do so. Only two respondents gave a figure above 1%, including the respondent from the firm that specialised in the serious injury cases (OU2). Both estimated the figure at 10%, although this was qualified by the aforementioned solicitor as representing 25% of very serious cases, but less than 5% of less serious cases. It seems, therefore, that there may be a near polarity between firms’ issue rates. What is not so clear is whether this is a result of a greater tendency for very serious cases to go to trial or of a greater tendency for certain solicitors to take their cases to trial. Most likely, it is a combination of both. Clearly, both could feed each other.

Although most respondents reported very few trials, they did generally report that up to 10% of cases settle close to the trial day, some actually at the door of the court. A few respondents (e.g. OU3) reported door of court settlements as being a significant proportion of late settlers.

One respondent (SR1), though, commented that, although quite a few cases settle in the month running up to trial, it is rare for cases to settle at the door of the court. "If it settles, it will settle before the trial day," he said. The reasoning was that much of the expense of the trial has already been incurred by the time the door of the court is reached. There is therefore far less of an incentive to concede ground at that point.

80 Supra, n.55, p.20
"If you are at court, everyone has spent the money. They are just as happy to fight it."

Where insurance companies are involved in the litigation process, it seems clear that standard practice is for the insurance companies themselves to deal with all matters up to the point of proceedings being issued. At that point they will generally instruct solicitors. However, a number of respondents reported that negotiations would sometimes continue directly with insurance companies even after this point, with only the formalities being dealt with by solicitors.

**Use of Counsel**

There was no clear pattern to the use of counsel within personal injury cases. A number of respondents seemed reluctant to instruct counsel unless they absolutely had to, either because of a requirement under a legal aid certificate or because of a need to settle complicated proceedings. It certainly seemed to be the case that counsel was instructed more frequently in legally aided cases.

Settling proceedings was the most common occasion upon which respondents felt the use of counsel was appropriate. A few respondents said they would always instruct counsel to settle pleadings.

The serious injury specialist respondent (OU2) offered a rule of thumb to the effect that counsel would rarely be instructed in cases worth (in damages terms) less than £100,000, usually in cases worth between £100,000 and £500,000 and always in cases worth more than £500,000. Some solicitors might regard that as showing off!

**Experts**

There was a consensus that the average number of medical reports obtained in a case would be around one and a half. The number would be dictated by the nature and extent of injuries along with the certainty of prognosis. Minor injuries would rarely see more than one report, although sometimes a short follow up would be necessary to clarify the prognosis, especially if a significant period of time had elapsed between receiving the first medical report and settling the case. One respondent (OR4) suggested that the sensible course of action in minor injury cases was to wait quite a while before obtaining a medical report, as the prognosis is generally uncertain in the immediate aftermath of an accident, but usually quite clear after 10 months or so. He admitted that clients did not always appreciate this approach, but was adamant that it was a prudent and economical path.
Apart from requiring an update on prognosis, multiple medical reports can be necessary where the claimant suffers multiple injuries. Different specialists may need to be employed to advise on the nature of each of the different injuries.

Of course, more than one medical report will also be obtained in cases in which the defence wish to commission their own report. The experience of the respondents varied greatly on the question of how often defendants wished to follow this path. Some said it was rare, others that it was fairly common. However, it would certainly seem to occur in only a minority of cases, perhaps around a fifth. Not surprisingly, it was also more likely in serious cases and "suspicious" cases.

Although none had ever done so, a couple of respondents (e.g. SU2) accepted there might be occasions upon which it would be possible to settle very low value claims on the basis of a general practitioner's report or hospital records. However, the overwhelming response to any such suggestion was that it would be professionally negligent to do so. Most respondents were quick to point out that a solicitor must take all steps to determine what future problems might stem from any current injuries. In any event, as one respondent (SU2) stated, the defence would always want a medical report from a consultant to "authenticate" a claim. One respondent (OU6) did state that he had once settled a case on the basis of a medical report commissioned by the defence. With this one exception, there seemed no possible way around the need to obtain a medical report.

The cost of medical reports was generally put at between £200 and £300, although it was clear that the lower figure was reserved for run-of-the-mill orthopaedic reports. The greater the degree of specialism required of an expert, the greater the cost of a report. Senior consultants used in medical negligence cases might charge many times these amounts.\(^1\)

The most expensive expert reports were identified as non-medical reports. Employment consultants (£500-£1,000), accident reconstruction experts (£250-£1,500), forensic accountants (£500-£1,100), engineers (£200-£1,500), residual earnings consultants (£750-£1,100), detectives and architects (£750-£1,000) were all mentioned as potential sources of expert evidence. Once again, the fees charged would generally be linked to the relative complexity of the evidence to be produced.

**Delay**

Respondents were asked what case elements gave rise to the most delay within the claims process. The various responses are set out in figure 6.3. As can be

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\(^1\) Respondents sometimes observed that it can be difficult to find appropriate medical experts willing to work on the plaintiff's side of a case. If this were so, then one might expect costs to be greater, even in the absence of greater specialism, as a result of the small pool of experts.
seen, the most common response by far was the obtaining of medical reports. This provides an easy answer, as it is usually a discrete process with a clear and determinable delay associated with it.

Figure 6.3
Principal Causes of Delay in Personal Injury Cases

<table>
<thead>
<tr>
<th>Cause of Delay</th>
<th>No. of References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obtaining medical reports</td>
<td>8</td>
</tr>
<tr>
<td>Waiting for response from insurance companies</td>
<td>2</td>
</tr>
<tr>
<td>Waiting for response from other solicitors</td>
<td>2</td>
</tr>
<tr>
<td>Court approval of minor settlement</td>
<td>1</td>
</tr>
<tr>
<td>Waiting for response from client</td>
<td>1</td>
</tr>
<tr>
<td>Exchange of witness statements</td>
<td>1</td>
</tr>
<tr>
<td>Getting a hearing date</td>
<td>1</td>
</tr>
<tr>
<td>Volume of work</td>
<td>1</td>
</tr>
<tr>
<td>Tactics</td>
<td>1</td>
</tr>
</tbody>
</table>

Those respondents who referred to waiting for responses from other parties to the claims process seemed to be generally talking about a cumulative form of delay, although examples were offered of huge single delays in isolated “horror” cases.

It was interesting that the one respondent (OR4) who acted for both plaintiffs and defendants mentioned slowness of solicitors’ response as a cause of delay, but went on to declare that it was far worse a problem in relation to defence solicitors.

The same respondent also referred to 'volume of work'. He was making the point that, even with effective individual case management, if the volume of work a solicitor is undertaking exceeds a certain mark, then delay becomes inevitable:

"The busier you are, the more likely you are to fall foul of delay."

He went on to introduce an analogy of "spinning plates". The more plates you try to spin, the more fall crashing to the ground.

Related to these points, a number of respondents observed that the work they undertook could be dictated in quite a large part by the manner in which the other side approached a case. One respondent quantified the amount of work which was dictated solely by the other side's actions at around 50%. Within this would be included matters ranging from following up unanswered correspondence to dealing with strategic applications to the court.

When asked what was the most time-consuming element of personal injury work, a number of respondents immediately drew a distinction between cases in which proceedings were issued and cases in which they were not. In the former
case a number of respondents identified witness statements as being particularly
time consuming, reinforcing a view that they form part of the "leg work" (see
below). In cases which proceeded towards trial, the process of preparing for trial
was separated out as particularly time consuming.

There was quite a struggle in identifying individually time consuming activities in
non-issuing cases. Those activities that were mentioned were valuing the claim
and taking instructions from the client. The main impression, though, was of
there being a fair amount of disparate activity in these cases.

Strategy

Respondents were asked about the negotiating strategies they adopted in
personal injury cases. Slightly more respondents characterised their general
negotiating style as "aggressive" as opposed to "cordial". 4 respondents
regarded themselves very much as "hard bargainers". One (OR4), who said he
issued proceedings in 95% of cases, commented:

"I have found you have to be aggressive. You have got to keep marching
forwards and threaten them with everything ... I try to bludgeon them into
submission."

Another reflected that:

"The longer we are doing [personal injury work] the more we are hard
bargaining."

The other (OR1) stated that he would push the process forwards until and unless
liability was clearly admitted.

Underlying these attitudes seemed to be the belief that insurance companies are
bureaucratic bodies which take claims seriously only when they are given reason
to do so, and the best reason to give them is the push to trial.

There was good support for the view that insurance companies can be slow to
enter into meaningful communication in respect of personal injury claims.
Indeed, this seemed to be one of the most commonly stated reasons for issuing
proceedings - the need to wake up the defence and kick start the negotiation
process.

There was some suggestion that things have worsened in this respect over
recent years, with the restructuring and centralisation of the insurance industry.

However, the most aggressive respondents by no means presented themselves
as having the best understanding of the claims process. In fact their rigid
approach suggested very much the opposite and quite possibly exacerbated their situation.

The most sophisticated approach to the claims process seemed to be adopted by a small group of highly specialist solicitors. This group included two trade union solicitors (SR1, OU5), the solicitor from the firm that specialised in the serious injury cases (OU2) and a solicitor in a large urban firm with a high volume personal injury department (OU7). The guiding principle of these respondents was that "individual cases call for different strategies". Clients are different, cases are different, insurance companies are different and claims adjusters are different. All these differences have to be made to work rather than worked over. As one respondent (OU5) put it,

"Different insurers respond to different strategies. With one there may be no point in wasting time sending letters and trying to negotiate, with another we can say, 'This is the entirety of our evidence' and they will respond appropriately."

The same respondent worried, though, that a decreasing ability to build up relationships with individuals within the insurance industry, resulting from restructuring, would necessitate a more uniform and aggressive approach. He went on to say that, as a consequence of this, he had increased the number of cases in which proceedings were issued by around 50% over a few years.

He also suggested that bureaucratisation diminishes personal trust and thus "the days of waiting for insurers to act are over."

Interestingly, others of these respondents also mentioned recent changes in their issue rates. Not all the changes were in the same direction, though. One talked of a drop from 90% to 70%. The changes might, therefore, indicate a constant monitoring of defence responses and shifting of behaviour to meet perceived changes.

The principal impression these more sophisticated respondents gave was of being firm at all times and aggressive when pushed or, occasionally, when deemed prudent. However, they also suggested they were not pushed so often as might ordinarily be expected, given the general view of the insurance industry. There was a suggestion that their reputations preceded them into negotiations and acted as facilitators of general communication.

They also placed a great deal of emphasis on the twin dangers of predictability and unreasonableness. This was most forceful in the context of offers. One of them (SR1) put it this way:

"If you always accept offers, then they will often be lower than would have otherwise have been the case. If you always reject offers, you end up in
the same situation ... So, first you look and see what the case is worth and if the offer is at or above your valuation, then you may just accept it."

The respondent went on to say that a knowledge of the individuals on the other side of the negotiation process was vital in such circumstances, as it is may be important to distinguish between a reasonable and a misjudged defence offer.

Another (OU5) said:

"We deal with these things in the proper way. By the time of the first offer we will hopefully have valued the case ourselves. We always write to the client and say what the offer is and what we think of it. Sometimes we suggest they accept it, as it is a good one. Often we suggest they reject it, as we think we can get more. Sometimes they will accept anyway, because they are in debt. There are no rules."

In the light of these comments, it is interesting to note that a number of respondents stated they "always reject the first offer" (ÖR4). One respondent quickly explained the rationale:

"I nearly always advise the client to reject the first offer, [although] usually I advise accepting the second ... They offer low, I ask for more and we then split the difference."

A number of other respondents said much the same thing. There were only rare occasions upon which acceptance of a first offer was possible as "nearly all insurance companies will put in a low offer" (OU6).

The question that must be asked in the light of this is whether the more sophisticated respondents deal with a particular and different mix of insurance companies (and claims managers), or whether the strategic behaviour of this latter group of respondents has in some way conditioned a uniformity of response from the claims managers they deal with.

The fact that it was common for these respondents to characterise the negotiation process in the simple terms just mentioned, and regard it as something of a game with the roles of the players being cast, would certainly seem to give credence to the idea of a conditioning effect. It was certainly in marked contrast to the beliefs of the more sophisticated respondents, who were concerned to come to "know the people on the other side, treat them all individually" and develop professional relationships. Some insurers, as they pointed out, would always make low offers, some would make reasonable offers, some would act differently on different occasions.
Complexity

Medical negligence cases were universally regarded as (usually) being more complicated than other personal injury cases. This was principally attributed to the complexity of the expert evidence and particularly the question of causation.

Industrial disease cases were also mentioned as being more difficult than most. Again, evidential complexity was the prime concern, although the more intricate structure of the law in the context of workplace injuries was also cited.

Other specific types of work cases that were highlighted as problematic included those involving lifting accidents and those concerned with RSI. There could also be difficulty in inspecting the accident site in work cases. One respondent also spoke of the reluctance of witnesses to come forward where there was any insecurity of employment.

As Shapland et al. have noted, causation and liability can be complicated in work cases by the lack of an equivalent to the police accident report so often relied on in road cases. As they state,

"If the Health and Safety executive has investigated the accident, then, provided that a criminal prosecution is not ongoing, they will supply a factual statement by the inspector investigating, but will not supply copies of all reports until the close of pleadings in a civil case." (italics added)82

At the other end of the scale, road traffic cases were generally regarded as being relatively straightforward. More so than tripping cases, where discovery of council documentation, such as inspection and repair records, could give rise to difficulties.

Respondents were also asked what specific aspects of personal injury work were the most complicated. Determining special damages, especially loss of future earnings, was by far the most common reply.83 Many respondents routinely instructed counsel to draft special damages schedules, especially in high value cases. Expert evidence, including engineers' reports and other non-medical specialist reports as well as medical reports, were mentioned by a significant minority of respondents. A couple of respondents spoke generally of the difficulties of establishing liability and a couple also stated that assessing general damages was particularly complicated. As was noted above, there was a broad range of opinion on this last point. Those with less experience of personal injury

82 Supra, n.55, p.22
83 Interestingly, when it came to the question of whether general damages are ever difficult to assess the responses ranged from "never" through "not usually" to "always", although generally something close to the middle answer was forthcoming!
work seemed to be the least confident in assessing the level of general damages.

Delegation of Work

It seemed to be common practice for respondents to delegate what one of them described as “the legwork” to clerks, paralegals, legal executives or trainees. When asked what type of work this included the most common answer was the taking of witness statements. One respondent, however, qualified this by saying that if a statement might be “complex or pivotal to the case” then it would have to be taken by a solicitor. Other answers included document lists, valuations, special damages schedules (despite the observations set out above), and even the whole “investigation stage”.

Reassuringly, the respondent (SU1) who suggested that special damages schedules could be delegated observed that the person by whom the work was to be done “must have some experience.”

Cost

When asked to identify the most expensive element of personal injury cases respondents tended to refer to expert evidence in general and medical reports in particular. One respondent (OU6), though, qualified this by stating that in cases which saw issue counsel would become the most expensive element. The couple of respondents (SU2, OU2) who suggested that preparation for trial was the most expensive element clearly had in mind cases which ran through all their stages. When pushed to identify the most expensive item generally one (OU2) made reference to medical evidence.

As with many other matters, it was clear that the relative expenditure on particular case elements would vary as between cases of different categories and types. Medical cases provide an example of a category of case that would generally involve higher expenditure on medical evidence. Severe injury cases would as well, although, as has been seen above, severity of injury would also seem to drive up costs more generally, resulting in it having perhaps less of an effect on relative expenditure.

One respondent curiously identified witness statements as the most expensive element. There was nothing about his case load to suggest an anomalous mix of cases that might make this likely.

Just one of the respondents referred to profit costs as being the most expensive element of personal injury litigation, although this may be because respondents
were generally trying to think of particular things or activities, rather than broad types of expenditure.

Funding

Most respondents stated that the source of a case's funding had no bearing upon its conduct. However, there were three clear exceptions to this. One was the general acceptance that greater caution was necessary in (particularly the early stages of) conditional fee cases. There would be more reflection on the merits of conditional fee cases at their outset and of the need to incur disbursements throughout.

A few respondents also seemed to suggest there was greater reflection over the need for disbursements within privately funded cases, where one respondent (OR1), for example, alluded to "a responsibility to be much more careful as to costs." There was great reluctance, however, to accept any marked difference of "attitude" or "approach" in these types of cases. Indeed, most respondents categorically stated that they adopted "exactly the same approach" (OR4) to all cases.

The most radical exception was in the case of a trade union firm respondent (SR1) who admitted to taking a completely different approach to union work as a consequence of the vastly different fee and incentives structure within which he operated in such cases. These differences included the fact that the high volume union work could be taken away and granted to another firm at any point, if the union were to become unhappy with the service provided. Further, the union had adopted specific measures by which to determine whether the service provided was satisfactory. Also, the fees paid by the union in respect of lost cases were a fraction of inter-partes rates. As a consequence of all this the respondent said he took great care over screening union cases, adopted a minimal expenditure policy within them, adapted their goals towards meeting the targets set by the union and more carefully analysed the cost of the work for management purposes.

Respondents were asked whether they had observed any difference between the attitude of legally aided clients who were assessed as liable to pay contributions and those who were not. Although the two sets of clients were invariably regarded as being fairly similar and as taking a similar (unpredictable and varying) interest in the progress of their cases, most respondents did discern an additional "anxiety" as to the speed of a case's progress on the part of

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84 For example, the union would look at a firm's net costs, their costs to damages ratio, their success rate, the number of complaints made against their service and the number of cases turned away as failing the merits test.
85 One-third of profit costs plus disbursements.
86 The general view was that "the interest of the client relates much more to the nature of the injury than the level of contribution."
clients paying contributions. This was attributed to the fact that contributions are payable monthly and are independent of actual expenditure incurred within a case. So, it was often remarked that legally aided clients paying contributions were "under more pressure to stop paying contributions" (OR1), "more conscious of time" (OU4) or "more anxious to get the case wrapped up" (SU2). A couple of respondents said they would sometimes take this into account and accelerate the progress of cases.87

*Conditional Fees*

The situation in almost all of the firms visited seemed to be that clients entering into conditional fee agreements had to themselves pay for any disbursements incurred, a cost that respondents were quick to point out could be substantial and, as one respondent (OR3) suggested, made conditional fee agreements "most attractive to the chattering classes."

Just two respondents (e.g. OR4) mentioned the possibility of their own firm covering disbursement costs. However, one of them then suggested that only a small number of "very high" prospects of success cases would be regarded as appropriate for such treatment. It seemed that these cases were probably much the same as those that may have previously been done *on spec*. Passengers in car crashes provided the example of the sort of clients for whom such arrangements were appropriate. Other clients would have to pay their own way.

There was a split between respondents in relation to arrangements for using counsel in conditional fee cases. Some saw counsel as merely another disbursement, but most seemed to be developing arrangements with specific barristers who would also work on a conditional fee basis. A few said they "expected" counsel to do so. Most, however, seemed to be feeling their way in this area. There were indications, as Goriely and Butt have also observed, that some solicitors are finding it "difficult to find counsel willing to act on a conditional fee basis."88

When asked what types of cases were unsuitable for conditional fee arrangements a variety of answers were forthcoming. There was general agreement that medical cases, as a category, were unsuitable. The basic problem was identified as being predictability. Respondents stated that it was generally not possible to form a view as to the risks associated with medical cases prior to having completed a substantial amount of investigation work. A number of respondents pointed out that there were exceptions to this. "Concrete" medical negligence cases do exist! However, they were regarded as unusual.

87 Providing another example of a difference of approach!
A few respondents also noted that there were other types of case that the same could be said of. Industrial disease cases were specifically singled out. They went on to say, though, that cases requiring investigation could crop up within most categories of work:

"This is true of any case if things are not clear at the start" (OR3)

Other types of case that were mentioned as being unsuitable for conditional fee work were those valued at under £5,000 (as the risks could not be adequately spread without eating up more than the maximum permissible proportion of damages) and cases with high disbursements (as clients would be unable to afford the disbursements and firms would be unable to cover the costs themselves). 89

When asked to estimate the proportion of current legal aid cases that they would have agreed to undertake on a conditional fee basis had legal aid not been available, there was little variation from the figure of 80%. It should be noted though that only 4 respondents were asked this question.

It was quite clear from the interviews that only a few firms had any reliable means to determine how well targeted and profitable their conditional fee practice was.

When asked how they decided which claimants should be offered conditional fee arrangements, it seemed to be standard practice, as was noted above, for a senior solicitor or panel of senior solicitors within a firm to assess claims. As was also noted above, no firm utilised any objective formula to make or even aid these determinations. A great deal of time seemed to be spent making determinations and there were indications that some firms were starting to feel a need to develop more standardised and "objective" approaches.

As to the prospects of success firms required in relation to conditional fee work, just one firm (OU1) (a high volume low value firm) accepted cases with a better than 50% chance of success. The normal requirement was around 70%, although a number of respondents said that it had been lower when they entered the conditional fee market. Experience was only ever said to be pushing the figure higher, though it is not easy to see an economic rationale for a high and uniform prospect of success requirement.

One respondent (OR4), whose firm used an alternative insurance provider to ALP, spoke of the insurer requiring the prospects to be at least 85%. He further stated that he had asked for this condition to be put in writing, but the insurer had refused. However, a threat to withdraw cover if the requirement was not observed was left in place. This incident left the respondent concerned at the

89 This type of case would also seem to cover, once again, medical negligence and industrial disease cases.
lack of regulation of the insurance industry in relation to conditional fees. His
concerns were echoed by a couple of other respondents.

There was a clear worry that any replacement of legal aid with conditional fees
could result in a lower quality of service being provided to clients. As one
respondent (OR4) said,

“What legally aided people get now is the service we would like to give
everyone.”

The wish masked the observation, noted above, that private and conditional
fee cases proceeded on a more cautious basis. Of course, whether the lack
of this additional caution in legal aid cases is of general benefit, or even of
benefit to all legal aid clients, is far from being clear. Clearly, though, there is
a corollary that only the best cases are likely to be taken on by most solicitors
operating a conditional fee practice. As one respondent (SU2) put it

“What Cherry picking makes conditional fees possible.”

Other Fee Structures

Respondents were asked whether they had any experience of undertaking
contentious work for fixed fees. The universal response was that they had not.
Apart from one respondent (SU1) from a large urban practice, there had also
been no experience of bulk purchased legal services. That exception, however,
was in the context of commercial work.

Despite the lack of experience, however, a few respondents said that even in the
private sphere they were “open to the possibility” (OU6) of moves to greater
flexibility of charging arrangements in the future. As one respondent (OU7) put it:

“Anything that brings work through the door has got to be to our
advantage.”

Around half of the respondents said their firms had computerised case
management systems which allowed for some determination of time spent on
cases, the cost to the firm of those cases and the fees recovered. 4 firms were in
the process of acquiring or renewing case management systems, specifically for
the purpose of analysing case costs and risk in relation to foreseen
developments in public and private fee structures. One system was said to be
being introduced to ascertain the viability of differently structured legal aid block
contracts.

As was noted at the start of this chapter, the interviews were conducted either
side of the Lord Chancellor’s announcements in relation to conditional fees and
legal aid. Those interviewed after the announcement, irrespective of their views on the withdrawal of personal injury litigation from the legal aid scheme, seemed particularly unhappy at having been encouraged to prepare for one set of reforms only to find that those reforms were superseded by fresh proposals. Those respondents from firms undertaking little conditional fee work were, understandably, the seemingly most aggrieved.
CASE PROFILING / OUTCOME MEASURES SURVEY

PERSONAL INJURY

1.1 Solicitor account number: __________

1.2 Today's date: __ / __ / ___

1.3 Was today's audit: Pre-contract / Post-contract / Not applicable

1.4 Legal aid certificate number ________________________________

1.5 Was there a change of solicitor firm in this case (delete): Yes / No
   If yes, how many times? _____

1.6 What was the cause of the plaintiff's injuries? (tick one box only)
   1.6.1 Road traffic accident [ ]
       If RTA, was the plaintiff DRIVING [ ]
       PASSENGER [ ]
       PEDESTRIAN [ ]
   1.6.2 Accident at work [ ]
   1.6.3 Work related condition acquired over time [ ]
       (e.g. deafness, asbestosis, white-finger, etc.)
   1.6.4 Trip, fall or slip (Highway/Local Authority cases only) [ ]
   1.6.5 Product liability [ ]
   1.6.6 Occupier's liability [ ]
   1.6.7 Medical negligence [ ]
   1.6.8 Other (please specify) ________________________________ [ ]

1.7 Was the case: (tick one box only)
   1.7.1 a County Court case [ ]
   1.7.2 a High Court case [ ]
   1.7.3 transferred to the County Court [ ]
   1.7.4 transferred to the High Court [ ]
   1.7.5 none of the above (i.e. pre-issue) [ ]

Please enter here the time it takes you to complete this form: ______ minutes
PARTY DETAILS

2.1 Client date of birth:  
2.2 Client gender:  
2.3 Was the client represented by a next friend?  
2.4 At the time of the injury, was the plaintiff: (tick one box only)
2.4.1 employed  
2.4.2 self-employed  
2.4.3 unemployed  
2.4.4 student  
2.4.5 retired  
2.4.6 a minor  
2.4.7 homemaker  
2.5 Was the other party legally aided?  
2.6 Was the other party insured?  
2.7 Was the other party an individual (i.e. not a company &c.)?  

SERIOUSNESS OF INJURY

3.1 Can it be determined whether or not the plaintiff was hospitalised?  
3.2 If yes, was the plaintiff hospitalised?  
3.3 Also if yes, for how long was the plaintiff hospitalised?  
3.4 For how long was the plaintiff unable to work*?  
3.5 For how long was the plaintiff's working capacity reduced**?  
3.6 Was the injury/condition fatal in this case?  
3.7 From the information in the file, what is your subjective assessment of the seriousness of injury/condition sustained? (tick one box only)
3.7.1 Minor injury with full recovery within 1 year  
3.7.2 Minor injury with full recovery within 1 to 2 years  
3.7.3 Moderate injury with full recovery within 3 years  
3.7.4 Moderate injury with persistent problems  
3.7.5 Severe injury with moderate permanent disability  
3.7.6 Severe injury with severe permanent disability  
3.8 Will the plaintiff require future care?  

NATURE OF INJURY

4.1 Which of the following injuries/conditions did the plaintiff sustain? (tick all boxes which apply. If none apply, leave blank) 4.1.1 No details of injury  
4.1.2 Head injury  
4.1.3 Back or neck injury  
4.1.4 Disfigurement  
4.1.5 Loss of limb  
4.1.6 Loss of sight or hearing  
4.1.7 Congenital condition  
4.1.8 Terminal condition  
4.1.9 Psychiatric problems  
4.1.10 Paralysis  
4.1.11 P.V.S.  
4.2 Did the plaintiff have a pre-existing condition exacerbated by the accident?  

COMPLEXITY OF CASE

5.1 Was liability: (tick one box only) admitted  
5.2 If disputed, was there: (tick if appropriate)
5.2.1 a total denial of liability  
5.2.2 alleged contributory negligence  
5.3 Was causation disputed?  
5.4 Was quantum disputed?  
5.5 Was a police accident report obtained in this case?  
5.6 Number of experts used:  
5.7 Number of expert reports commissioned:  
5.8 Number of non-expert witnesses used by client:  
5.9 Potential number of defendants, if greater than 1  
<table>
<thead>
<tr>
<th>Section</th>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>Was the client awarded (or settle for) any damages?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>6.2</td>
<td>What was the gross award (before clawbacks, etc.)?</td>
<td>£</td>
</tr>
<tr>
<td>6.3</td>
<td>What was the amount within this representing general damages?</td>
<td>£</td>
</tr>
<tr>
<td>6.4</td>
<td>If no damages were obtained, did the plaintiff withdraw the case?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>6.5.1</td>
<td>client wished to discontinue / ceased instructing</td>
<td>[ ]</td>
</tr>
<tr>
<td>6.5.2</td>
<td>claim not sustainable</td>
<td>[ ]</td>
</tr>
<tr>
<td>6.5.3</td>
<td>client died</td>
<td>[ ]</td>
</tr>
<tr>
<td>6.5.4</td>
<td>legal aid revoked</td>
<td>[ ]</td>
</tr>
<tr>
<td>6.5.5</td>
<td>other</td>
<td>[ ]</td>
</tr>
<tr>
<td>7.1</td>
<td>Was the client assessed as liable for contributions?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>7.2</td>
<td>What was the cost of any green form work undertaken in the case?</td>
<td>£</td>
</tr>
<tr>
<td>7.3</td>
<td>What was the total profit costs (excl. green form work)?</td>
<td>£</td>
</tr>
<tr>
<td>7.4</td>
<td>What was the total disbursements (excl. green form work)?</td>
<td>£</td>
</tr>
<tr>
<td>7.5</td>
<td>What was the total counsel fees (excl. green form work)?</td>
<td>£</td>
</tr>
<tr>
<td>7.6</td>
<td>How many counsel were instructed by the client's solicitor?</td>
<td></td>
</tr>
<tr>
<td>7.7</td>
<td>Was the client awarded (or did the settlement include) costs</td>
<td>Yes / No</td>
</tr>
<tr>
<td>7.8</td>
<td>If yes, were all costs recovered?</td>
<td></td>
</tr>
<tr>
<td>8.1</td>
<td>What were the dates on which the following steps occurred or commenced?</td>
<td></td>
</tr>
<tr>
<td>8.1.0</td>
<td>Date of accident</td>
<td></td>
</tr>
<tr>
<td>8.1.1</td>
<td>First instruction of solicitor by client</td>
<td></td>
</tr>
<tr>
<td>8.1.2</td>
<td>First instruction to proceed (if different to above)</td>
<td></td>
</tr>
<tr>
<td>8.1.3</td>
<td>First medical report received</td>
<td></td>
</tr>
<tr>
<td>8.1.4</td>
<td>Counsel's first opinion received</td>
<td></td>
</tr>
<tr>
<td>8.1.5</td>
<td>Counsel's last (if different) opinion received</td>
<td></td>
</tr>
<tr>
<td>8.1.6</td>
<td>Prognosis settled</td>
<td></td>
</tr>
<tr>
<td>8.1.6.B</td>
<td>Notification of case to defence</td>
<td></td>
</tr>
<tr>
<td>8.1.7</td>
<td>Negotiations commenced</td>
<td></td>
</tr>
<tr>
<td>8.1.8</td>
<td>First offer from other party</td>
<td></td>
</tr>
<tr>
<td>8.1.9</td>
<td>Proceedings issued</td>
<td></td>
</tr>
<tr>
<td>8.1.10</td>
<td>Service</td>
<td></td>
</tr>
<tr>
<td>8.1.11</td>
<td>Close of pleadings</td>
<td></td>
</tr>
<tr>
<td>(6.6)</td>
<td>If the case was settled, what was the date of settlement?</td>
<td></td>
</tr>
<tr>
<td>8.1.12</td>
<td>Set down for trial</td>
<td></td>
</tr>
<tr>
<td>8.1.13</td>
<td>First interlocutory hearing</td>
<td></td>
</tr>
<tr>
<td>8.1.14</td>
<td>Trial</td>
<td></td>
</tr>
<tr>
<td>8.1.15</td>
<td>Verdict</td>
<td></td>
</tr>
<tr>
<td>8.1.16</td>
<td>Appeal hearing</td>
<td></td>
</tr>
<tr>
<td>8.1.17</td>
<td>Last work on the case (excl. bill preparation)</td>
<td></td>
</tr>
<tr>
<td>8.1.18</td>
<td>Bulk of money paid to plaintiff</td>
<td></td>
</tr>
<tr>
<td>8.2</td>
<td>How many offers were made by the other side?</td>
<td>£</td>
</tr>
<tr>
<td>8.3</td>
<td>What was the amount of the first offer?</td>
<td>£</td>
</tr>
<tr>
<td>8.3</td>
<td>Did the client refuse any offer against the solicitor's advice?</td>
<td>Yes / No</td>
</tr>
<tr>
<td>8.4</td>
<td>What was the date of the last payments into court</td>
<td></td>
</tr>
<tr>
<td>8.5</td>
<td>What was the amount of the last payment into court</td>
<td>£</td>
</tr>
</tbody>
</table>
CASE PROFILING INTERVIEW SCHEDULE:
PERSONAL INJURY

Reminder that all information will be treated as confidential. No firm or party details will be referred to in any reports. No firm or party details will be divulged within the Legal Aid Board. All information will be stored in an anonymous format.

1. **General**
   a) How many partners are there in the firm? How many fee-earners
   b) How many fee earners undertake personal injury cases?
   c) What proportion of the firm’s gross fee income is made up of personal injury work?
   d) What proportion of your fee earning time is spent working on personal injury cases?
   e) How many years experience of such work (PI) do you have?
   f) Have you always undertaken it (PI)?
   g) What proportion of personal injury cases undertaken by the firm are legally aided, privately funded or conditional fee cases?
   h) Could you estimate the proportion of personal injury cases undertaken by the firm which fall within these categories? *(show card)*
   RTA
   Work accident
   Work related condition acquired over time
   Trip, slip or fall (public)
   Occupier’s liability
   Medical negligence
   Other
   i) Do you represent both plaintiffs and defendants in PI cases?

2. **Prediction**
   a) Is it standard practice for you to estimate the likely costs and duration of cases at their outset?
   **If yes,** do you have a formal system to do this?
   **Also if yes,** what factors do you look to in order to estimate the likely costs of a case?
   **Also if yes,** what factors do you look to in order to estimate the likely duration of a case?
   b) Do you then regularly review your estimates?
   **If yes,** at what point in a case can your estimates be relied on?
   c) Are there any broad categories of case which allow greater accuracy of prediction?
If yes, why do you think that is?

d) **If the firm undertakes conditional fee work,** Do you adopt the same approach to estimates in differently funded types of cases. For example, do you need to adopt a more rigorous approach in conditional fee cases because of the greater risk undertaken by the firm?

e) To what extent are estimates of costs and case durations necessary to the strategic management of your business?

f) How often do you provide your client with such estimates? *Then,* is this the same in cases funded in different ways?

**Also, if the firm undertakes D work,** do institutional defendants demand more predictive information?

g) How often and in what circumstances is liability difficult to assess?

h) Are general damages ever difficult to assess? *If yes,* to what extent are you able to provide clients with an estimate?

*From here, Plaintiff cases only unless otherwise stated.*

3. **Parties**

a) Would you say your clients are weighted towards any particular social grouping (or would you say they represent a true cross-section of society)?

b) How do clients tend to find out about your firm?

c) Do you try and target any particular type of client? *(advertising)* *If yes,* how?

*If yes,* do you do this because you prefer certain types of case?

**In any event,** Do you think it is possible to effectively target clients in order to, say, allow for specific specialisms to develop?

d) What proportion of your clients are minors

pensioners

unemployed

e) What range of injuries are involved in the cases you undertake?

f) Are the bulk of injuries you deal on the minor end of the scale (i.e. with full recovery within 2 years)?

g) How often are defendants represented other than through an insurance company?

h) How often do you deal with insurance companies directly?

i) How often do you deal with professional loss adjusters?
4. *Process and Strategy*

a) What proportion of personal injury cases see proceedings issued / reach trial?

b) How would you describe the negotiating style you adopt in personal injury cases?

c) Do you have a particular case strategy you adhere to?

d) Do you adopt the same style / strategy in all cases?

e) In what circumstances do you reject offers from the other side?

e) How often do you instruct counsel in personal injury cases (other than as advocates)?

Then, in what circumstances?

f) Are there any elements of the work you do that do not require legal training and specialism?

g) To what extent are trainees / paralegals and administrative personnel involved in the claims process?

f) In our provisional analysis of the data we collected from files, we noticed that work within cases tends to clustered. To what extent would you say clustering is a consequence of the structure of the claims process (initial instructions / receipt of medical report / issue of proceedings, etc.) and to what extent is it a consequence of case management practices?

g) What specific case elements give rise to the most delay?

h) Do you think that it would be possible to speed up the claims process by limiting the time between clusters?

i) Within individual cases, to what extent is the work that you do determined by the way that the other side conduct the case?

j) It is a common criticism that the claims process is too lengthy in most cases. Do you agree with that?

5. *Fee Structures*

a) Do you find that you need to approach cases which are funded in different ways in a different manner?

b) How do you cope with the risk of cases failing in conditional fee cases?

c) Do you feel you have a good idea of the risks associated with different categories of cases?

d) Are there any types of case which you consider inappropriate for conditional fees?

If yes, which and why?

e) Is a particular case volume necessary in order to be able to hazard the conditional fee market?

If yes, details
f) Are there any means through which you are able to limit the level of risk the firm is open to?
g) Does the form (or even level) of work differ in conditional fee cases?
h) To what extent does the level of client involvement in a case vary depending upon the fee structure in operation?
i) Do legally aided clients who are making contributions behave any differently from others?

6. Complexity and Duration

a) Are there any categories of case which you regard as more complicated than others?
   If yes, which and why (factual or legal complexity)?

b) Generally speaking, what is the most complicated aspect of personal injury work?

c) What aspect of personal injury work is the most time consuming?
   Then, is this different as between case categories?

7. Cost

a) What are the most expensive elements of personal injury cases?
   Then, are these different as between case categories?

b) How many medical reports are obtained in an average personal injury case?

c) Why would more than one medical report be obtained?

d) Do you ever settle cases without having first obtained a medical report?
   If no, do you consider that it is really necessary to obtain a medical report in every case? If yes (to the suppl. question), what about minor injuries where the prognosis is clear and set out in hospital and GP records?

e) How much do medical reports cost on average?

f) What other types of expert reports do you obtain in personal injury cases?

If any, how much do they cost and when do you do so?

h) To what extent do you keep clients appraised of the costs that are being run up in personal injury cases?
   Then, does this vary as between differently funded cases?

i) Do legally aided clients who are paying contributions behave differently in their relations with you, or vice versa?
   If yes, why do you think this is?
8. **Contracting**

a) Do you have any experience of working for fixed fees in contentious cases?  
   If yes, what are the characteristics of that type of work which allow you to quote a fixed fee?

b) **(If firm undertakes conditional fee cases)** We have also talked a bit about the way you work in conditional fee cases. They seem to work because you are able to spread costs risks evenly between a number of cases. Do you have any experience of bulk purchased legal services, which often work in the same way?  
   If yes, explore  
   If no, do you feel you would be able to assess the spread of risk sufficiently to enter into such arrangements in the future - for example in legal aid cases?

c) Do you have case management systems in place which allow you to analyse the costs of cases?

d) What would be the principal benefits to you of working under block contracts?  
   Then, what would be your main concerns?

e) Have you considered how you might change the way you manage cases in order to best utilise block contracting arrangements?

f) Are there any categories of case which you would regard as particularly suitable for block contracting arrangements?

g) Conversely, are there any which would be particularly unsuitable?