

Change in the Liability Claims Environment

Mike Noonan – Head of Strategic Claims
Management - 12th May 2009



- Legal costs – radical reform?
- EL claims trends – what's moving, what's shaking?
- Criminal sanctions
- Claims inflation stocktake
- Motor claims process reform
- Horizon scanning
- Claims tourism
- Questions and answers

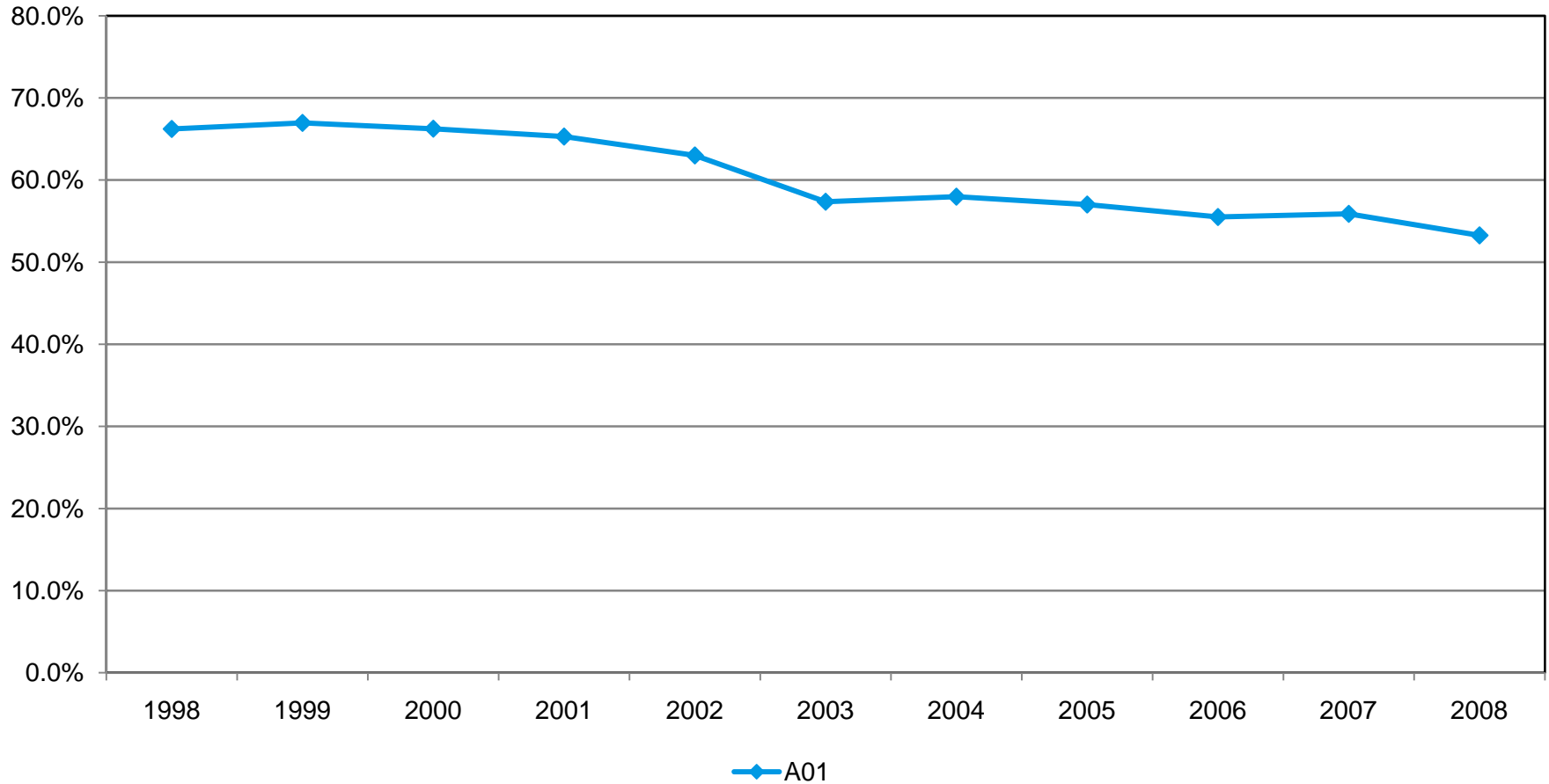
Costs zzz...

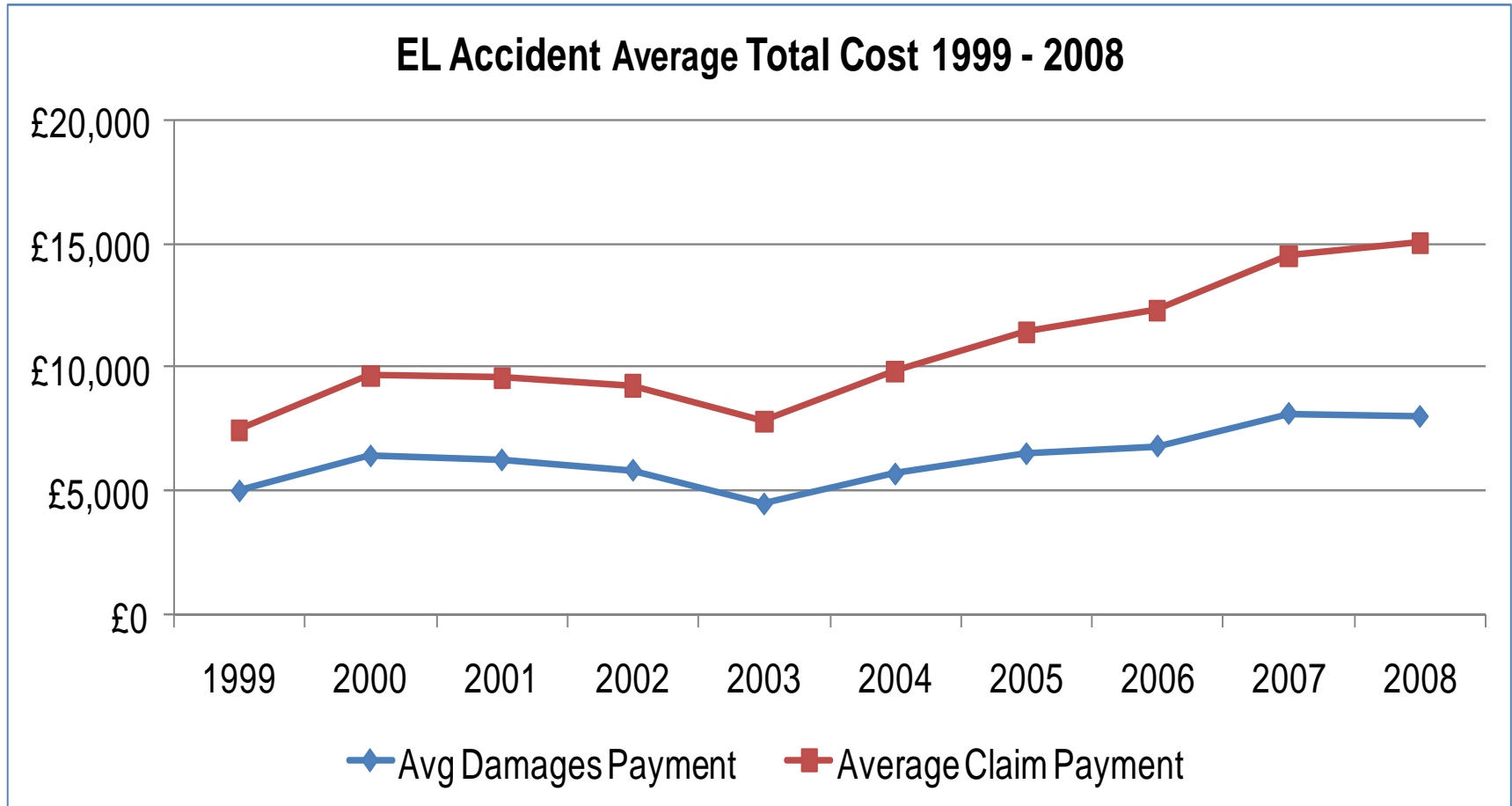


The rising share of legal costs...



EL Accident Damages as Total of Paid

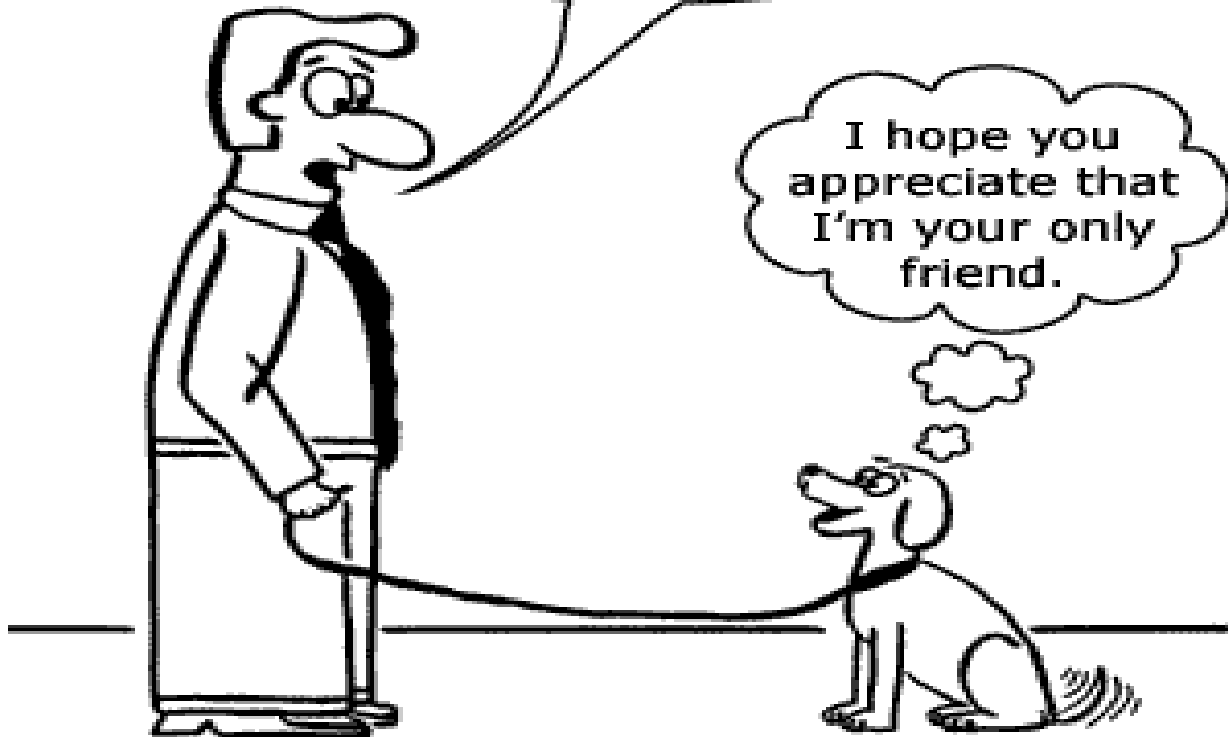






I hope you appreciate that each "walk" costs \$175 of my billable time.

I hope you appreciate that I'm your only friend.



Master of Rolls initiative – Sir Anthony Clarke

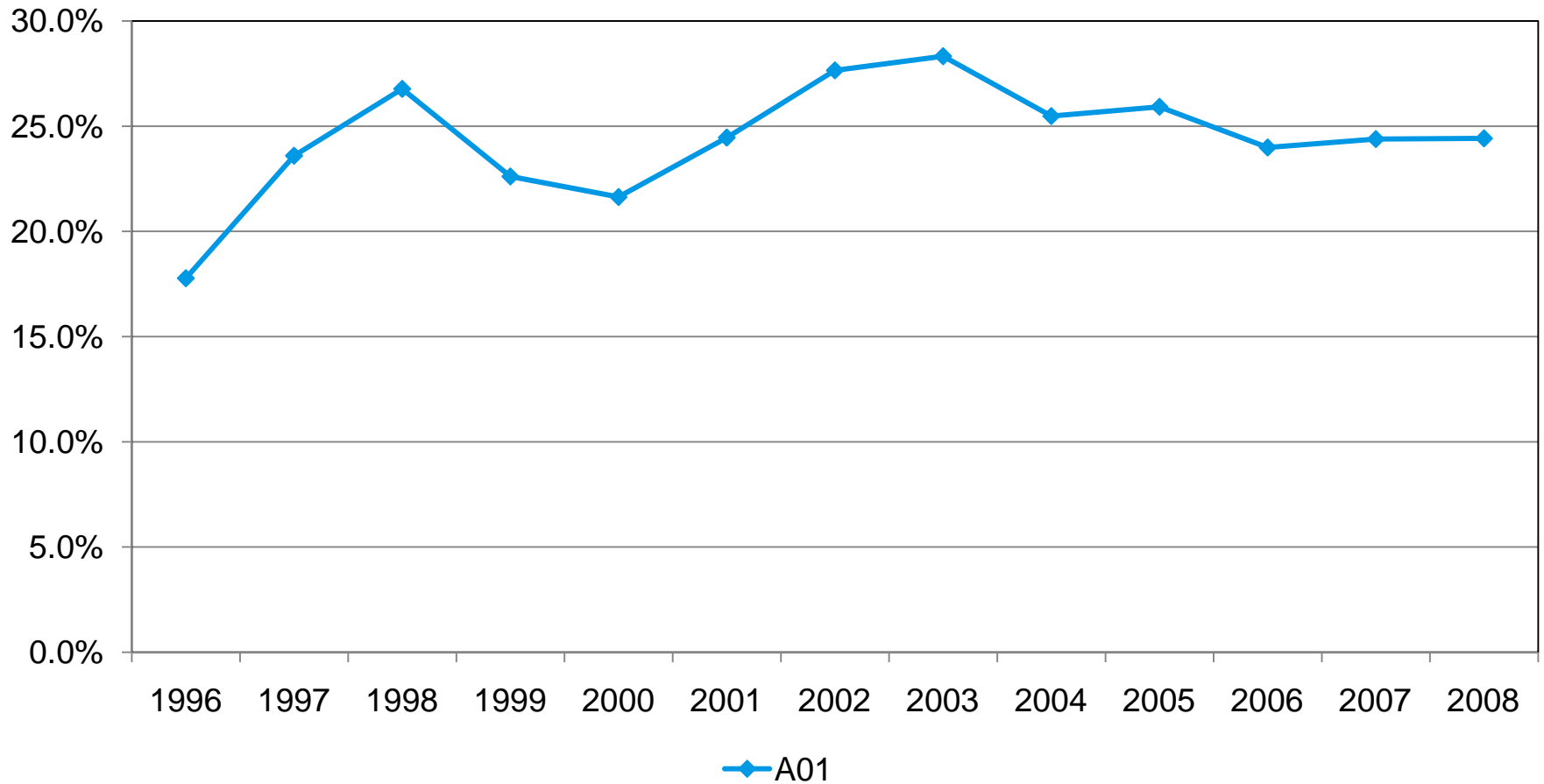
- Lord Justice Jackson enquiry - England and Wales costs system – big thoughts?
- Consultation paper published Friday 8th May
- Radical solutions?
- Noonan extemporises...

- Defence rates
- Occupational health

Defences rates – EL accident



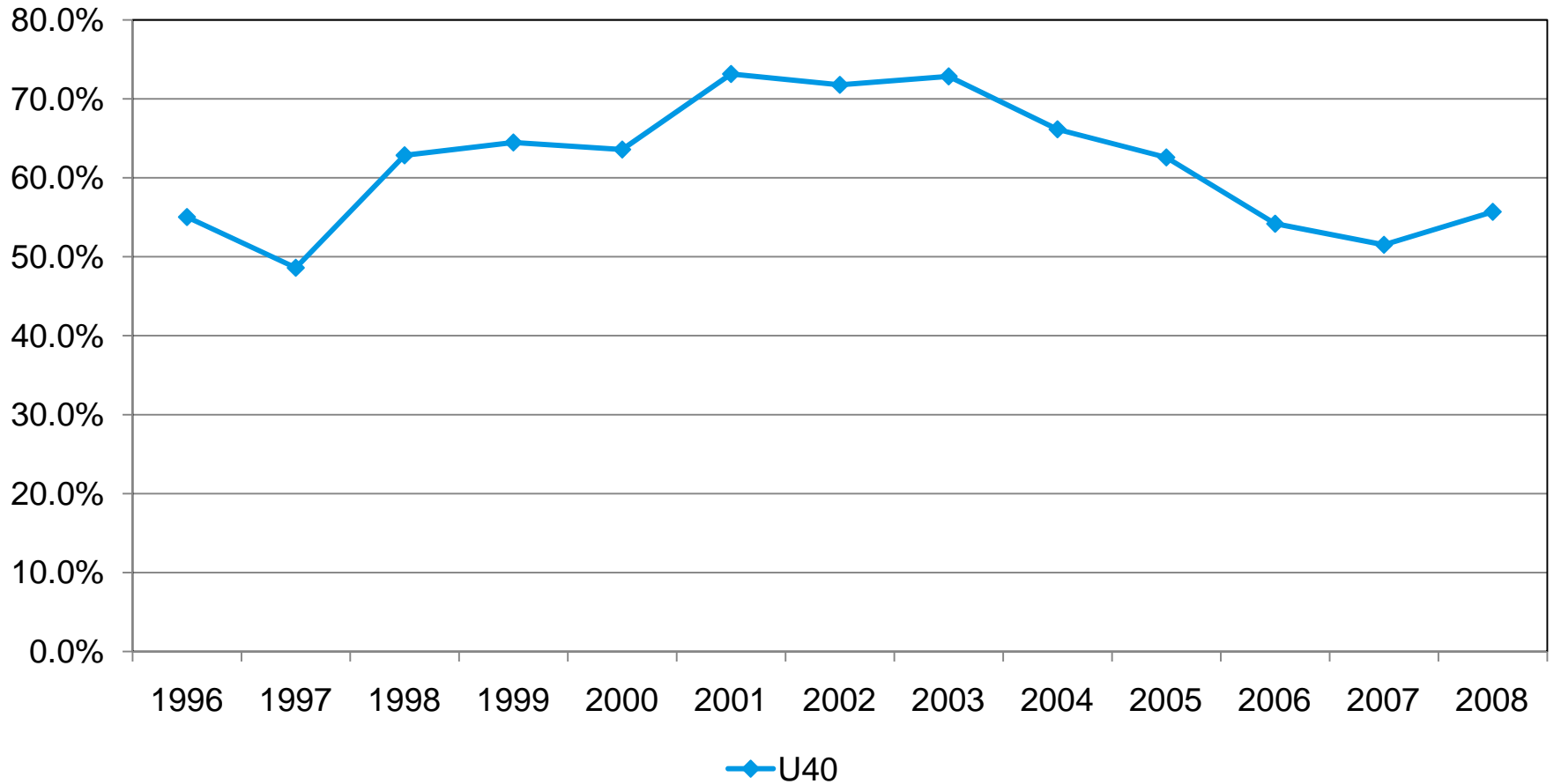
EL Accident - % No Damages Paid



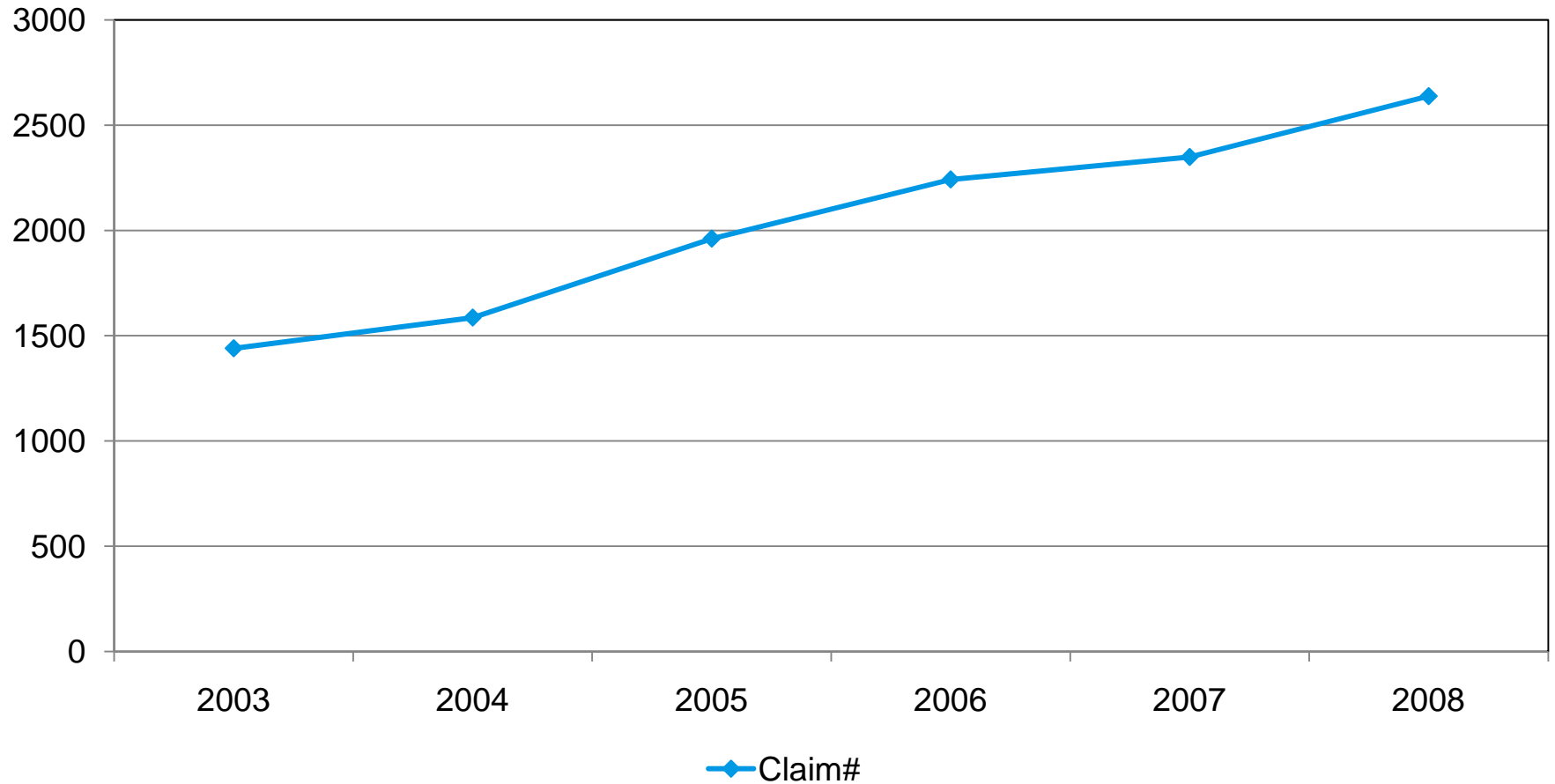
Defence rates – upper limb disorder



Upper Limb Disorder - % No Damages Paid



EL Deafness Claims



- Deafness – numbers up
- Lower exposure thresholds / non compliance / claims farming
- HAVS – moderately up
- Upper limb disorder - up
- Stress – depressed
- Asbestos incidence - increasing
- Fairchild creep – lower standard of proof for claimants
 - Growing risk of application to other injuries and ailments

1. Corporate Manslaughter

- Sentencing consultation response still awaited
- Clarify fines and non monetary sanction - 5 / 10% of turnover?
- First prosecution underway – R v Cotswold Geotechnical Holdings

2. Coroners: Rule 43 “powers to prevent future deaths”

- Statutory duty to respond to coroners report
- Advise as action to be taken or reasons for taking none

3. Health and Safety (Offences) Act 2008 – in force January 2009

- Lower courts – fines limit increased to £20,000
- Broader range of offences leading to imprisonment

- R v P – Charge under S37 H&SWA 1974
- Child fatality following accident involving an unsecured load being moved on a fork lift truck
- COA: A director was guilty of an offence under s.37 if he either knew of the relevant facts, or if he **ought** to have known whether the relevant safety procedures were in place

Claims inflation



- Total cost of bodily injury claims paid out by UK Motor Insurers increased at an annual rate of 9.5% between 1996 and 2006
- Between 2001 to 2006 costs per insurance policy for claims increased by:
 - 11% per annum for claims between £100k → £2m
 - 12% per annum for claims between £2m → £5m
 - 30% per annum for claims above £5m

- Reduced from 3% to 2.5% in 2001
- Political decision made by Lord Chancellor
- Rumours of reduction to 1%
- Declining investment returns
- Two cases pending in Channel Islands argument for -0.5%
- Huge impact on NHSLA and Local Authorities

Impact : 20yr old lady with normal lifespan: £100k p.a. care regime



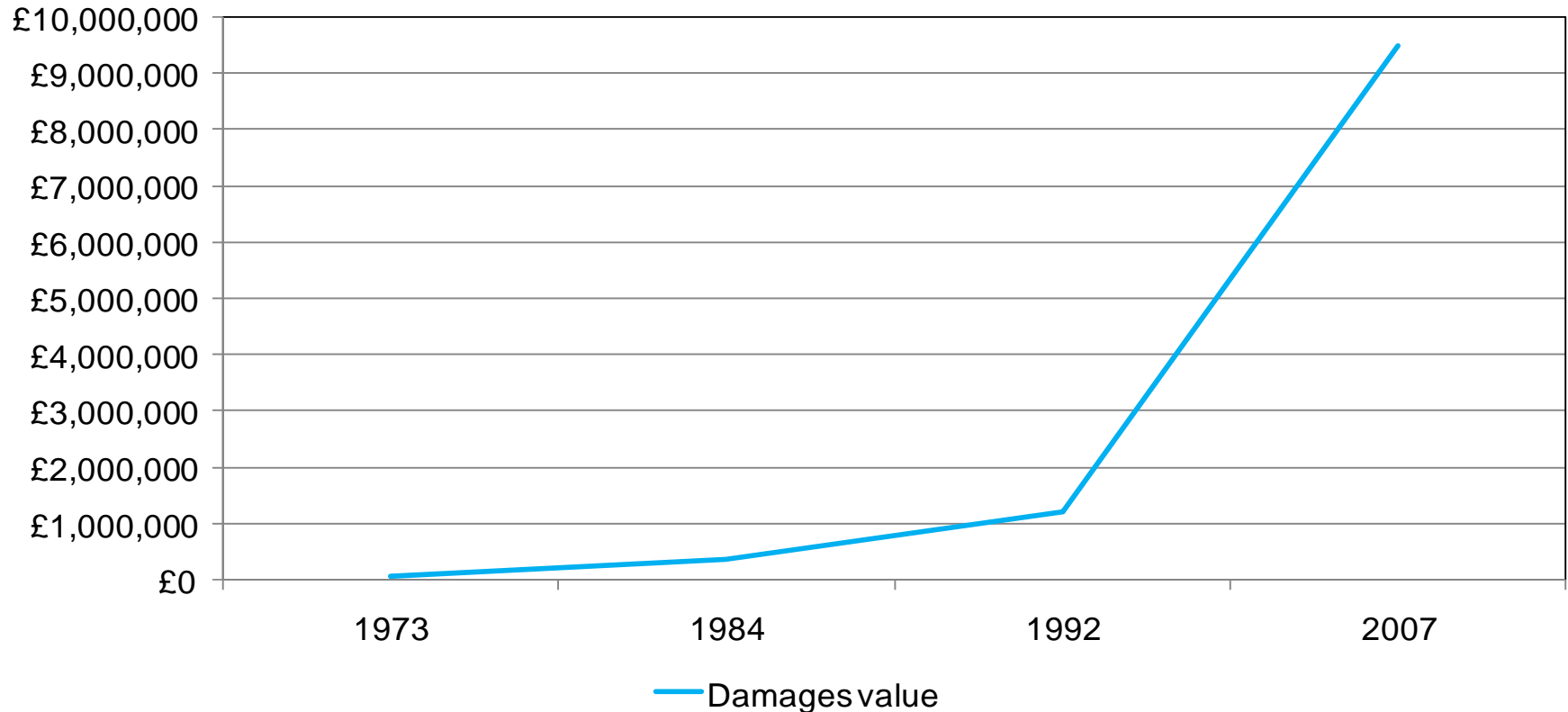
| Discount Rate | Multiplier | Lump Sum Value |
|---------------|------------|----------------|
| 2.5% | 32.54 | £3,254,000 |
| 2.0% | 36.97 | £3,697,000 |
| 1.5% | 42.42 | £4,242,000 |
| 1.0% | 49.22 | £4,922,000 |
| 0.5% | 57.76 | £5,776,000 |
| 0% | 68.61 | £6,861,000 |

- Heads of damages – 11 in Housecroft v Burnett (1986) - 5-20 now
- Case management now standard (£65 hr +)
- Increased running costs for large properties
- Motoring costs
- Assistive technology
- More private medical care
- Holidays
- State funding not capable of offset – Peters v East Midlands (2009) – claimant has right to insist defendant pays
- Increased Court of Protection costs – Mental Capacity Act , additional safeguards (Guarantee Bonds, increased regulation of accounts, limited appointments etc)
- Better organized solicitors...

Catastrophic claims inflation - a graphic history



Comparable damage awards



Awards table



| Case | Year | Description (age at date of trial) | Damages | Damages (adjusted for RPI) |
|-------------------------------------|------|---|------------|----------------------------|
| Cunningham v Harrison | 1973 | male, C4/C5 complete tetraplegia, lifetime multiplier 9.5 | £59,316 | £547,486 |
| Rialis v Mitchell | 1984 | brain/spastic quadriplegia, lifetime multiplier 14 | £350,965 | £856,352 |
| Cassell v Hammersmith and Fulham HA | 1992 | Cerebral palsy, lifetime multiplier 18 | £1,159,980 | £1,937,182 |
| Sarwar v Ali and MIB | 2007 | C5 tetraplegia with brain injury, lifetime multiplier 28.42 | £9,544,828 | £10,000,000? |

“You chaps can just put the rates up can’t you?”

- Crystal ball gazing – long term future provision
- Insulation from risk
- Sympathy of the court
- Fullest possible quality of life
- Reluctance to disturb established care regimes
- Tendency to favour claimant’s experts?

- If unable to self fund cost of PPO can be 3 times lump sum (i.e. *Frow v Croot* £8m versus £24m)
- Defendant bears cost of administration
- Settlement money available for investment but returns very unlikely to exceed indexation
- More popular – financial and investment uncertainty

Record payout by Co-op for injury

BY LOUISE MEESON

CO-OPERATIVE Insurance is set to pay out £8.1m in compensation following what is believed to be a record-breaking court award for a spinal injury.

Callum Eriksson, formerly Cross, will need lifelong care after suffering spinal and brain injuries after he was accidentally run over by his father, Patrick Cross, when he was two-and-a-half years old in March 2002.

In *Cross v Cross* the court heard that Mr Cross's insurer, Co-operative Insurance, admitted liability at an early stage and had already made an interim payment of £1.7m

before the case went to court.

On 7 April, Mrs Justice Swift ordered the defendant to pay a gross lump sum of £2.5m, taking into account the amount already received, plus annual periodic payments of £220 000.

Callum Eriksson's solicitor Paul Paxton of Stewarts Law said: "We have achieved our aim of ensuring Callum is financially secure for the rest of his life."

Mr Paxton explained there was a "broad consensual" approach and that Co-operative admitted liability very early on, providing a "significant" interim payment.

"It is a good example of

both sides working together in helping to meet the claimants needs," he added.

He said that this collaborative working enabled the matter to be settled in six months, from the time proceedings began.

A Co-operative spokesman commented: "It was a really tragic case and we were keen to settle in a manner that was appropriate."

Mrs Justice Swift said: "While this order cannot possibly put him back to the circumstances in which he otherwise would have been, I hope it will play its part in enabling him to live to his full potential and assist the family in the difficult task of providing for his future."

Claims process reform



The emerging motor claims process...



- £10,000 injury claims
- The 15 day challenge
- Search of motor insurance database
- Standard claim forms – fully completed
- E mail transactions – dated / assumption of receipt
- Full liability admissions only
- Standard medical reports – GP/hospital records?
- Settlement packs
- Costs payable – as you go
- Interim damages payable – as agreed
- Costs....

- The 15 day challenge
- Mechanics and sanctions
- Process and costs negotiations ongoing
- System for autumn 2009?
- Operational – April 2010?
- General election – May 2010...

Horizon Scanning



An Employer's Liability insurance fund?



- Employer's liability insurance bill (Bill no 31)
 - Retrospective EL fund (ELIB) for uninsured periods – query defunct entities only
 - EL database – capturing cover
- ABI EL database initiative – EL cover capture – prospectively from 2011 onwards – in development
- Asbestos controversies – Insurance jackals...pleural plaques, compensatable, Scotland, judicial review, England initiatives...
- Why important? – one solution could be a levy on EL premiums to fund centralised compensation

- “The law on Damages” – Ministry of Justice CP09/07
- Fatal accident damages increase
- Potential changes to other damages heads
- Reform of law of Limitation

Decreased Risk

- Stress probably doesn't accelerate heart disease
A Goble et al. Stress and Health (2008) Vol.24 p 203 – 212
- Work stress, as measured, probably does not cause diagnosable depression
JPE Bonde Occ. Env. Med (2008) Vol.65 p 438-445
- Display Screen Equipment Regs serve no useful purpose re: injury
HSE (2008) RR628. BMC Musculoskeletal disorders (2008) Vol.9#134

Increased Risk

- Osteo arthritis - knee: IIAC review for mineworkers
- “Increased risk of” v “material contribution”
 - Fairchild etc
- Recession : Claims generation effect, fraud risk...
 - iPod deafness: 10m at risk in EU

Large, certain, immediate – three years



Recession effects - *(EPL, EL, PL, Ageing w/force, property...)*

Change in “Material Contribution” *(Bailey v MOD)*

Nanotechnology - hazard is in place and growing

Climate change

Privacy failure *(Biometrics, cyber transactions, distributed computing, phorm , CCBT)*

Network failure risk *(is becoming more correlated)*

Urban flash flooding + subsidence (gradual change)

Clean-up, BI, D&O, motor, service failure

Health foods/supplements (HRT = MC)

Food production methods (additives, hygiene, GM..)

Fructose and purinergic effects (MC)

Work-related heart disease (MC)

Work-related mental illness (MC)

Pandemic flu

**Shift work effects on health
– diabetes (MC)**

Ageing demographic (MC)

New metric for emfs

**Hypersensitivity politics
(MCS,
emfs, SBS)**

**REACH (unintended
consequences)**

Biofuels (GM)

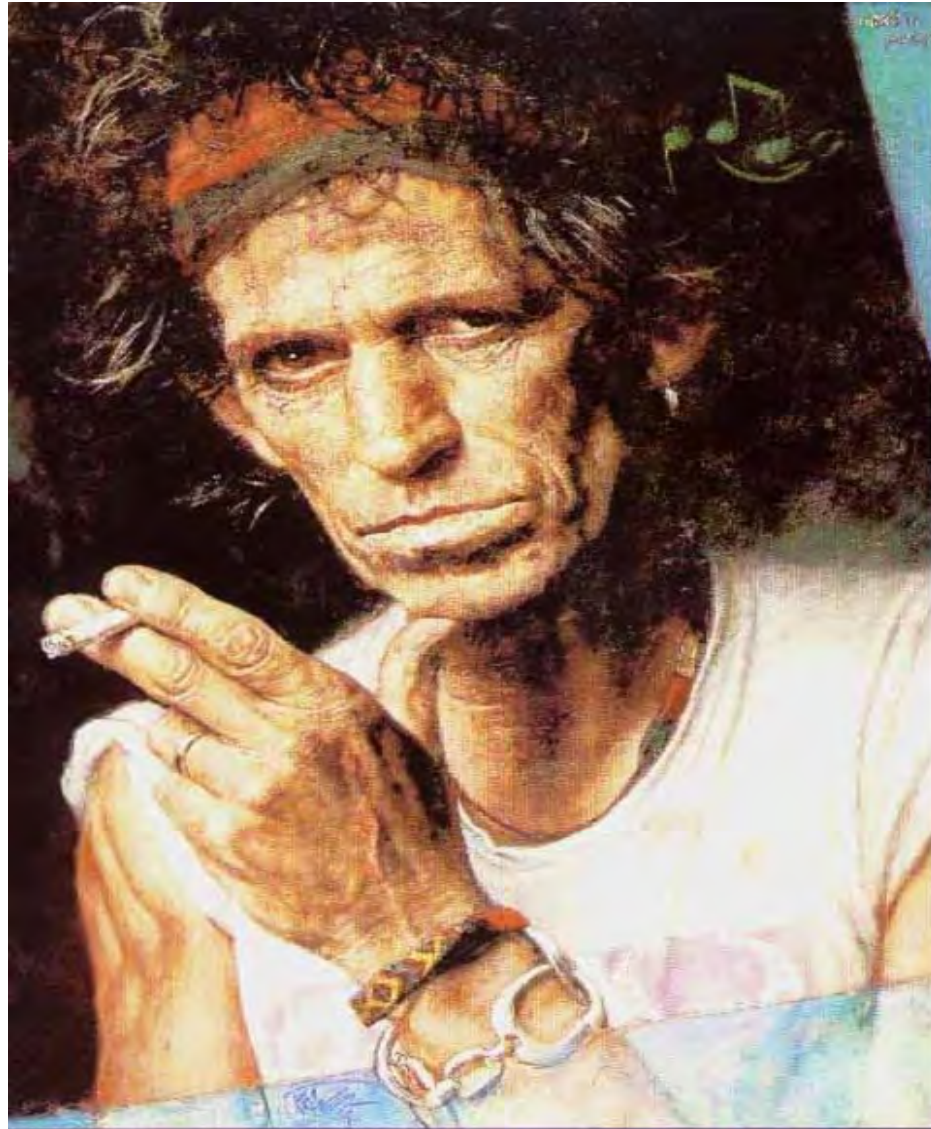
Pesticides (MC)

Caffeine (MC)

**Anything which causes or
accelerates obesity (MC)**

QBE claims tourism







GRAND PIER











