

**LA1: Justice Delayed: Access to Justice in Tort Litigation in  
England and Wales**

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## **Research Problem**

The law of tort in England and Wales governs claims that are brought to litigation against a wrongful act or an infringement of rights that leads to a legal liability. Such cases normally arise in small causes courts or are resolved through alternate dispute resolution between the parties involved. Statistics and data related to tort claims are recorded by the Association of Insurers in England and Wales. However, this data is either not publicly accessible or too dated to represent the present condition of tort litigation.

This research aims to assess a facet of access to justice in tort litigation in England and Wales by determining the total duration of tort claims that have progressed to the Supreme Court, as well as consider the costs related to such litigation.

## **Context**

This piece of research is meant to serve as a rudimentary overview of the tort litigation system and has further assisted in generating ideas for further research. It sets the first brick in the foundation of future literature devoted to understanding how access to justice in the tort system can be improved and what the implications of the high costs of the system are. The last comprehensive piece of research related to tort statistics was published in 2006.<sup>1</sup> There is an endeavour to begin discourse and start to update these statistics so as to fill the existing gaps in academic literature with this research.

## **Methodology and Process**

The primary objective of this research was to calculate the duration of tort litigation, charting its journey from the date of injury to the date of judgement in the Supreme Court. The reason for only using cases that progressed to the Supreme Court is primarily to gain a broad understanding of what kinds of tort claims cater to public interests and due to the infeasibility of studying every tort claim that arises in England and Wales. The Supreme Court, being the apex court, is most likely to allow appeals for cases that decide on a general point of law to set an important precedent or cases related to public interest and holding constitutional importance.

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<sup>1</sup> Richards Lewis and others, 'Tort personal injury claims statistics: Is there a compensation culture in the United Kingdom?' [2006] 14(2) Torts Law Journal

The primary method of data collection was reading and analysing judgements through legal research platforms (Primarily Westlaw in this case.) In total, 84 cases were added to the database created, with several data points from these cases. These were the cause of action, date of injury, date of first instance decision, date of decision by the court of appeal, date of grant of permission to appeal by the Supreme Court, decision date of the Supreme Court, the nature of the defendants and claimants, their legal representation and the remedy awarded. At first glance this appears to be a very comprehensive set of data points, however, due to a lack of accessibility to data and many points missing from the judgements, some data was obscured, making 60 cases useful to the research.

After the creation of this database, which involved meticulously mapping dates and summarizing events for close to 100 cases, I computed the data to determine my key findings. These calculations included the nature of the defendants, the most common type of claim being made, the duration of claim from the date of injury to the final decision of the Supreme Court, as well as the total time the claim has spent in the Supreme Court

Additionally, to attribute a cost to the claims, I also investigated papers and academic literature regarding the private and social costs of these claims and who is liable to pay compensation. These articles were last published in 2018, with the figures being a mere estimate and extrapolated from previous years and adjusted for inflation.

## **Findings**

### **Justice Delayed? The Life Cycle of a Tort Claim through the Courts**

For the purpose of this research, two time periods were studied. First, the duration of a claim from the date of injury to the final decision of the Supreme Court and second, the time the claim spent in only the supreme court. The findings are as below:

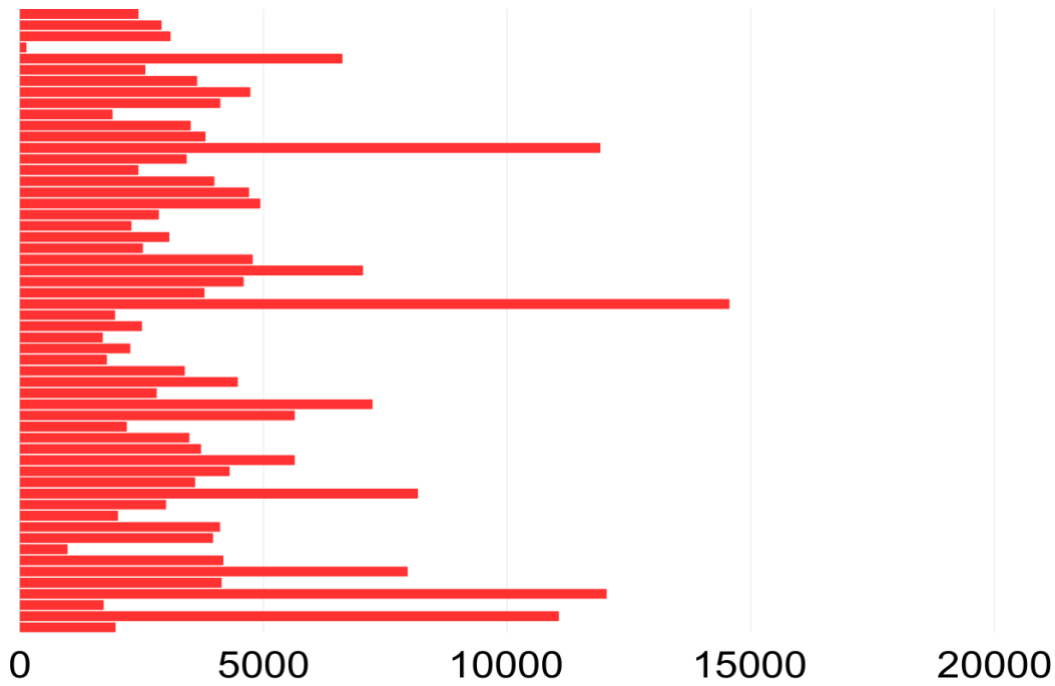


Fig 1: Duration between date of injury and the final decision of the Supreme Court (in days)

On average, the total duration of a claim was 4,460 days from the date of injury to the final decision of the Supreme Court. This means litigation for a tort claim roughly lasts a period of just over 12 years.

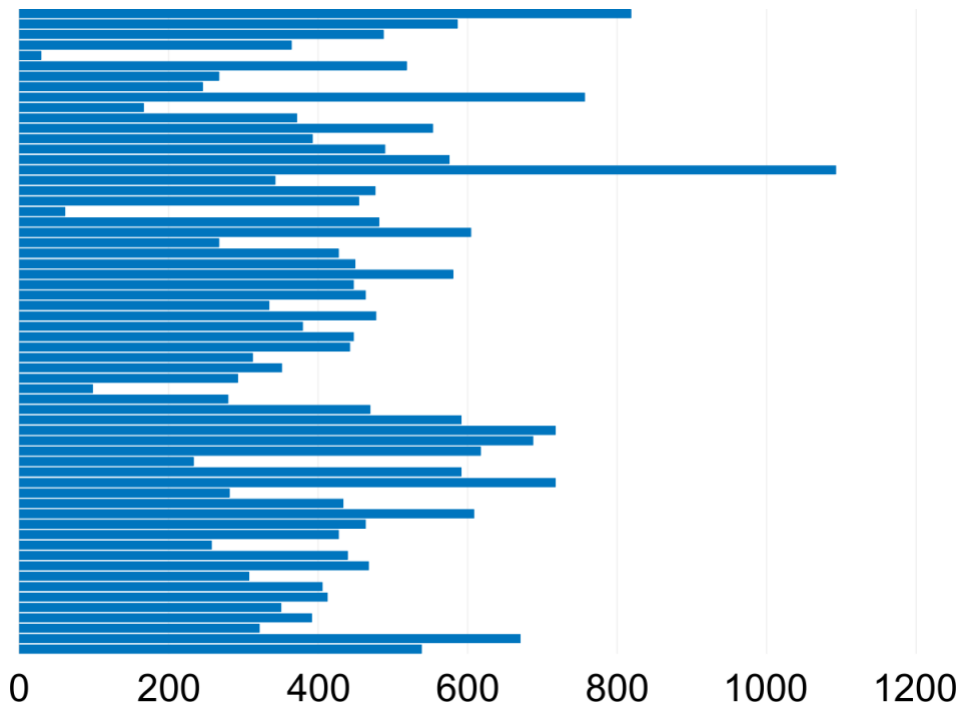


Fig 2: The duration of claims in the Supreme Court (in days)

The average time a claim spends in the Supreme Court is 446 days, which forms 10.4% of the total duration of a claim on average. There is scope to comment on whether this is the longest part of the claim overall, however, lack of data from lower courts makes it tough to estimate.

Complexity of the claims, procedural delays, such as court backlogs, and negotiations with insurance companies are all factors that contribute to the prolongation of the litigation process.<sup>2</sup> Streamlining this process can therefore become difficult, with the limitation period of bringing a tort claim to litigation in the UK being 6 years and the factors impacting the delays being systemic in nature.

### **Who makes these Claims?**

It was found that 80.6% of all claimants in the cases used were private individuals and 19.4% were companies. Meanwhile, 60% of defendants were companies, 31.7% were public bodies and 8.3% were private individuals. It can be hypothesized that private individuals' claims against companies and public bodies are more common as they are driven by remedying wrongdoings by larger entities towards ordinary people. This is hypothesised on the basis that tort litigation is commonly invoked against big corporations who can pay the compensation and damages costs related to such litigation from their own resources. However, this needs to be tested with further research.

Additionally, nearly 45% of the claims studied for this research were related to negligence of various kinds, including but not limited to professional and medical negligence.

### **The True Cost of Tort Litigation: Roadblocks to Accessing Justice**

Although, commonly, a large number of tort claims are settled out of court

As per a government report published in 2004, the cost of the tort system accounts for roughly 0.6% of the country's GDP.<sup>3</sup> Although this figure might not be reflective of modern-

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<sup>2</sup> Rubenstein, David M. (1972) "The Problem of Delay in Tort Recovery and the British Interim Payment Scheme," *University of Chicago Law Review*: Vol. 39: Iss. 4, Article 8.

<sup>3</sup> In J. Broughton, B. Gravelsons, C. Hensman et al., *The Cost of Compensation Culture* (Institute of Actuaries, 2001).

day conditions, it is certainly reflective of how costly the tort system is. In fact, the total annual cost of tort litigation was estimated to be somewhere between 10 to 16 billion pounds.

The compensation system in tort litigation is perhaps the most expensive amongst its kind. As per the Law Commission, the biggest contributor to these costs is the Government, which makes it so that the public, via taxpayer's money, is indirectly responsible for shouldering the largest share of these costs.<sup>4</sup> Further, the legal costs associated with bringing a claim, hiring an advisor and the insurer's costs in paying out damages make it extremely costly to run the system. Is there then sufficient room to comment on how much should be spent on the tort system? There cannot be a one-dimensional answer to this question. On one hand bringing tort claims to trial set imperative precedents, with the compensation culture being beneficial as an incentive to potential injurers to act with a certain degree of care and responsibility. On the other hand, the sheer cost of litigation makes it ill-suited to solve larger social problems, especially since there are rising concerns as to whether those from marginalised backgrounds can afford to shoulder such costs.

On further probing, there might be something to be said about whether the true cost of litigation, both financial and social, deters access to justice or indirectly makes it less popular as a method for achieving justice.

### **Limitations**

During this research, many hypotheses contemplated remain untestable due to a significant lack of publicly available information. The government's Compensation Research Unit tracks payouts and statistics related to such claims but does not make all this information publicly accessible.<sup>5</sup>

The dynamic nature of tort claims also means that there is no one-size-fits-all solution to remedying long durations and high costs. It is a highly specific field that requires far more research than it is currently devoted.

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<sup>4</sup> Law Com. No. 287, *Pre-Judgment Interest on Debts and Damages* (2004), para. 7.30.

<sup>5</sup> Cane P, Goudkamp J. The Cost of Compensation and Who Pays It. In: *Atiyah's Accidents, Compensation and the Law*. Law in Context. Cambridge University Press; 2018:375-388.

## **Recommendations**

To make information more accessible, there is a need to instate a central database with relevant legal information and statistic related to judgements and cases in different areas of the law. This would not only help the courts improve procedural issues by having a robust system to rely on for assessing areas of improvement, but also facilitate research by enabling academics to access the foundational information to build upon. One such topic that I was unable to address during my research was analysing whether there was any correlation between wealth and the tendency of claimants to pursue litigation for torts. The process behind this was using post codes of claimants and defendants and understand was the average income in their area of residence is to assess the correlation.

## **Reflections**

Over 6 weeks of research and familiarising myself with the intricacies of the tort system, I realised the broad scope of research in the area. The process of collecting data, though time consuming, solidified a very clear idea of the gaps in accessibility, leading to ideating better ways in which to archive and store such data to facilitate future research on the topic. This instilled in me a sense of motivation to further pursue this area of research and liaise with my supervisor to come up with avenues through which I could do so.