



Resolution

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October 2023
FOI_6198

The following information was requested on 26 September 2023:

We intend to investigate the impact of missed or delayed diagnoses of encephalitis in patients presenting to NHS services - including the number of these cases, the medical setting in which the alleged negligence occurred, the number which result in litigation, and the associated costs – with the aim of informing guideline development to the Royal College of Psychiatrists. The clinical harms of delayed encephalitis diagnosis include mortality and substantial and/or chronic morbidity. We believe that a descriptive analysis of the cause and effects of litigation and associated cost in these cases may support Trusts to provide more comprehensive education programmes to improve and maintain awareness of the diagnosis and testing protocols. This would inform the encephalitis working group of the faculty of neuropsychiatry.

Our Response

We only hold claims data for England (our [schemes](#) only cover England), not the UK.

Although NHS Resolution may hold some information relating to claims such as what you have requested, due to the way claims are recorded on our claims database, we will not be able to identify such specific cases. It might be helpful to explain that when claims are notified to NHS Resolution they are categorised against pre-defined cause, injury and speciality [codes](#). We do not have a code for: *encephalitis*. Therefore, while there may be information held in our records, we are not readily able to identify the relevant files by searching the database. To do so would involve a manual review of all cases to identify which ones relate to claims involving *encephalitis*. NHS Resolution receives thousands of claims each year.

Therefore, we estimate that the cost of complying with the request in its entirety would exceed the 'appropriate limit'. Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit (known as the 'appropriate limit'). The 'appropriate limit' for NHS Resolution is £450. This equates to 18 hours of work at the rate of £25 per hour set out in the 'Fees Regulations'.

We estimate that it would take on average 10 minutes to locate, retrieve and extract the requested information from an individual file. It may therefore be the case that we would be able to examine only 108 files within 18 hours.

In addition, given the complexity of clinical negligence claims and their litigation, it is possible for a single electronic or paper-based file to contain hundreds of documents in a variety of formats.

Please also note even if we were able to carry out a review of 108 random files we may not be able to provide you with the level of detail you require owing to Data Protection grounds.

We would need to suppress low numbers or any information that could possibly lead to the identification of claimants, patients or individuals where disclosure would breach the General Data Protection Regulation.

We do have the following Specialties: Psychiatry/Mental Health; Psychology; Community Mental Health Services.

We could provide you with the number of claims received for the above specialties and the numbers closed with a damages payment. We can also break it down by causes and by injury. Please let us know if you would be interested in this information and what time period (in financial years) you would like it to cover.

Further to our obligations to provide advice and assistance, you may find it helpful to review the work of the [Getting It Right First Time team](#) with whom NHS Resolution has been working with to undertake in-depth analysis of our claims data. They have produced a number of [reports](#) from analysing our claims data which has been shared following approval of the confidentiality advisory group to the use of confidential patient information for this purpose.

If you would like to know how data is categorised in our Claims database please see the following link: [Glossary](#)

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to [Tinku Mitra](#), Deputy Director of Corporate and Information Governance, Data Protection Officer for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information

Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

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