



Resolution

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FOI_6278

The following information was requested and clarified on 16 November 2023:

[You requested]

Please answer this question for the time period between 01/01/23 and 31/10/23.

1) How many times have NHS Resolution been notified of clinical negligence claims relating to surgical burns to patients in England over this period? Please tell me what hospitals the burns happened in, the date on which the burns happened and the amount of money NHS Resolution paid in damages and legal costs for each of the claims. Please also send me the redacted claim submitted by the patient/the patient's lawyers, which sought compensation from the burn, along with the response(s) from the trust. This will likely be in the form of an e-mail or letter, but could be a combination of both. Please also send the reports/surveys done after the incident to assess what caused the situation, and the best ways to prevent patients being burnt during surgery in the future.

2) For each of the calendar years between 2018 and 2022, please tell me how many times NHS Resolution were notified of clinical negligence claims relating to surgical burns to patients in England.

[We clarified]

Thank you for your request for information. We would like to provide some guidance on information that we are able to provide.

- 1. We are able to provide the data in Financial years – the most recent year being 2022/23. For example we could provide you with data for the following financial years 2018/19 – 2022/23.*
- 2. Please refer to our publication: [Guidance-note-Understanding-NHS-Resolution-data-updated](#) and a set of codes against which claims are logged: [CNST-Codes.xlsx \(live.com\)](#) (see the three tabs in the spreadsheet). We can provide the information about injury: **Burn(s)**. We can provide the data for NHS Trusts in England (not for individual hospitals).*
- 3. We would like to advise you that we would be unable to disclose any details that would allow the identification of the individual claim, where it could lead to the breach of the Data Protection requirements, therefore we are unable to provide the exact date for each instance of burn and individual amount paid in those claims. We cannot provide*

you with the claim documents submitted by patients or their lawyers, or the Trust response, reports or surveys as this information is likely to be exempt under FOI rules. We can provide you with high level costs for Claims relating to Burns injuries. Please let us know if you would be interested in this information and the time period you would like the information to cover.

[You replied]

Thanks for seeking clarification in relation to my request - please can you proceed as advised for all three questions.

Our Response

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: *surgical burns*. 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 *surgical burns*. 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 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 did consider providing you with high level data regarding burns injury coding, however, we recognise that not all of these claims will be about surgical burns.

We have therefore decided to provide you with high level data about **Diathermy Burns/react to prep**, which is the code which may be used in relation to surgical burns, and we have used this code to extract the data you have requested. Unfortunately, this may not cover all potential surgical burns incidents/claims, as there can be more than one cause of a claim and the only way to extract this information would be to manually review individual claims files relating to Burns injury, and we believe this would exceed the appropriate limit set under the FOI rules.

Please find attached the requested information we are able to provide within the time limit set under the FOI Act. This information only covers England and not the rest of the UK.

NB: We have recently changed the way we report on our FOIs to align better with our published documents. Streamlining our reporting on FOIs with our annual published reports may mean a variation in snapshot dates. This means this data may not align with previous similar requests and it may not be possible for you to compare this information with a previous request. For further information, please refer to <https://resolution.nhs.uk/resources/understanding-nhs-resolution-data>.

Please note claims notified/received and open are not guaranteed to be settled in the same year and can take many years to be concluded. Claims notified/received in any given year will often relate to incidents that have occurred many years prior. Claims closed in any given year will often relate to claims received/notified many years prior.

The data shows variation in numbers of cases received per year, closed per and costs attributed to those claims. This is a reflection of the nature of individual claims received by NHS Resolution, which can vary significantly. In some cases, this can be affected by an adverse issue involving a number of patients. As such, these fluctuations cannot be interpreted as trends.

Table 1 shows: - Number of Clinical Claims and Incidents received between financial years 2017/18 and 2022/23 where one of the Cause is '**Diathermy Burns/react. To Prep**'.

Table 2 shows: - Number of Clinical Claims and Incidents received between financial years 2017/18 and 2022/23 where one of the Cause is '**Diathermy Burns/react. To Prep**' broken down by Trusts with 5 or more claims.

Table 3 shows: - Number and Cost of Clinical Claims Closed between financial years 2017/18 and 2022/23 where one of the Cause is '**Diathermy Burns/react. To Prep**' with a damages payment.

Table 4 shows: - Number of Clinical Claims Closed between financial years 2017/18 and 2022/23 where one of the Cause is '**Diathermy Burns/react. To Prep**' with **NIL** damages payment.

Table 5 shows: - Number and Cost of Clinical Claims Closed between financial years 2017/18 and 2022/23 where one of the Cause is '**Diathermy Burns/react To Prep**', with a damages payment, broken down by Trusts with 5 or more claims.

Low Numbers

We have suppressed low figures (and we are unable to provide the name of Trusts with fewer than 5 claims) as we believe that disclosure of information with this level of granularity is exempt under Section 40(2) by virtue of section 40(3A)(a) of the FOI Act, where disclosure to a member of the public would contravene one or more of the data protection principles. The data protection principles are set out in Article 5 of the General Data Protection Regulation. We take the view that it would not be fair or lawful (given the sensitive and confidential nature of the information held) to disclose such information, and any disclosure would therefore contravene the first data protection principle.

In some instances, the low numbers of claims (fewer than 5) in each category, the likelihood exists that individuals who are the subject of this information may be identified either from this information alone, or in combination with other available information. In addition to this, as this information is considered to be sensitive personal data (the data subjects' medical condition); NHS Resolution believes it has a greater responsibility to protect those individuals' identities, as disclosure could potentially cause damage and/or distress to those involved.

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

<https://ico.org.uk/>

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NB: Number of claims fewer than 5 (and any associated values, within the same row) are masked with a "#" (in accordance with Data Protection guidelines). Accordingly, some total values may also be approximated to prevent masked values to be deduced through reverse calculation.

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Table 1: Number of Clinical Claims and Incidents received between financial years 2017/18 and 2022/23 where one of the Cause is 'Diathermy Burns/react. To Prep'.

FOI View		Notified
Year of Notification		No. of Claims
2017/18		31
2018/19		29
2019/20		35
2020/21		29
2021/22		24
2022/23		15
Grand Total		163

Table 2: Number of Clinical Claims and Incidents received between financial years 2017/18 and 2022/23 where one of the Cause is 'Diathermy Burns/react. To Prep' broken down by Trusts with 5 or more claims.

FOI View		Notified
Trust Name		No. of Claims
Other Trusts (Less than 5)		133
Barts Health NHS Trust		5
Hull University Teaching Hospitals NHS Trust		5
Manchester University NHS Foundation Trust		5
Northern Care Alliance NHS Foundation Trust		5
Nottingham University Hospitals NHS Trust		5
York and Scarborough Teaching Hospitals NHS Foundation Trust		5
Grand Total		163

Table 3: Number and Cost of Clinical Claims Closed between financial years 2017/18 and 2022/23 where one of the Cause is 'Diathermy Burns/react. To Prep' with a damages payment.

FOI View	Closed Settled
Claim_Outcome	Successful
Is_PPO	No

Year of Closure	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2017/18	30	676,900	154,402	902,987	1,734,289
2018/19	40	1,063,634	166,314	869,135	2,099,082
2019/20	27	614,017	115,968	546,434	1,276,419
2020/21	23	1,178,473	228,481	836,997	2,243,951
2021/22	22	414,825	72,866	430,126	917,817
2022/23	24	612,784	227,745	963,528	1,804,056
Grand Total	166	4,560,633	965,776	4,549,206	10,075,614

Table 4: Number of Clinical Claims Closed between financial years 2017/18 and 2022/23 where one of the Cause is 'Diathermy Burns/react. To Prep' with NIL damages payment.

FOI View	Closed Settled
Claim_Outcome	Unsuccessful
Is_PPO	No

Year of Closure	No. of Claims
2017/18	#
2018/19	6
2019/20	6
2020/21	7
2021/22	#
2022/23	#

Table 5: Number and Cost of Clinical Claims Closed between financial years 2017/18 and 2022/23 where one of the Cause is 'Diathermy Burns/react To Prep', with a damages payment, broken down by Trusts with 5 or more claims.

FOI View	Closed Settled
Claim_Outcome	Successful

Year of Closure	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Other Trusts (Less than 5)	138	3,708,542	810,185	3,989,022	8,507,749
University Hospitals Sussex NHS Foundation Trust	6	615,227	107,186	259,000	981,413
Manchester University NHS Foundation Trust	6	132,664	20,933	135,235	288,832
Northern Care Alliance NHS Foundation Trust	6	27,000	8,919	56,700	92,619
Barts Health NHS Trust	5	37,500	13,782	75,999	127,281
York and Scarborough Teaching Hospitals NHS Foundation Trust	5	39,700	#	33,250	77,720