



## Resolution

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January 2024  
FOI\_6337

The following information was requested on 21 December 2023:

*Please could I request the following....*

*The total number of 'informed consent - failure to warn' claims received by NHS resolution from 2005 until the present day.*

*The total number of 'informed consent - failure to warn' claims that were settled or where damages were paid from 2005 until the present day.*

### Our Response

Please find attached the requested information we are able to provide. This information only covers England and not the rest of the UK.

We are able to provide information from **2006/07** – 2022/23. The information for the financial year 2023/24 is currently unavailable and will be available on request from July 2024.

**Please note:** 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>.

Claims notified/received in any given year will often relate to incidents that have occurred many years prior. Due to the nature of clinical negligence claims and the level of investigation needed to bring them to a resolution, claims received and notified in a specific year may take years to settle and close. They are not guaranteed to be settled and closed in the same year. As such, there will be a time gap between incident and claim closure.

Due to the way in which data is extracted, it is also possible that the same claim may appear more than once in a dataset, across different year groups e.g. where the case has been closed (as nil damages payment), challenged, reopened and closed again at conclusion.

Please also note that the data shows a variation in the number of claims received and closed during this period. 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 2006/07 and 2022/23 where the Primary Cause is '**Fail to Warn-Informed Consent**'.

**Table 2 shows:** - Number of Clinical Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Cause is '**Fail To Warn-Informed Consent**'.

**Table 3 shows:** - Number of Clinical Claims Closed between financial years 2006/07 and 2022/23 with **Nil** damages payment, where the Primary Cause is '**Fail To Warn-Informed Consent**'.

## **PPOs**

PPOs are an agreement between the parties, to pay an initial lump sum and regular future payments (PPO damages) related to the injured party's ongoing needs, usually care for life i.e., a percentage of the full value of the claim is paid at the point of settlement (lump sum damages) with the balance paid at regular intervals over subsequent years.

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.

Please refer to [Understanding NHS Resolution data](#) guidance for further details on how our Claims database is categorised.

**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.**

Table 1: Number of Clinical Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Cause is 'Fail to Warn-Informed Consent'.

Table 2: Number of Clinical Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Cause is 'Fail To Warn-Informed Consent'.

Table 3: Number of Clinical Claims Closed between financial years 2006/07 and 2022/23 with NIL damages paid, where the Primary Cause is 'Fail To Warn-Informed Consent'.

Table 1: Number of Clinical Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Cause is 'Fail to Warn-Informed Consent'.

| FOI View             | Notified      |
|----------------------|---------------|
| Year of Notification | No. of Claims |
| 2006/07              | 113           |
| 2007/08              | 180           |
| 2008/09              | 158           |
| 2009/10              | 176           |
| 2010/11              | 194           |
| 2011/12              | 252           |
| 2012/13              | 274           |
| 2013/14              | 320           |
| 2014/15              | 326           |
| 2015/16              | 340           |
| 2016/17              | 437           |
| 2017/18              | 433           |
| 2018/19              | 409           |
| 2019/20              | 588           |
| 2020/21              | 855           |
| 2021/22              | 752           |
| 2022/23              | 580           |
| <b>Grand Total</b>   | <b>6,387</b>  |

**Table 2: Number of Clinical Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Cause is 'Fail To Warn-Informed Consent'.**

|               |                |
|---------------|----------------|
| FOI View      | Closed Settled |
| Claim_Outcome | Successful     |

| Year of Closure (Settlement Year for PPOs) | No. of Claims |
|--------------------------------------------|---------------|
| 2006/07                                    | 93            |
| 2007/08                                    | 93            |
| 2008/09                                    | 96            |
| 2009/10                                    | 107           |
| 2010/11                                    | 145           |
| 2011/12                                    | 141           |
| 2012/13                                    | 141           |
| 2013/14                                    | 147           |
| 2014/15                                    | 154           |
| 2015/16                                    | 140           |
| 2016/17                                    | 169           |
| 2017/18                                    | 213           |
| 2018/19                                    | 219           |
| 2019/20                                    | 289           |
| 2020/21                                    | 238           |
| 2021/22                                    | 252           |
| 2022/23                                    | 320           |
| <b>Grand Total</b>                         | <b>2,957</b>  |

**Table 3: Number of Clinical Claims Closed between financial years 2006/07 and 2022/23 with NIL damages paid, where the Primary Cause is 'Fail To Warn-Informed Consent'.**

| FOI View<br>Claim_Outcome | Closed Settled<br>Unsuccessful |
|---------------------------|--------------------------------|
| Year of Closure           | No. of Claims                  |
| 2006/07                   | 119                            |
| 2007/08                   | 92                             |
| 2008/09                   | 71                             |
| 2009/10                   | 95                             |
| 2010/11                   | 91                             |
| 2011/12                   | 96                             |
| 2012/13                   | 129                            |
| 2013/14                   | 132                            |
| 2014/15                   | 177                            |
| 2015/16                   | 161                            |
| 2016/17                   | 183                            |
| 2017/18                   | 186                            |
| 2018/19                   | 189                            |
| 2019/20                   | 200                            |
| 2020/21                   | 237                            |
| 2021/22                   | 327                            |
| 2022/23                   | 399                            |
| <b>Grand Total</b>        | <b>2,884</b>                   |