NHS
Resolution

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FOI_6342

The following information was requested on 2 January 2024:

I am writing to make an open government request for all the information to which I am entitled under the freedom of information act.

I am outlining my query as specifically as possible. If however this request is too wide or too unclear, I would be grateful if you could contact me as I understand that under the act, you are required to advise and assist requesters.

Published NHS Resolution figures suggest that, after removing the effect of Existing Liabilities Scheme for General Practice (ELSGP) from the total of all reported clinical claims, "numbers [of clinical negligence claims] rose in 2022/23 by 8.6%, compared to an increase of 0.03% between 2020/21 and 2021/22" (https://resolution.nhs.uk/wp-content/uploads/2023/07/NHS-Resolution-Annual-report-and-accounts-2022_23-3.pdf).

I would like to be provided with all information produced during 2023 that is held by NHS Resolution and refers to the reasons, or potential reasons, for the rise in the number of those claims.

The information I am interested in may be held in - but will not be limited to - emails, memos and reports.

Our Response

Due to the broad nature of this request, we are unable to readily identify and locate all of the relevant information. We note you have requested:

*I would like to be provided with **all** information produced during 2023 that is held by NHS Resolution and refers to the reasons, or potential reasons, for the rise in the number of those claims.*

The information I am interested in may be held in - but will not be limited to - emails, memos and reports.

The information requested will also be subjective and will require several members of staff to conduct individual searches of e-mails, memos and reports and to manually

review these to identify and extract the relevant information. This would be quite an onerous task and one that we believe would likely exceed the Freedom of Information Act 2000 (FOIA) cost limit.

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'.

Even if each individual member of staff that may hold the relevant information were to carry out a search of their records for all information where the words *"the rise in the number of those claims"* appeared, this would still require a manual review to ensure that the information meet the request. We estimate that this exercise would likely exceed 30 hours, as it would involve, identifying the various members of staff that may hold the relevant information, locating the relevant records and extracting the relevant information.

Some information that may be of interest

Further to our obligation under section 16 of the FOIA to provide advice and assistance to requesters, we are able to advise you of the following information that is readily available and which we believe answers some of your request:

NHS Resolution ARA 2022/23 (pg 36):

The change in reported **volumes** this year is due to a range of factors including:

- In 2021/22, ELSGP reported numbers (for claims with incident dates before 1 April 2019) were particularly high due to the bulk migration of 2,005 claims from the MPS (as shown in figure 4). As our ongoing general practice indemnity scheme (CNSGP) matures ELSGP claim numbers are expected to reduce over time as fewer new claims with incident dates before 1 April 2019 are reported.
- A maturing CNSGP portfolio, illustrated in figure 4, which is as expected following inception of the scheme in 2019. CNSGP covers incidents occurring on or after 1 April 2019 and the time-lag between incident and reporting (as illustrated by figure 2 on page 35) means that we are now more steadily receiving claims relating to incidents which occurred when the scheme first began.
- Reported numbers were low during the acute phase of the pandemic, particularly in the non-clinical portfolio. Although numbers have risen since then they remain lower than pre-pandemic levels in both CNST (1.7% lower than the average over the five years to 2019/20) and Liabilities to Third Parties Scheme (LTPS) (16.4% lower than the average over the five years to 2019/20). In relation to LTPS, which covers non-clinical claims such as public and employers' liability, we received 62 more claims (3,136 in 2022/23 compared to 3,074 in 2021/22); however, they remain lower than the average over the

five years to 2019/20. This is likely to be due to the lower footfall in hospitals and healthcare settings throughout the pandemic.

Learning from these incidents to ensure that they can be prevented is essential and underpins NHS Resolution's work with the NHS to use its unique role as a national indemnity body to help improve safety.

Background:

1. The drivers of the cost of clinical negligence includes three main constituent elements: claims volume (the number of claims made in a year); damages payments (compensation); and legal costs.
2. Claim volume trends have mainly been influenced by legal market factors, Covid-19, and NHS Resolution indemnifying general practice. When adjusted for new general practice claims, the volume of claims has levelled out since 2013-14.
3. Legal costs are being addressed through proposals currently under consideration by the Civil Procedure Rules Committee, and recent Rule amendments for fixed recoverable costs (Fixed Recoverable Costs for Lower Value Clinical Negligence Claims - NHS Resolution).
4. Increased compensation payments have been the main driver for a rise in the cost of clinical negligence. There are a number of reasons for this, they are addressed in a Department of Health and Social Care (DHSC) submission to the Health and Social Care Select Committee inquiry into NHS Litigation Reform, referred to in written evidence submitted by DHSC (NLR0070) to the Health and Social Care Select Committee - *committees.parliament.uk/writtenevidence/40836/pdf/)*. They include a 2017 change to the relevant rate for calculating the value of up-front settlements for future losses such as the cost of treatment and care, and loss of earnings. This substantially increased the cost of compensation. The higher costs also reflect increases in the cost of long-term care and treatments for severely injured people. Higher value awards which involve these significant future costs are growing at rates higher than general inflation.
5. Higher-value awards, mainly for maternity claims, make up a large proportion of the overall amount paid in compensation.

Evidence from publicly available documents:

- The volume of claims remains relatively static against a backdrop of increased activity within the NHS over a 10 year period (See *Section 12,* Written evidence submitted by the DHSC (NLR0070) *committees.parliament.uk/writtenevidence/40836/pdf/)*
- Overall costs have continued to rise steeply, driven by rising payments for compensation, accounting for 73% of annual payments for claims by 2020-21. Higher value awards, mainly for maternity claims, make up a large proportion of the overall amount paid in compensation and are growing at rates significantly higher than inflation.
- Several factors have influenced the growth in the cost of these higher-value claims, including increased use of PPOs, the 2017 reduction in the Personal Injury Discount

Rate (PIDR), as well as external factors such as the rising cost of social care and increasing life expectancy. However, together these factors alone cannot fully explain their steep rise. It appears that a proportion of the rise may be due to precedent setting in the Courts. (see *Section 14,* Written evidence submitted by the DHSC (NLR0070) *committees.parliament.uk/writtenevidence/40836/pdf/).*

We hope the above information is helpful and provides some of the information requested.

For details of the claims data that we publish please see the following links:

Annual report statistics: - Annual statistics (including Factsheet 5) - NHS Resolution

You may also 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/