NHS Resolution

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February 2024
FOI_6374

The following information was requested on 22 January 2024:

I am looking into litigation claims in oral and maxillofacial surgery taken against the NHS in England and Wales over the last 2 years. I would like to know how many cases were successfully compensated and what were the reasons for these claims. I understand that I can't be given any names etc, but I would like a detailed report of examples of the cases that were successfully compensated. Were any claimants successful because they had to pay out of pocket to get surgery elsewhere to rectify problems caused by primary surgery on the NHS? Many thanks

[We sought clarification on 22 January 2024]

We can certainly provide information about Oral and Maxillofacial claims in the last 2 Financial years (2021/22 to 2022/23 is the most recent data we hold. Data for 2023/24 will be available on request from August 2024).

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 claims for oral and maxillofacial surgery broken down by cause and injury and the number closed with nil damages paid; number closed with a damages payment and associated costs.

*We hold information about claims in **England only**. You may need to contact NHS Wales for information about claims in Wales: Clinical negligence - NHS Wales Shared Services Partnership.*

Please, would you be able to confirm if you are interested in receiving the data as set out above.

[You replied on 22 January 2024]

I would very much appreciate the detailed info and breakdown of all claims against maxillofacial treatment. And if possible, go back to say 2019 as well. Many thanks

Our Response

Please find attached the requested information we are able to provide. Please note we only hold information for **England**.

We do not hold information for Wales. Each jurisdiction has its own arrangements. Please visit the following website for the: Welsh Risk Pool - NHS Wales Shared Services Partnership.

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 unsuccessful), challenged, reopened and closed again at conclusion.

The data shows variation in numbers of cases received, closed per year and costs attributed to those claims. This is a reflection of the nature of individual claims received and resolved by NHS Resolution, which can vary significantly. As such, these fluctuations cannot be interpreted as trends.

Table 1 shows: - Number of Clinical Claims and Incidents received between financial years 2019/20 and 2022/23 where the Specialty is 'Oral and Maxillofacial surgery'.

Table 2 shows: - Number and Cost of Clinical Claims Closed (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 with a damages payment, where the Specialty is 'Oral and Maxillofacial Surgery'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure, or for PPO matters, year of settlement.

Table 3 shows: - Analysis of Primary Injuries for Clinical Claims Closed with a damages payment (or Settled with a periodical payment order) between financial years 2019/20 and 2022/23 where the Specialty is 'Oral and Maxillofacial Surgery'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure, or for PPO matters, year of settlement.

Table 4 shows: - Analysis of Primary Causes for Clinical Claims Closed with a damages payment (or Settled with a periodical payment order) between financial years

2019/20 and 2022/23 where the Specialty is 'Oral and Maxillofacial Surgery'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure, or for PPO matters, year of settlement.

PPOs

The information disclosed includes damages and costs paid up to the end of the settlement year (in Periodical payment order (PPO) cases) and up to the end of the closure year in non-PPO cases.

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. The information disclosed includes lump sum damages, costs and any PPO damages paid up to the end of the year of settlement. It does not include PPO damages, which have been committed to but due to be paid after the settlement year.

Low figures

We have supressed low numbers 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.

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/

Freedom of Information Request# 6374
Data correct as at: The end of every financial year

NHS Resolution

TABLE OF CONTENTS

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.

Freedom of Information Request #6374
Data correct as at: The end of every financial year

Table 1: Number of Clinical Claims and Incidents received between financial years 2019/20 and 2022/23 where the Specialty is 'Oral & Maxillo Facial Surgery'.

FOI View	Notified

Year of Notification	No. of Claims
2019/20	111
2020/21	93
2021/22	86
2022/23	72
Grand Total	**362**

Freedom of Information Request #6374
Data correct as at: The end of every financial year

Table 2: Number and Cost Clinical Claims Closed (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 with a damages payment, where the Specialty is 'Oral & Maxillo Facial Surgery'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure, or for PPO matters, year of settlement.

FOI View	Closed Settled

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2019/20	83	3,950,612	713,048	2,480,542	7,144,202
2020/21	86	2,989,334	669,101	2,452,839	6,111,273
2021/22	99	8,345,245	1,061,189	3,345,461	12,751,895
2022/23	82	5,176,368	744,132	2,727,351	8,647,851
Grand Total	**350**	**20,461,559**	**3,187,469**	**11,006,193**	**34,655,221**

Freedom of Information Request #6374
Data correct as at: The end of every financial year

NHS Resolution

Table 3: Analysis of Primary Injuries for Clinical Claims Closed with a damages payment (or Settled with a periodical payment order) between financial years 2019/20 and 2022/23 where the Specialty is 'Oral & Maxillo Facial Surgery'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure, or for PPO matters, year of settlement.

FOI View	Closed Settled

Primary Injury	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Adtnl/unnecessary Operation(s)	97	4,436,734	937,975	2,247,008	7,621,717
Nerve Damage	56	4,467,900	715,088	2,233,295	7,416,283
Dental Damage	36	858,463	299,649	979,320	2,137,432
Unnecessary Pain	35	754,107	159,801	980,703	1,894,611
Scarring	22	885,374	77,486	641,415	1,604,275
Cosmetic Disfigurement	17	2,188,280	184,577	582,420	2,955,277
Cancer	11	681,538	140,957	584,350	1,406,845
Advanced Stage Cancer	11	1,191,104	102,910	656,277	1,950,291
Poor Outcome - Fractures Etc.	10	340,695	55,148	188,650	584,493
Fracture	9	187,678	35,439	224,200	447,317
Fatality	8	1,826,289	148,714	647,200	2,622,203
Burn(s)	8	206,750	29,738	209,400	445,888
Multiple Injuries	6	1,435,803	79,360	130,500	1,645,663
Other	#	#	#	#	#
Blindness	#	#	#	#	#
Psychiatric/Psychological Dmge	#	#	#	#	#
Other Infection	#	#	#	#	#
Partial Hearing Loss	#	#	#	#	#
Anaphylact Shock/Allergic Shock/allergy	#	#	#	#	#
Bruising/ Extravasation	#	#	#	#	#
Pressure Sores	#	#	#	#	#
Cardiac Arrest	#	#	#	#	#
Infectious Diseases	#	#	#	#	#
Hospital Acquired Infection	#	#	#	#	#
Other Visual Problems	#	#	#	#	#
Compartment Syndrome	#	#	#	#	#
Deafness	#	#	#	#	#
Tissue Damage	#	#	#	#	#
Infection (bacterial)	#	#	#	#	#
Grand Total	**350**	**20,461,559**	**3,187,469**	**11,006,193**	**34,655,221**

Freedom of Information Request #6374
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NHS Resolution

Table 4: Analysis of Primary Causes for Clinical Claims Closed with a damages payment (or Settled with a periodical payment order) between financial years 2019/20 and 2022/23 where the Specialty is 'Oral & Maxillo Facial Surgery'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure, or for PPO matters, year of settlement.

FOI View	Closed Settled

Primary cause	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Inappropriate Treatment	88	6,783,169	903,549	1,841,632	9,528,350
Fail / Delay Treatment	57	3,386,526	415,118	1,524,965	5,326,608
Fail To Warn-Informed Consent	36	1,973,193	471,631	1,518,997	3,963,821
Failure/Delay Diagnosis	33	1,983,888	353,758	1,634,565	3,972,211
Intra-Op Problems	25	849,044	237,001	886,940	1,972,985
Operator Error	22	506,275	71,607	507,200	1,085,082
Fail To Recog. Complication Of	15	476,966	160,430	546,120	1,183,516
Wrong Site Surgery	11	68,650	9,727	57,840	136,217
Delay In Performing Operation	10	959,391	136,609	619,850	1,715,850
Equipment Malfunction	9	60,248	12,062	88,900	161,210
Foreign Body Left In Situ	7	85,665	23,148	115,526	224,339
Failure To Perform Operation	5	75,500	29,212	135,700	240,412
Failure To Interpret X-Ray	5	30,790	11,008	84,500	126,298
Failure To X-Ray	#	#	#	#	#
Bacterial Infection	#	#	#	#	#
Wrong Diagnosis	#	#	#	#	#
Perform. Of Op. Not Indicated	#	#	#	#	#
Err With Agnt/Dose/Route/Selec	#	#	#	#	#
Fail To Act On Abnorm Test Res	#	#	#	#	#
Fail To Infrm Test Rslts	#	#	#	#	#
Lack Of Pre-Op Evaluation	#	#	#	#	#
Fail To Supervise	#	#	#	#	#
Application Of Excess Force	#	#	#	#	#
Other	#	#	#	#	#
Retained Instrument Post-Operation	#	#	#	#	#
Tooth Inj & Patient Posit Prob	#	#	#	#	#
Intubation Problems	#	#	#	#	#
Fail To Follow-Up Arrangements	#	#	#	#	#
Grand Total	**350**	**20,461,559**	**3,187,469**	**11,006,193**	**34,655,221**