



Resolution

8th Floor,
10 South Colonnade
Canary Wharf
London
E14 4PU

Telephone: 020 7811 2700

February 2024
FOI_6397

The following information was requested on 2 February 2024:

Can I get answers to the following under the FOI act 2000?

*Please only provide **Obstetrics - NHS Statistics for Dartford and Gravesham Trust***

- 1. Number of total wrongful birth claims brought against this trust in the past 5 years.*
- 2. Number of successful wrongful birth claims brought against this trust in the past 5 years.*
- 3. Number of unsuccessful wrongful birth claims brought against this trust in the past 5 years.*
- 4. Number of antenatal scans with wrong genetic condition diagnosis.*

Our Response

We are unable to provide the information requested in **Q4**. 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 codes for: *antenatal scans with wrong genetic condition*. 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 *antenatal scans with wrong genetic condition*. 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'.

Please find attached the requested information in respect of Q1 – Q3. We are able to provide the information in complete financial years.

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>.

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 with nil damages paid), challenged, reopened, and closed again at conclusion.

Table 1 shows: - Number of Clinical Claims **received** between financial years 2018/19 and 2022/23 where any of the injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'.

Table 2 shows: - Number and Cost of Clinical Claims **Closed** between financial years 2018/19 and 2022/23 with a damages payment, where any of the Injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure.

Please note that the number of claims associated with both attached tables (table 1 and table 2) is fewer than 5. Please refer to the Low Numbers refusal notice below for further explanation about why we cannot provide you with the precise figures.

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.

During the period 2018/19 – 2022/23 there were no Claims closed with a **Nil** Damages payment where any of the Injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'.

Low Numbers

We have not provided the information for low figures involved, 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/>

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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 received between financial years 2018/19 and 2022/23 where the one of the injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'.

Table 2: Number and Cost of Clinical Claims Closed between financial years 2018/19 and 2022/23 with a damages payment, where one of the Injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure.

Table 1: Number of Clinical Claims received between financial years 2018/19 and 2022/23 where the one of the injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'.

FOI View	Notified
Speciality1L1ARA	Obstetrics
Latest Trust Name	Dartford and Gravesham NHS Trust

Year of Notification	No. of Claims
2019/20	#
2021/22	#
Grand Total	#

Table 2: Number and Cost of Clinical Claims Closed between financial years 2018/19 and 2022/23 with a damages payment, where one of the Injuries is 'Wrongful Birth', the Specialty is 'Obstetrics' and the Trust is 'Dartford and Gravesham NHS Trust'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure.

FOI View	Closed Settled
Claim_Outcome	Successful
Speciality1L1ARA	Obstetrics
Latest Trust Name	Dartford and Gravesham NHS Trust

Year of Closure	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2022/23	#	#	#	#	#
Grand Total	#	#	#	#	#