



Resolution

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February 2024
FOI_6406

The following information was requested on 12 February 2024 and clarified on 14 February 2024:

Please can you tell me the number of claims brought under the Congenital Disabilities (Civil Liability) act 1976 for the past ten years (claims brought by children for injuries that occurred before birth)?

Please can you tell me the number of wrongful life claims that have been brought during the same period?

[We explained on 14 February 2024]

Thank you for your request. Before we can respond, we will need clarification on the following points.

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).

Please, could you confirm if the reference to wrongful life in Q2 relates to wrongful birth? We do not have an injury code wrongful life.

Previously, we provided you with the information about specialty: Obstetrics and injury: wrongful birth: [FOI 5735 Obstetrics-and-wrongful-birth.pdf \(resolution.nhs.uk\)](#). Would you like the same data for the last 10 years?

Additionally, we could include following injury codes:

*Foetal Abnormality
Multiple Disabilities
Wrongful Birth*

We could also provide claims for Obstetrics broken down by all causes and/or injuries.

[You replied on 14 February 2024]

*Thank you. That is a shame if no code for wrongful life. Please could I have the data for **foetal abnormality, multiple disability, and wrongful birth** please?*

Our Response

Thank you for your request for information. Please find attached the requested information we are able to provide. Please note we only hold information for England.

Please note that our Claims learning codes are not organised in the way indicated in your original request of 12 February. Our Claims learning codes are not based on the Congenital Disabilities (Civil Liability) Act 1976. Therefore, we have provided information based on the way in which it is recorded in our Claims Management System.

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.

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 2006/07 and 2022/23 where the Primary Injury is '**Wrongful Birth**'.

Table 2 shows – Number and Cost 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 Injury is '**Wrongful Birth**'. 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 – Number of Clinical Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Injury is '**Foetal Abnormality**'.

Table 4 shows – Number and Cost of Claims Closed between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Injury is '**Foetal Abnormality**'. The data includes the damages and legal costs paid up until the end of each relevant financial year of closure.

Please note that where a financial year is not shown in the data, it means that there were no claims falling within that year.

Table 5 shows – Number of Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Injury is '**Multiple Disabilities**' and the Specialty is '**Obstetrics**'.

Table 6 shows – Number and Cost of Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Injury is '**Multiple Disabilities**' and the Specialty is '**Obstetrics**'. 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 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 Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Injury is 'Wrongful Birth'.

Table 2: Number and Cost of Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Injury is 'Wrongful Birth'. 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.

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Table 1: Number of Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Injury is 'Wrongful Birth'.

FOI View Injury1L1	Notified Wrongful Birth
Year of Notification	No. of Claims
2006/07	11
2007/08	16
2008/09	25
2009/10	12
2010/11	27
2011/12	16
2012/13	30
2013/14	23
2014/15	21
2015/16	18
2016/17	22
2017/18	16
2018/19	18
2019/20	17
2020/21	16
2021/22	22
2022/23	18
Grand Total	328

Table 2: Number and Cost of Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Injury is 'Wrongful Birth'. 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
Claim_Outcome	Successful
InjuryLL1	Wrongful Birth

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2006/07	11	6,494,775	661,182	1,400,839	8,556,796
2007/08	9	4,584,246	343,922	1,033,708	5,961,876
2008/09	9	2,934,000	292,440	781,227	4,007,667
2009/10	13	5,458,934	276,427	1,053,588	6,788,949
2010/11	20	9,807,113	563,802	1,963,964	12,334,879
2011/12	10	7,520,147	457,650	1,043,718	9,021,515
2012/13	17	13,751,502	946,638	2,526,425	17,224,565
2013/14	11	11,418,946	489,550	1,826,512	13,735,009
2014/15	7	5,569,812	510,692	1,193,822	7,274,326
2015/16	12	16,473,385	861,836	2,720,267	20,055,488
2016/17	10	11,806,949	411,003	1,641,351	13,859,304
2017/18	15	8,798,869	579,545	2,002,847	11,381,261
2018/19	10	17,296,750	316,130	1,683,615	19,296,495
2019/20	12	27,819,992	725,960	3,011,625	31,557,577
2020/21	10	32,947,268	954,257	3,797,375	37,698,900
2021/22	12	62,726,777	1,162,349	5,650,613	69,539,739
2022/23	17	59,348,216	1,531,697	6,630,090	67,510,003
Grand Total	205	304,757,681	11,085,080	39,961,586	355,804,347

Table 3: Number of Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Injury is 'Foetal Abnormality'.

FOI View	Notified
Injury1L1	Foetal Abnormality

Year of Notification	No. of Claims
2006/07	#
2007/08	#
2008/09	#
2009/10	#
2010/11	#
2012/13	#
2013/14	9
2014/15	5
2015/16	6
2016/17	6
2017/18	#
2018/19	#
2019/20	7
2020/21	6
2021/22	#
2022/23	#
Grand Total	63

Table 4: Number and Cost of Claims Closed between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Injury is 'Foetal Abnormality'. 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
Injury1L1	Foetal Abnormality

Year of Closure	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2006/07	#	#	#	#	#
2013/14	#	#	#	#	#
2014/15	#	#	#	#	#
2016/17	#	#	#	#	#
2015/16	#	#	#	#	#
2017/18	5	4,599,741	91,013	488,671	5,179,425
2019/20	#	#	#	#	#
2020/21	#	#	#	#	#
2021/22	8	8,242,142	204,126	757,000	9,203,269
Grand Total	32	15,627,927	685,070	2,824,645	19,137,642

Table 5: Number of Claims and Incidents received between financial years 2006/07 and 2022/23 where the Primary Injury is 'Multiple Disabilities' and the Specialty is 'Obstetrics'.

FOI View	Notified
Speciality1L1ARA	Obstetrics
Injury1L1	Multiple Disabilities

Year of Notification	No. of Claims
2006/07	#
2007/08	#
2008/09	#
2009/10	#
2012/13	#
2013/14	#
2014/15	#
2015/16	#
2016/17	#
2017/18	#
2020/21	#
2021/22	#
2022/23	#
Grand Total	21

Table 6: Number and Cost of Claims Closed (or settled with a periodical payment order) between financial years 2006/07 and 2022/23 with a damages payment, where the Primary Injury is 'Multiple Disabilities' and the Specialty is 'Obstetrics'. 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
Speciality1L1ARA	Obstetrics
Claim_Outcome	Successful
Injury1L1	Multiple Disabilities

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2007/08	#	#	#	#	#
2008/09	#	#	#	#	#
2009/10	#	#	#	#	#
2012/13	#	#	#	#	#
2013/14	#	#	#	#	#
2014/15	#	#	#	#	#
2016/17	#	#	#	#	#
2018/19	#	#	#	#	#
2020/21	#	#	#	#	#
2021/22	#	#	#	#	#
Grand Total	15	34,861,273	1,494,739	3,514,158	39,870,170