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London
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April 2024
FOI_6421

The following information was requested on 21 February 2024:

I am writing to request information under the Freedom of Information Act, please can you provide the following?

1. How many medical negligence claims have been brought against the NHS in relation to Covid-19? From Jan 2020-2023 (up to and including any data held for 2024).
1a) What are the nature of these claims?
1b) How many of these claims have been settled?
1c) How much compensation has been paid out in total?

Our Response

Please find attached the requested information. Please note we only hold information for England. We are able to provide information in complete financial years. We have therefore provided information for the financial year 2020/21 – 2022/23. The information for the financial year 2023/24 is currently unavailable and will be available on request from August 2024.

For the purposes of this request, we have tried to identify claims for review where we believe the pandemic may have been a factor in the circumstances leading to the claim.

This does not mean that the words ‘coronavirus’ and/or ‘Covid-19’ appear in the presenting claim, nor that the pandemic is mentioned by the NHS organisation reporting the claim, it is simply that the nature of the allegations of negligence have alerted us to the possibility that the pandemic <u>may</u> have been a factor in any harm caused.

One example would be a claim brought because of alleged harm caused by a delayed diagnosis where the period of delay (all or part) falls within the pandemic, and we will need to review the claim to establish whether the pandemic is a contributing factor.

Please note claims notified/received and open are not guaranteed to be settled in the same year and can take many years to be concluded. 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.

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 during this period. This is a reflection of the nature of individual claims received by NHS Resolution, which can vary significantly. As such, these fluctuations cannot be interpreted as trends.

Table 1 shows: - Number of Claims and Incidents received between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor.

Table 2 shows: - Number and cost of Claims Closed (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 with a damages payment, where COVID was potentially a contributing factor. 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 and Cost of Claims Closed between financial years 2019/20 and 2022/23 with **NIL** damages paid where COVID was potentially a contributing factor.

Table 4 shows: - Analysis of Specialties of Claims Closed with a damages payment (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor. 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 5 shows: - Analysis of Primary Injuries for Claims Closed with a damages payment (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor. 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 6 shows: - Analysis of Primary Causes for Claims Closed with a damages payment (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor. 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 Numbers

We have suppressed low figures and are unable to provide the location of the claims 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 Freedom of Information 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. Where we are in the territory of such small numbers in the attached, we have used a '#' symbol in the relevant field. You should still be able to see aggregate/total details for higher level fields containing this data.

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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Data correct as at: The end of every financial year

T A B L E O F C O N T E N T S

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.

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Table 1:Number of Claims and Incidents received between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor.

FOI View	Notified

Year of Notification	No. of Claims
2020/21	208
2021/22	385
2022/23	361
Grand Total	**954**

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Table 2: Number and cost of Claims Closed (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 with a damages payment, where COVID was potentially a contributing factor. 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
scheme	(All)
Claim_Outcome	Successful

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2020/21	#	#	#	#	#
2021/22	11	198,500	46,184	148,050	392,734
2022/23	44	696,957	238,762	529,700	1,465,419

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Table 3: Number and Cost of Claims Closed between financial years 2019/20 and 2022/23 with NIL damages paid where COVID was potentially a contributing factor.

FOI View	Closed Settled
scheme	(All)
Claim_Outcome	Unsuccessful

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2020/21	23	0	26,949	0	26,949
2021/22	121	0	343,992	0	343,992
2022/23	176	0	654,445	0	654,445
Grand Total	**320**	**0**	**1,025,385**	**0**	**1,025,385**

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NHS Resolution

Table 4: Analysis of Specialties of Claims Closed with a damages payment (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor. 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
scheme	(All)
Claim_Outcome	Successful

Primary Specialty	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Anaesthesia	#	#	#	#	#
Emergency Medicine	#	#	#	#	#
Gastroenterology	#	#	#	#	#
General Medicine	#	#	#	#	#
General Practice	9	76,399	45,029	103,750	225,178
General Surgery	8	185,365	42,575	112,200	340,140
Geriatric Medicine	#	#	#	#	#
Gynaecology	#	#	#	#	#
Obstetrics	#	#	#	#	#
Ophthalmology	#	#	#	#	#
Orthopaedic Surgery	#	#	#	#	#
Other	#	#	#	#	#
Radiology	#	#	#	#	#
Respiratory Medicine/ Thoracic Medic	#	#	#	#	#
Urology	#	#	#	#	#
Infectious Diseases	#	#	#	#	#
Rehabilitation	#	#	#	#	#
Ambulance	#	#	#	#	#
Community Medicine/ Public Health	#	#	#	#	#
Renal Medicine	#	#	#	#	#
HM Prison Medical/dental	#	#	#	#	#
Physiotherapy	#	#	#	#	#
Genito-Urinary Medicine	#	#	#	#	#

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Table 5: Analysis of Primary Injuries for Claims Closed with a damages payment (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor. 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
scheme	(All)
Claim_Outcome	Successful

Primary Injuries	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Adtnl/unnecessary Operation(s)	6	106,500	20,313	57,250	184,063
Amputation - Lower	#	#	#	#	#
Fatality	14	168,000	82,190	104,150	354,340
Poor Outcome - Fractures Etc.	#	#	#	#	#
Pressure Sores	#	#	#	#	#
Psychiatric/Psychological Dmge	6	45,293	9,161	95,750	150,204
Removal Of Fallopian Tube	#	#	#	#	#
Removal Of Testicle	#	#	#	#	#
Unnecessary Pain	9	118,000	59,263	141,100	318,363
Fracture	#	#	#	#	#
Multiple Injuries	#	#	#	#	#
Bowel Damage/ Dysfunction	#	#	#	#	#
Bladder Damage	#	#	#	#	#
Brain Damage	#	#	#	#	#
Infection (bacterial)	#	#	#	#	#
Cardiac Arrest	#	#	#	#	#
Advanced Stage Cancer	#	#	#	#	#
Cerebral Palsy	#	#	#	#	#
Hypothermia	#	#	#	#	#
Anaesthetic	#	#	#	#	#

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Table 6: Analysis of Primary Causes for Claims Closed with a damages payment (or settled with a periodical payment order) between financial years 2019/20 and 2022/23 where COVID was potentially a contributing factor. 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
scheme	(All)
Claim_Outcome	Successful

Primary Causes	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Fail / Delay Treatment	7	75,120	25,117	70,210	170,447
Fail To Follow-Up Arrangements	#	#	#	#	#
Fail To Supervise	#	#	#	#	#
Failure To Interpret X-Ray	#	#	#	#	#
Failure To Perform Operation	#	#	#	#	#
Failure/Delay Diagnosis	12	239,293	70,139	173,090	482,522
Inadequate Nursing Care	10	122,643	44,716	106,600	273,959
Inappropriate Treatment	#	#	#	#	#
Lack Of Facilities/Equipment	#	#	#	#	#
Fail To Monitor 1st Stg Labour	#	#	#	#	#
Fail/Delay Admitting To Hosp.	#	#	#	#	#
Foreign Body Left In Situ	#	#	#	#	#
Inapprop. Case Selection	#	#	#	#	#
Retained Instrument Post-Operation	#	#	#	#	#
Fail To Act On Abnorm Test Res	#	#	#	#	#
Fail/Delay Referring To Hosp.	#	#	#	#	#
Failed Infection Control Policy/Hospital Hygiene	5	53,250	23,630	18,200	95,080
Perform. Of Op. Not Indicated	#	#	#	#	#
Fail To Infrm Test Rslts	#	#	#	#	#
Wrong Site Surgery	#	#	#	#	#
Fail/Delay Of Avail Emgy Anaes	#	#	#	#	#