NHS Resolution

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May 2024
FOI_6524

The following information was requested on 2 May 2024:

I am emailing to ask for your advice with an upcoming educational article focussed on paediatric anaesthesia. The article is centred around the practical environment of the delivery of paediatric anaesthesia, and one of the "pillars" I am hoping to detail are the medicolegal themes encountered by anaesthetists.

I have previously researched litigation with respect to anaesthesia, with this article (https://associationofanaesthetists-publications.onlinelibrary.wiley.com/doi/10.1111/anae.15685) providing an excellent summary of the themes encountered in adult practice, but I cannot find a similar analysis of themes relating to paediatric anaesthesia, or any raw data that is available from NHSE/NHSR.

I am hoping that I would be able to request data on claims made involving anaesthesia/anaesthetists in tertiary paediatric centres, or within the disciple of paediatric anaesthesia as a whole. I would aim use this as a framework to help me write the article. My aim is to provide the reader with a overview of the themes encountered, as opposed to specific cases and claims.

I understand that I could submit FOI requests to tertiary paediatric centres in the UK for this data, but this may be an arduous and prolonged process; I am hoping that as a focal point, NHSR may have this data already collated.

[We replied on 2 May 2024]

I am responding to your request for information which was passed to our team.

In terms of data already collated, you may be interested in our Did you know? Publication: NHS Resolution – Did you know? Paediatric medicine errors and a following FOI request: FOI_5912_Paediatric-Medicine-Errors.pdf (resolution.nhs.uk).

You can also check claims data we publish: Annual statistics (including Factsheet 5) - NHS Resolution.

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 could provide you with the number of claims received for the specialty Anaesthesia for patients under 18, and also the number closed with nil damages paid; number closed with a damages payment and associated costs; breakdown by primary cause; breakdown by primary injury.

*Please provide us with the **time period** you would like the data to cover. We can provide information in financial years.*
Your request will be put on hold until we receive the clarification requested above.

[You replied on 2 May 2024]

Thank you for your wonderfully prompt and comprehensive response.

I have reviewed the FOI articles outlined, and whilst these give a nice summary of the issues encountered, if it is possible, I would, both for my own learning, and to disseminate to the audience seek some further details on the cases.

From the options outlined, I would be interested only in cases involving children under 18.
Within these cases, I would be interested all of the fields outlined:

Number closed with nil damages paid
Number closed with a damages payment and associated costs
Breakdown by primary cause
Breakdown by primary injury

I would summarise these so that the reader would have a feel for the types of cases encountered, and the injury types, as well as sequalae.

Regarding time period, I have no specific figure in mind, but I do want to be overly burdensome - is the past 10 financial years doable, or is this an arduous amount of work?

Our Response

Please find attached the requested information we are able to provide. This information only covers England and not the rest of the UK.

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.

The information for the financial year 2023/24 is currently unavailable and will be available on request from August 2024.

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.

Please also note that the data shows a variation in the number of claims received and closed 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 Clinical Claims and Incidents received between financial years ‘2012/13’ and ‘2022/23’ where the Specialty is ‘**Anaesthesia**’, and the patient is under 18 years of age.

Table 2 shows: - Number and cost of Clinical Claims Closed (or settled with a periodical payment order) between financial years ‘2012/13’ and ‘2022/223’ with a damages payment, where the Specialty is ‘**Anaesthesia**’ and the patient is under 18 years of age. 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.

Where a financial year is not shown in the table, this means that there were no claims meeting this criteria closed in that financial year.

Table 3 shows: - Number and Cost of Clinical Claims Closed between financial years ‘2012/13’ and ‘2022/23’ with **NIL** damages paid where the Specialty is ‘**Anaesthesia**’ and the patient is under 18 years of age.

Where a financial year is not shown in the table, this means that there were no claims meeting this criteria closed in that financial year.

Table 4 shows: - Analysis of Primary Injuries for Clinical Claims Closed with a damages payment (or settled with a periodical payment order) between financial years ‘2012/13’ and ‘2022/23’ where the Specialty is ‘**Anaesthesia**’ and the patient is under 18 years of age. 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 Clinical Claims Closed with **NIL** damages paid between financial years ‘2012/13’ and ‘2022/23’ where the Specialty is **‘Anaesthesia’** and the patient is under 18 years of age.

Table 6 shows: - Analysis of Primary Causes for Clinical Claims Closed with a damages payment or Settled with a periodical payment order between financial years ‘2012/13’ and ‘2022/23’ where the Specialty is ‘**Anaesthesia**’ and the patient is under 18 years of age. 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 7 shows: - Analysis of Primary Causes for Clinical Claims Closed with **NIL** damages paid between financial years '2012/13' and '2022/23' where the Specialty is 'Anaesthesia' and the patient is under 18 years of age.

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/

Freedom of Information Request# 6524
Data correct as at: The end of every financial year

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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.

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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 and Incidents received between financial years ‘2012/13’ and ‘2022/23’ where the Specialty is ‘Anaesthesia’ and the patient is under 18 years of age.

FOI View	Notified

Year of Notification	No. of Claims
2012/13	#
2013/14	5
2014/15	5
2015/16	5
2016/17	#
2017/18	#
2018/19	5
2019/20	6
2020/21	#
2021/22	#
2022/23	#
Grand Total	**44**

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Table 2: Number and Cost of Clinical Claims Closed (or settled with a periodical payment order) between financial years '2012/13' and '2022/23' with a damages payment, where the Specialty is 'Anaesthesia' and the patient is under 18 years of age. 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

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2012/13	5	153,551	136,366	286,625	576,543
2013/14	#	#	#	#	#
2014/15	#	#	#	#	#
2015/16	#	#	#	#	#
2016/17	5	2,915,241	203,418	411,186	3,529,845
2017/18	#	#	#	#	#
2018/19	6	44,000	6,541	63,325	113,866
2019/20	#	#	#	#	#
2021/22	#	#	#	#	#
2022/23	#	#	#	#	#
Grand Total	**33**	**20,645,352**	**1,208,844**	**2,440,436**	**24,294,633**

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Table 3: Number and Cost of Clinical Claims Closed between financial years '2012/13' and '2022/23' with NIL damages paid where the Specialty is 'Anaesthesia' and the patient is under 18 years of age.

FOI View	Closed Settled
Claim_Outcome	Unsuccessful

Year of Closure	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2012/13	#	#	#	#	#
2013/14	#	#	#	#	#
2015/16	#	#	#	#	#
2017/18	#	#	#	#	#
2018/19	#	#	#	#	#
2020/21	#	#	#	#	#
2021/22	#	#	#	#	#
Grand Total	**14**	**0**	**48,383**	**0**	**48,383**

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Table 4: Analysis of Primary Injuries for Clinical Claims Closed with a damages payment (or settled with a periodical payment order) between financial years '2012/13' and '2022/23' where the Specialty is 'Anaesthesia' and the patient is under 18 years of age. 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

FOI View	Closed Settled
Claim_Outcome	Successful

Primary Injury	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Psychiatric/Psychological Dmge	7	218,491	82,904	270,716	572,111
Fatality	5	145,675	27,028	135,625	308,328
Brain Damage	5	13,106,612	613,695	1,143,750	14,864,057
Respiratory Disorder/ Failure	#	#	#	#	#
Anaesthetic	#	#	#	#	#
Adtnl/unnecessary Operation(s)	#	#	#	#	#
Unnecessary Pain	#	#	#	#	#
Learning Difficulties	#	#	#	#	#
Spinal Damage	#	#	#	#	#
Cerebral Palsy	#	#	#	#	#
Pressure Sores	#	#	#	#	#
Partial Paralysis	#	#	#	#	#
Paraplegia	#	#	#	#	#
Other	#	#	#	#	#
Nerve Damage	#	#	#	#	#
Grand Total	**33**	**20,645,352**	**1,208,844**	**2,440,436**	**24,294,633**

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Table 5: Analysis of Primary Injuries for Clinical Claims Closed with NIL damages paid between financial years '2012/13' and '2022/23' where the Specialty is 'Anaesthesia' and the patient is under 18 years of age.

FOI View	Closed Settled
Claim_Outcome	Unsuccessful

Primary Injury	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Adtnl/unnecessary Operation(s)	#	#	#	#	#
Amputation - Upper	#	#	#	#	#
Nerve Damage	#	#	#	#	#
Psychiatric/Psychological Dmge	#	#	#	#	#
Unnecessary Pain	#	#	#	#	#
Bruising/ Extravasation	#	#	#	#	#
Burn(s)	#	#	#	#	#
Vocal Cord Damage	#	#	#	#	#
Grand Total	**14**	**0**	**48,383**	**0**	**48,383**

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Table 6: Analysis of Primary Causes for Clinical Claims Closed with a damages payment or Settled with a periodical payment order between financial years '2012/13' and '2022/23' where the Specialty is 'Anaesthesia' and the patient is under 18 years of age. 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

FOI View	Closed Settled
Claim_Outcome	Successful

Primary Cause	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Err With Agnt/Dose/Route/Selec	5	2,909,500	171,985	395,020	3,476,505
Intra-Op Problems	#	#	#	#	#
Lack Of Assistance/Care	#	#	#	#	#
Operator Error	#	#	#	#	#
Failure/Delay Diagnosis	#	#	#	#	#
Infusion Problems	#	#	#	#	#
Inadequate Nursing Care	#	#	#	#	#
Medication Errors	#	#	#	#	#
Fail To Supervise	#	#	#	#	#
Fail To Warn-Informed Consent	#	#	#	#	#
Inadequate Monitoring Intra-Op	#	#	#	#	#
Intubation Problems	#	#	#	#	#
Failure To Perform Operation	#	#	#	#	#
Fail/Delay Of Avail Emgy Anaes	#	#	#	#	#
Inappropriate Treatment	#	#	#	#	#
Re-Canalisation	#	#	#	#	#
Grand Total	**33**	**20,645,352**	**1,208,844**	**2,440,436**	**24,294,633**

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Table 7: Analysis of Primary Causes for Clinical Claims Closed with NIL damages paid between financial years '2012/13' and '2022/23' where the Specialty is 'Anaesthesia' and the patient is under 18 years of age.

FOI View	Closed Settled
Claim_Outcome	Unsuccessful

Primary Cause	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Fail / Delay Treatment	#	#	#	#	#
Failure/Delay Diagnosis	#	#	#	#	#
Inappropriate Treatment	#	#	#	#	#
Intra-Op Problems	#	#	#	#	#
Foreign Body Left In Situ	#	#	#	#	#
Medication Errors	#	#	#	#	#
Err With Agnt/Dose/Route/Selec	#	#	#	#	#
Intubation Problems	#	#	#	#	#
Grand Total	**14**	**0**	**48,383**	**0**	**48,383**