NHS
Resolution

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FOI_6795

The following information was requested between 28 September 2024 – 8 October 2024:

[You requested the following on 28 September 2024]:

The annual accounts of University Hospital Bristol & Weston NHS Foundation Trust for the year ended 31 March 2024, indicate that NHS Resolution has included a £ 340.7 million provision in its accounts (2022/23) in respect of alleged clinical negligence liabilities of the Trust.

With regard to this provision of £ 340.7 million can you please provide for me: -

1. Each of the years in which the alleged claims arose

2. The expected magnitude of each of those alleged claims and

3. The clinical disciplines to which each of the alleged claims relate.

[We replied on 4 October 2024 with]:

I can confirm that the figure quoted is not in respect of reported claims. It will include values for IBNR (incurred but not reported) matters, i.e. what has been calculated in respect of potential liabilities.

You may want to contact the trust directly for more details: [UHBW NHS - Freedom of Information (FOI) requests](#).

I hope this helps.

[You replied on 8 October 2024 with]:

Thank you for your e-mail.

I have noted that the provision is not solely for reported claims but includes also IBNR matters.

I have therefore subsequently been liaising with Eric Sanders, the Director of Corporate Governance at University Hospitals Bristol and Weston Foundation Trust.

Apart from advising me that the NHS Resolution 20232/23 provision for alleged clinical negligence of £ 340.7 million related to 179 claims he has simply responded that for answers to the undermentioned three questions "You will need to request this information from NHS Resolution".

With regard to this NHS Resolution provision of £ 340.7 million I should therefore be obliged if you could let me have the undermentioned information as a formal Freedom of Information Request.

1. *Both the earliest and the latest dates of the 179 claims mentioned by Eric*

2. *The value of both the smallest and the largest of the 179 claims which form part of the aggregate sum of £340.7 million.*

3. *Of the 179 claims both the number and total value (aggregating to £ 340.7 million) which relate to each stated clinical discipline affected.*

Our Response

We can confirm that the £340.68 million provision for this Trust relates to 183 claims, not 179 claims.

The make-up of the provision is the provision value, effected by the discount rate factors applied of both outstanding known claims and settled PPO claims. Whilst there is an element of our overall total provision which may be attributed to IBNR, the clinical negligence balances per trust member are at claim level which are a mix of known claims and settled PPO claims with outstanding provision due to the ongoing annual payments for the remainder of the injured party's life.

In response to each of your questions using the same numbering:

1. Earliest incident date is in the financial year 1991/92. The latest incident date is in the financial year 2023/24.
2. The information requested relates to open claims. We are not able to provide the value of open claims. Please refer to the refusal notice below for the exemptions available under the Freedom of Information Act (FOI Act) that applies to the withheld information.
3. We can advise that 153 claims relate to open claims, and we are not able to provide the value of these claims, but we have provided below the specialities they relate to. The remaining 30 claims relate to claims that have been settled on a periodical payment order (PPO) basis. 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. We have also provided the specialty the PPOs relate to below. We are not able to provide the value of open claims or the value of PPO claims. Please refer to the refusal notice below for the exemptions available under the FOI Act that applies to the withheld information.

153 Open claims specialties –

Specialty	Number of claims
Anaesthesia	fewer than 5 claims
Cardio Surgery	fewer than 5 claims
Cardiology	9
Chemical Pathology/Biochemistry	fewer than 5 claims
Dentistry	fewer than 5 claims
Emergency Medicine	9
Gastroenterology	fewer than 5 claims
General Medicine	fewer than 5 claims
General Surgery	10
Gynaecology	12
Haematology	fewer than 5 claims
Histopathology	fewer than 5 claims
Miscellaneous	fewer than 5 claims
Neurology	fewer than 5 claims
Neurosurgery	fewer than 5 claims
Obstetrics	27
Oncology	11
Ophthalmology	fewer than 5 claims
Oral & Maxillo Facial Surgery	fewer than 5 claims
Orthopaedic surgery	5
Other	fewer than 5 claims
Otorhinolaryngology/ENT	fewer than 5 claims
Paediatric Surgery	7
Paediatrics	20
Radiology	fewer than 5 claims
Respiratory Medicine – Thoracic Medic	fewer than 5 claims
Surgical Specialty – Other	5
Urology	fewer than 5 claims
Vascular Surgery	fewer than 5 claims

30 Settled PPO Claims -

Specialty	Number of claims
Cardio Surgery	Fewer than 5
Cardiology	Fewer than 5
Emergency Medicine	Fewer than 5
Intensive Care Medicine	Fewer than 5
Neurology	Fewer than 5
Obstetrics	11
Paediatric surgery	Fewer than 5
Paediatrics	5

Low Figures refusal
Please note we have supressed low figures 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.

Refusal Notice – Value of the open claims

NHS Resolution considers that this information is exempt from disclosure under s.36 (2)(c) and s.43 (2) of the FOI Act.

In consideration of this request, NHS Resolution concludes that the disclosure of this information would prejudice the effective conduct of public affairs (s.36 (2) (c) and prejudice commercial interests (s.43 (2)). Disclosing precise values of liabilities accounted for, and the documentation related to this would be likely to encourage claims informed by that amount rather than conventional civil liability principles.

NHS Resolution has given due consideration to the public interest test when relying on the above listed exemptions, s.36(2)(c) and s.43(2) and concludes that the factors in favour of non-disclosure outweigh the factors in favour of disclosure under the public interest test.

Actual experience may differ considerably from the estimates that have been accounted for, however, it will be several years before we are likely to be able to confirm that, due to the time lag between incidents occurring, claims being received, and then being settled, particularly for clinical negligence claims.

NHS Resolution has considered all the relevant factors in favour of disclosure, including:

- The public interest in favour of disclosure inherent in FOIA.
- Transparency and accountability around NHS Resolution's potential costs of clinical negligence claims.

NHS Resolution has weighed these against the factors in favour of maintaining the exemptions, including:

- The strong public interest in the proper and effective discharge of NHS Resolution's statutory duties and responsibilities, which include exercising its functions in an efficient, effective, and economical way;
- The public interests in the timely and cost-effective resolution of complaints and claims;
- The public interest in the costs of any claims not being compounded by 'anchoring' claims to reserved amounts.

In light of all of the factors, NHS Resolution concludes that the public interest favours non-disclosure of the requested information.

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.

If you would like to know how data is categorised in our Claims database please see the following link: Glossary

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

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