



# Resolution

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January 2019  
FOI\_3584

The following information was requested on 7 January 2019:

*I want access to NHS England trusts figures on the total cost in compensation payouts for complications during birth for the last two years where the child has been left with a disability. Whether the child is disabled is in line with the definition provided in the Equality Act 2010 found here on the government website <https://www.gov.uk/government/publications/equality-act-guidance>*

*I want the reasoning behind each of the payouts also listed with dates of each payout if this information is recorded. If you do not hold this additional data I expect you to identify the organisation that do, to the best of the trust's knowledge.*

## **Our Response**

Please find attached the information we are able to provide in relation to obstetrics claims. Please note the attached table 1 relate to claims received in the specified years. This does not correlate with the date the incident occurred. Tables 2 – 5 relate to cases closed in those years.

By way of advice and assistance (and further to our duties under s. 16 FOIA): Our overarching claims management system (CMS) databases are currently set up to primarily record numerical and pre-defined field-based data, rather than free text (which is contained within the individual case files). We do not have specific coding for complications during birth where the child has been left with a disability.

Whilst there are limited free-text/descriptive fields on CMS, these will typically contain specific information about individual patients' cases and the likelihood is that this information will therefore be their 'personal data' (which it would be unfair to disclose – see below) and/or confidential. However, the content of the free-text field in any case will be non-standardised and may comprise information which is about the management of the claim by NHS Resolution, rather than the underlying episode of care itself.

As you will see from our [annual report](#), we have handled over 1,000 cases with a definite 'obstetric' element during 2017/18. Assuming (and this is optimistic) that it would take only one minute per case to review the free-text data to establish whether it did contain any information about complications during birth where the child has been left with a disability, this would exceed 18 hours work and in our view would place a disproportionate burden on NHS Resolution. This means that we are unable to provide (such as it may be held in that format) the 'reasoning' for a damages payment being made (or in your terms, a 'payout'), which will be

informed on a case-by-case basis by the specific facts of each case, our assessment of the legal issues, negotiations with the claimant's legal representatives, and other factors, and this assessment may be legally privileged (and would therefore be exempt from disclosure under s. 42 FOIA). More detailed information would be likely to be held on the individual case-files and is less readily accessible. Also, in many obstetric cases, we cannot know what the long term prognosis will be for children age 0-2 even with a detailed review of the cases.

We have therefore concentrated our search on our pre-defined injuries that lead to disability within the obstetrics speciality. There may be some cases that have not been picked up. Please also note there is no direct correlation between our injury codes and the wording of the Disability Act.

In terms of the reasoning behind the pay-outs we have provided the cause codes which gives you an indication of the reason for the claim.

We have suppressed 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(3) (a) (i) 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.

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

For completeness, whilst outside the date range you have asked about, we have also previously published a thematic analysis of maternity claims over a ten year period: <https://resolution.nhs.uk/wp-content/uploads/2018/11/Ten-years-of-Maternity-Claims-Final-Report-final-2.pdf>, which may be of interest.

### **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](#), Head of Corporate and Information Governance 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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Data correct as at: 2018-12-31

**Table 1: Number of Obstetrics Claims received resulting in disability between 2016/17 and 2017/18**

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|                      |          |
|----------------------|----------|
| Notifications        | Y        |
| Clinical_NonClinical | Clinical |
| Patient              | 0        |

| Notification Year  | No. of Claims |
|--------------------|---------------|
| 2016/17            | 225           |
| 2017/18            | 217           |
| <b>Grand Total</b> | <b>442</b>    |

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Data correct as at: 2018-12-31

Table 2: Number and Cost of Obstetrics Claims resulting in disability Closed/Settled with damages paid between 2016/17 and 2017/18

|                      |            |
|----------------------|------------|
| Closed_Settled       | Y          |
| Clinical_NonClinical | Clinical   |
| Claim_Outcome        | Successful |
| Patient              | 0          |

| Year of Closure (Settlement Year for PPOs) | No. of Claims | Damages Paid       | Defence Costs Paid | Claimant Costs Paid | Total Paid         |
|--|---------------|--------------------|--------------------|---------------------|--------------------|
| 2016/17                                    | 123           | 279,295,948        | 12,849,282         | 38,713,912          | 330,859,142        |
| 2017/18                                    | 134           | 371,001,098        | 13,574,687         | 43,051,641          | 427,627,426        |
| <b>Grand Total</b>                         | <b>257</b>    | <b>650,297,046</b> | <b>26,423,968</b>  | <b>81,765,553</b>   | <b>758,486,567</b> |

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Table 3: Number of Obstetrics Claims resulting in disability Closed without damages paid between 2016/17 and 2017/18

|                      |              |
|----------------------|--------------|
| Closed_Settled       | Y            |
| Clinical_NonClinical | Clinical     |
| Claim_Outcome        | Unsuccessful |
| Patient              | 0            |

| Year of Closure (Settlement Year for PPOs) | No. of Claims | Damages Paid | Defence Costs Paid | Claimant Costs Paid | Total Paid       |
|--|---------------|--------------|--------------------|---------------------|------------------|
| 2016/17                                    | 97            | #            | 2,409,201          | #                   | 2,403,370        |
| 2017/18                                    | 104           | #            | 1,749,906          | #                   | 1,749,906        |
| <b>Grand Total</b>                         | <b>201</b>    | <b>#</b>     | <b>4,159,107</b>   | <b>#</b>            | <b>4,153,276</b> |

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Data correct as at: 2018-12-31

**Table 4: Analysis of Primary Injuries for Obstetrics Claims resulting in disability Closed/Settled wth damages paid between 2016/17 and 2017/18**

|                      |            |
|----------------------|------------|
| Closed_Settled       | Y          |
| Clinical_NonClinical | Clinical   |
| Claim_Outcome        | Successful |
| Patient              | 0          |

| Year of Closure (Settlement Year for PPOs) |               |                    |                    |                     |                    |
|--|---------------|--------------------|--------------------|---------------------|--------------------|
| ----- Primary Injury Types                 | No. of Claims | Damages Paid       | Defence Costs Paid | Claimant Costs Paid | Total Paid         |
| <b>2016/17</b>                             |               |                    |                    |                     |                    |
| Cerebral Palsy                             | 59            | 162,315,188        | 7,257,501          | 21,626,261          | 191,198,949        |
| Brain Damage                               | 45            | 102,539,185        | 4,465,129          | 13,277,548          | 120,281,861        |
| Erb's Palsy                                | 14            | 4,590,172          | 553,400            | 1,961,100           | 7,104,671          |
| Cosmetic Disfigurement                     | #             | #                  | #                  | #                   | #                  |
| Learning Difficulties                      | #             | #                  | #                  | #                   | #                  |
| Limb Deformity                             | #             | #                  | #                  | #                   | #                  |
| Partial Paralysis                          | #             | #                  | #                  | #                   | #                  |
| Deafness                                   | #             | #                  | #                  | #                   | #                  |
| <b>2017/18</b>                             |               |                    |                    |                     |                    |
| Cerebral Palsy                             | 80            | 282,946,248        | 9,480,363          | 29,696,419          | 322,123,030        |
| Brain Damage                               | 32            | 80,369,321         | 3,144,363          | 10,290,671          | 93,804,356         |
| Erb's Palsy                                | 20            | 7,671,030          | 940,356            | 2,999,550           | 11,610,936         |
| Cosmetic Disfigurement                     | #             | #                  | #                  | #                   | #                  |
| Respiratory Disorder/ Failure              | #             | #                  | #                  | #                   | #                  |
| <b>Grand Total</b>                         | <b>257</b>    | <b>650,297,046</b> | <b>26,423,968</b>  | <b>81,765,553</b>   | <b>758,486,567</b> |



Table 5: Analysis of Primary Causes for Obstetrics Claims resulting in disability Closed/Settled with damages paid between 2016/17 and 2017/18

|                      |            |
|----------------------|------------|
| Closed_Settled       | Y          |
| Clinical_NonClinical | Clinical   |
| Claim_Outcome        | Successful |
| Patient              | 0          |

| Year of Closure (Settlement Year for PPOs) |               |                    |                    |                     |                    |
|--|---------------|--------------------|--------------------|---------------------|--------------------|
| ----- Primary Causes                       | No. of Claims | Damages Paid       | Defence Costs Paid | Claimant Costs Paid | Total Paid         |
| <b>2016/17</b>                             |               |                    |                    |                     |                    |
| Fail To Make Resp To Abnrm FHR             | 24            | 61,466,470         | 3,107,937          | 8,307,361           | 72,881,767         |
| Fail To Monitor 2nd Stg Labour             | 21            | 56,490,828         | 2,531,241          | 7,839,616           | 66,861,686         |
| Fail / Delay Treatment                     | 14            | 40,164,042         | 1,420,978          | 4,519,535           | 46,104,555         |
| Fail To Monitor 1st Stg Labour             | 10            | 21,068,335         | 749,534            | 2,417,865           | 24,235,735         |
| Fail To Recog. Complication Of             | 9             | 16,222,764         | 813,322            | 2,517,565           | 19,553,650         |
| Application Of Excess Force                | 7             | 1,394,231          | 213,584            | 668,600             | 2,276,415          |
| Birth Defects                              | 5             | 12,862,431         | 545,931            | 1,549,003           | 14,957,365         |
| Fail To Act On Abnorm Test Res             | #             | #                  | #                  | #                   | #                  |
| Delay In Performing Operation              | #             | #                  | #                  | #                   | #                  |
| Fail Mon Dose/rate Syntocinon              | #             | #                  | #                  | #                   | #                  |
| Failure/Delay Diagnosis                    | #             | #                  | #                  | #                   | #                  |
| Fail Antenatal Screening                   | #             | #                  | #                  | #                   | #                  |
| Bacterial Infection                        | #             | #                  | #                  | #                   | #                  |
| Inapp Use Of Forceps/Ventouse              | #             | #                  | #                  | #                   | #                  |
| Forceps Delivery                           | #             | #                  | #                  | #                   | #                  |
| Inadequate Nursing Care                    | #             | #                  | #                  | #                   | #                  |
| Inapprop. Case Selection                   | #             | #                  | #                  | #                   | #                  |
| Unexpected Death                           | #             | #                  | #                  | #                   | #                  |
| Fail To Interpret USS                      | #             | #                  | #                  | #                   | #                  |
| Fail/Delay Resus By Paediatric             | #             | #                  | #                  | #                   | #                  |
| Inappropriate Treatment                    | #             | #                  | #                  | #                   | #                  |
| Fail To Carry Out PO Observs.              | #             | #                  | #                  | #                   | #                  |
| Lack Of Facilities/Equipment               | #             | #                  | #                  | #                   | #                  |
| Failure To Perform Operation               | #             | #                  | #                  | #                   | #                  |
| Fail To Follow-Up Arrangements             | #             | #                  | #                  | #                   | #                  |
| Fail/Delay Admitting To Hosp.              | #             | #                  | #                  | #                   | #                  |
| <b>2017/18</b>                             |               |                    |                    |                     |                    |
| Fail To Make Resp To Abnrm FHR             | 36            | 110,249,610        | 3,972,008          | 12,285,485          | 126,507,104        |
| Fail To Monitor 2nd Stg Labour             | 24            | 69,629,948         | 2,216,558          | 7,353,599           | 79,200,105         |
| Fail To Recog. Complication Of             | 12            | 37,779,225         | 1,432,677          | 4,718,538           | 43,930,440         |
| Fail To Monitor 1st Stg Labour             | 10            | 25,440,162         | 1,071,018          | 3,092,350           | 29,603,530         |
| Fail / Delay Treatment                     | 10            | 41,885,652         | 1,150,389          | 4,730,171           | 47,766,212         |
| Fail Antenatal Screening                   | 5             | 6,908,222          | 420,215            | 1,399,989           | 8,728,426          |
| Application Of Excess Force                | #             | #                  | #                  | #                   | #                  |
| Failure To Perform Tests                   | #             | #                  | #                  | #                   | #                  |
| Inapp Use Of Forceps/Ventouse              | #             | #                  | #                  | #                   | #                  |
| Fail To Correctly Apply Forcep             | #             | #                  | #                  | #                   | #                  |
| Fail/Delay Admitting To Hosp.              | #             | #                  | #                  | #                   | #                  |
| Delay In Performing Operation              | #             | #                  | #                  | #                   | #                  |
| Fail To Act On Abnorm Test Res             | #             | #                  | #                  | #                   | #                  |
| Fail Mon Dose/rate Syntocinon              | #             | #                  | #                  | #                   | #                  |
| Birth Defects                              | #             | #                  | #                  | #                   | #                  |
| Fail To Warn-Informed Consent              | #             | #                  | #                  | #                   | #                  |
| Repeat Attempt Forcep/Ventouse             | #             | #                  | #                  | #                   | #                  |
| Intra-Op Problems                          | #             | #                  | #                  | #                   | #                  |
| Inappropriate Treatment                    | #             | #                  | #                  | #                   | #                  |
| Infusion Problems                          | #             | #                  | #                  | #                   | #                  |
| Fail/Delay Referring To Hosp.              | #             | #                  | #                  | #                   | #                  |
| Operator Error                             | #             | #                  | #                  | #                   | #                  |
| Lack Of Assistance/Care                    | #             | #                  | #                  | #                   | #                  |
| Medication Errors                          | #             | #                  | #                  | #                   | #                  |
| <b>Grand Total</b>                         | <b>257</b>    | <b>650,297,046</b> | <b>26,423,968</b>  | <b>81,765,553</b>   | <b>758,486,567</b> |