



Resolution

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FOI_3606

The following information was requested on 30 January 2019:

1. *Please advise with respect to NHS mental health trusts what requirements, if any, NHSLA does make of these bodies in order to qualify for clinical negligence indemnity or any other indemnity by NHSLA?*

2. *Does NHSLA centrally track the pattern of litigation against NHS mental health trusts regarding:*

- harm to patients as a result of physical restraint

- harm to staff as a result of physical restraint

Please advise what data NHS Resolution holds centrally on this, and what parameters are tracked

3. *If the information is available within cost limits, for the years:*

2017/18

2016/17

2015/16

2014/15

2013/14

i. please identify the 10 mental health trusts which generated the highest total amounts of compensation paid that were related to physical restraint.

ii. please give the total amount of compensation associated with each of the 10 mental health trusts in this period.

4. *Has NHSLA undertaken any analysis or thematic review of the pattern of harm, claims and compensation related to physical restraint in mental health services? If so please disclose the relevant reports, findings or equivalent.*

Our Response

1. All mental health trusts in England are eligible to join our indemnity schemes. No additional requirements need to be met to qualify for membership. Members are expected to comply with our Scheme Rules on applying to become members (<https://resolution.nhs.uk/resources/clinical-negligence-scheme-for-trusts-cnst-rules/>) .

2. It is not clear what is meant by 'pattern of litigation', but we do not maintain a separate record of claims arising from physical restraint.
3. 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 physical restraint.

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) 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. NHS Resolution receives 1000s of claims a year. 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 physical restraint, this would exceed 18 hours work and in our view would place a disproportionate burden on NHS Resolution.

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

We could answer 3(ii) for all claims against Mental Health trusts, but this would not identify claims where restraint was used.

4. The biggest piece of Mental Health claims analysis is:

https://resolution.nhs.uk/wp-content/uploads/2018/09/NHS-Resolution_learing_from_suicide_claims_148pp_ONLINE1.pdf

However, physical restraint was not a theme considered in that report. We are not aware of any other current relevant work in this area.

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:

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Water Lane
Wilmslow
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