



Resolution

2nd Floor
151 Buckingham Palace Road
London
SW1W 9SZ
Telephone: 020 7811 2700

February 2019
FOI_3631

The following information was requested on 15 February 2019:

*I apologise for its vagueness but I am looking for some information that NHSR holds on claims made on the issue of 'consent' in light of the 2015 Supreme Court decision in Montgomery. [staff name] informs me that you have a marker for consent on your system and it would be of interest for a **Medical Law & Ethics** module that I am studying as part of a Law Degree, to have any data you possess.*

I am especially curious for information in cases/claims where the defendant's stance has relied on either the 1950's Bolam test or that of Bolitho, where the case/claim should have relied on Montgomery.

Our Response

Please find attached the information we are able to provide in relation to consent claims over the last 3 financial 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: *Bolam, Bolitho, or Montgomery*.

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. NHS Resolution receives over 1,000 cases 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 *Bolam, Bolitho, or Montgomery* cases 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](#)

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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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 Claims received between financial years 2015/16 to 2017/18 in relation to issues of consent.](#)

[Table 2: Number and Cost of Claims Closed/Settled with damages paid between financial years 2015/16 to 2017/18 in relation to issues of consent.](#)

[Table 3: Number of Claims Closed without damages paid between financial years 2015/16 to 2017/18 in relation to issues of consent.](#)

Table 1: Number of Claims received between financial years 2015/16 to 2017/18 in relation to issues of consent.

Notifications	Y
Clinical_NonClinical	(All)

Notification Year	No_of_Claims
2015/16	493
2016/17	588
2017/18	629
Grand Total	1,710

Table 2: Number and Cost of Claims Closed/Settled with damages paid between financial years 2015/16 to 2017/18 in relation to issues of consent.

Closed_Settled	Y
Clinical_NonClinical	(All)
Claim_Outcome_FOI	Damages Paid

Year of Closure (Settlement Year for PPOs)	No_of_Claims	Damages Paid	Defence Costs Paid	Claimant Costs Paid	Total Paid
2015/16	179	13,362,545	2,225,334	11,273,939	26,861,818
2016/17	223	14,869,235	3,122,287	14,273,314	32,264,837
2017/18	296	32,451,103	4,106,488	17,091,437	53,649,028
Grand Total	698	60,682,883	9,454,109	42,638,690	112,775,682

Table 3: Number of Claims Closed without damages paid between financial years 2015/16 to 2017/18 in relation to issues of consent.

Closed_Settled	Y
Clinical_NonClinical	(All)
Claim_Outcome_FOI	NIL Damages

Year of Closure (Settlement Year for PPOs)	No_of_Claims	Damages Paid	Defence Costs Paid	Claimant Costs Paid	Total Paid
2015/16	170	0	443,730	6,757	450,487
2016/17	192	0	600,629	41,435	642,065
2017/18	195	0	806,688	12,922	819,610
Grand Total	557	0	1,851,047	61,114	1,912,162