



# Resolution

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June 2020  
FOI 4618

The following information was requested on 3 June 2020:

*...relates to the size of compensation claims for babies with brain injury.*

*Specifically:*

1. *A flow diagram including absolute numbers*
  - a. *Notifications*
  - b. *Proportion going on to beginning action*
  - c. *Proportion where liability accepted*
  - d. *Proportion where liability not initially accepted but finding for plaintiff in court*
2. *Timings for each step – ideally both median and ranges*
3. *Severity mix of cases.*
4. *Size of settlements. Again median and range (plus total?)*

*It might also be interesting to know something about how this has changed over time. Are we effectively dealing with cases from many years ago?*

## **Our Response**

Thank you for your request. Although NHS Resolution may hold some information relating to claims such as these, due to the way claims are recorded on our claims database, we will not be able to identify such specific cases. It might be helpful to explain that when claims are notified to NHS Resolution they are categorised against pre-defined cause, injury and speciality codes, unfortunately we do not have a specific code for **Brain Injury**. We do have Brain Damage and Cerebral palsy as injury codes, but we also have things like Developmental Delay, Epilepsy, Down's Syndrome, Foetal Abnormality, Hemiparesis and others, all of which might result from brain damage. It is also not clear if your research relates to catastrophic brain injury cases or all linked brain injury?

Therefore, while there may be information held in our records, we are not readily able to identify the relevant files by searching the database. To do so would involve a review of all cases to identify which ones relate to claims involving **Brain Injury**. NHS Resolution receives thousands of claims each year.

Therefore, we estimate that the cost of complying with the request in its entirety would exceed the 'appropriate limit'. Section 12(1) of the FOIA is a provision which allows a public authority to refuse to comply with a request for information where the cost of compliance is estimated to exceed a set limit (known as the 'appropriate limit'). The 'appropriate limit' for NHS Resolution is £450. This equates to 18 hours of work at the rate of £25 per hour set out in the 'Fees Regulations'.

We estimate that it would take on average 10 minutes to locate, retrieve and extract the requested information from an individual file. It may therefore be the case that we would be able to examine only 108 files within 18 hours.

In addition, given the complexity of clinical negligence claims and their litigation, it is possible for a single electronic or paper-based file to contain hundreds of documents in a variety of formats.

Please also note even if we were able to carry out a review of 108 random files we may not be able to provide you with the level of detail you require owing to Data Protection grounds.

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

<https://resolution.nhs.uk/wp-content/uploads/2018/10/Guidance-note-Understanding-NHS-Resolution-data-v2.pdf>

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 on 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 on the use of confidential patient information for this purpose.

### **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

<https://ico.org.uk/>