



Resolution

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

July 2020
FOI_4687

The following information was requested on 20 July 2020:

I plan to write an up-to-date article on litigation related to knee surgery in Orthopaedics including data for the last last 10 years.

The aim is really to inform Orthopaedic surgeons of recent trends in litigations.

Subsequently, prevent or decrease the number of claims and the involved costs for the NHS.

Wondering if you could kindly advise me what data is available for us to obtain and analyse using the freedom of information request.

I know there are many regulations regarding data protection and I can assure you of our utmost professionalism handling data securely.

We would be interested in following data for the last 10 years related to Orthopaedic surgery:

- *Details of incident, with description of cause, injury, location and date of the incident.*
- *Total amount paid out with figures for damages, claimant and defence costs.*
- *Also if the claim is closed or open.*

I would be most grateful if you could advise me how to obtain the data for all orthopaedic procedures and for knee related procedures.

Is there a special code we can use.

Also, how exhaustive are the details regarding the claim / incident? Does this provide enough data to obtain information which body part was involved and what procedure was carried out. e.g. Total knee replacement and wrong implant used, infection etc.

Our Response

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 *knee surgery* is not one of these. 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 *knee surgery*. NHS Resolution receives thousands of claims each year.

We could provide you with high level data relating to the specialty Orthopaedic surgery. It could cover number of claims received for the specialty in the relevant financial years; a breakdown by primary injury; a breakdown by primary cause; numbers settled; numbers with no damages paid and numbers currently open. Please let us know if you would be interested in this data.

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.

We would need to suppress low numbers or any information that could possibly lead to the identification of claimants, patients or individuals where disclosure would breach the General Data Protection Regulation.

In the past we have occasionally provided information based on the incident description field. However, this search has proven to be incomplete and provided a misleading picture as there are a number of causes for claims and they are settled for a number of multi-factorial reasons and the primary cause and injury may not relate entirely to what has been entered into the short free-text field. This approach would also be reliant on the precise phrase knee surgery or knee having been used (and spelt correctly) in the free text field rather than other synonyms or general descriptions of the patient's condition/treatment. As such we have decided not to carry out searches based on the incident description field as it is very unreliable.

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](#), 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