



# Resolution

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August 2020  
FOI\_4719

The following information was requested on 3 August 2020:

*1. For claims relating to breach of data protection law over the last 5 financial years for CNST and LTPS:*

*(a) The number of claims notified per year*

*(b) The number of claims closed per year broken down by successful / unsuccessful*

*(c) The amount cost of claims in part b per year*

*2. For claims relating to breach of confidentiality law over the last 5 financial years for CNST and LTPS:*

*(a) The number of claims notified per year*

*(b) The number of claims closed per year broken down by successful / unsuccessful*

*(c) The amount cost of claims in part b per year*

*3. For claims relating to breach of confidentiality law within CNSGP since the scheme was set up:*

*(a) The number of claims notified*

*(b) The number of claims closed per year broken down by successful / unsuccessful*

*(c) The amount cost of claims in part b per year*

## **Our Response**

We may have claims under LTPS and CNST for breaches of confidentiality, but cannot report on them for Q2 as we have no specific codes to identify those claims. 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 accurately identify all such specific cases in the first instance.

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 *breaches of confidentiality* (and in particular breaches of confidentiality associated with Serious Incident reports) 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 *breaches of confidentiality*. NHS Resolution receives thousands of

claims each year. Our experience is that 'breach of confidentiality' is often raised in addition or in alternative to claims such as allegations of breach of the Human Rights Act 1998, or breach of the Data Protection Act.

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'.

Breaches of patient confidentiality are not covered under CNSGP, so the answer to Q3 is none for that reason.

We can report on Q1 but for LTPS only. Breaches of data protection legislation are not covered under CNST.

Please also note we will have some cases logged multiple claims arising from the same data breach where the breach has affected many people.

Please find attached the information we are able to provide in respect of breach of the Data Protection Act claims.

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](#)

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/>

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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.**

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Table 1: Number of Claims relating to Data Protection Act received between financial years 2015/16 to 2019/20

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Notifications	Y
Scheme	LTPS
ScheduleName	PL - Data Protection Act

Notification Year	No. of Claims
2015/16	64
2016/17	69
2017/18	33
2018/19	63
2019/20	115
<b>Grand Total</b>	<b>344</b>

Table 2: Number of Claims relating to Data Protection Act Closed/Settled between financial years 2015/16 to 2019/20

Closed_Settled	Y			
Scheme	LTPS			
ScheduleName	PL - Data Protection Act			
No. of Claims		Column Labels		
Year of Closure (Settlement Year for PPOs)	Damages Paid	NIL Damages	Grand Total	
2015/16	#	#	5	
2016/17	21	7	28	
2017/18	16	#	#	
2018/19	17	#	#	
2019/20	50	22	72	
<b>Grand Total</b>	#	<b>38</b>	#	

**Table 3: Number and Cost of Claims relating to Data Protection Act Closed/Settled with damages paid between financial years 2015/16 to 2019/20**

Closed_Settled	Y
Claim_Outcome_FOI	Damages Paid
Scheme	LTPS
ScheduleName	PL - Data Protection Act

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
	#	#	#	#	#
2015/16	21	110,350	546,485	965,294	1,622,129
2016/17	16	121,250	7,977	120,099	249,327
2017/18	17	69,100	8,759	45,650	123,509
2018/19	50	448,451	121,236	676,601	1,246,288
<b>Grand Total</b>	<b>#</b>	<b>#</b>	<b>#</b>	<b>#</b>	<b>#</b>

**Table 4: Number and Cost of Claims relating to Data Protection Act Closed without damages paid between financial years 2015/16 to 2019/20**

Closed_Settled	Y
Claim_Outcome_FOI	NIL Damages
Scheme	LTPS
ScheduleName	PL - Data Protection Act

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2015/16	#	#	#	#	#
2016/17	7	0	72,103	138,675	210,777
2017/18	#	#	#	#	#
2018/19	#	#	#	#	#
2019/20	22	0	55,019	0	55,019
<b>Grand Total</b>	<b>38</b>	<b>0</b>	<b>186,737</b>	<b>138,675</b>	<b>325,411</b>