



Resolution

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November 2020
FOI_4829

The following information was requested on 21 October 2020:

1. *The total number of claims where consent was an issue.*
2. *The details of these cases including settled & outstanding claims & quantum where damages were paid (we would be grateful for as much information as possible but of course appreciate the constraints of sensitive personal data).*
3. *The no of claims where the Montgomery decision was referred to.*
4. *The no of claims/cases involving obstetrics.*
5. *The details of these cases including settled and outstanding claims (subject to constraints in 2).*
6. *The no of claims/cases involving gynaecology.*
7. *The details of these cases including settled and outstanding claims (subject to constraints in 2).*
8. *The no of claims involving consent in cancer.*
9. *The details of these cases including settled and outstanding claims (subject to constraints in 2).*
10. *The no of claims involving consent in women's cancer (breast, uterine, ovarian, cervical, vulval).*
11. *The details of these cases including settled and outstanding claims (subject to constraints in 2).*

We appreciate that the coding of causes is completed by claims managers at the time at which a claim is notified and that this may change during the course of a claim as the settled facts emerge.

Our Response

We only hold claims data for England (our schemes only cover England), not the UK.

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 *women's cancer (breast, uterine, ovarian, cervical, vulval) or claims where the Montgomery decision was referred to* 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 *women's cancer (breast, uterine, ovarian, cervical, vulval) or claims where the Montgomery decision was referred to*. 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.

Please **find attached** the information we are able to provide in respect of consent claims.

We have suppressed low figures and we are unable to provide details of individual cases 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 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.

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

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

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Data corrected as at 9/30/2020

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 where Primary Cause is 'Fail To Warn-Informed Consent' received between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Table 2 : Number and costs of claims where Primary Cause is 'Fail To Warn-Informed Consent' Closed/Settled with damages paid between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Table 3 : Analysis of Specialties for claims Closed/Settled where Primary Cause is 'Fail To Warn-Informed Consent' with damages paid between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Table 4 : Analysis of Primary Injuries for claims where Primary Cause is 'Fail To Warn-Informed Consent' Closed/Settled with damages paid between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Table 5 : Number of Open claims where Primary Cause is 'Fail To Warn-Informed Consent' received between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

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Data corrected as at 9/30/2020

Table 1 : Number of claims where Primary Cause is 'Fail To Warn-Informed Consent' received between financial years , 2015/16, 2016/17, 2017/18, 2018/19, 2019/20, 2020/21

Notifications	Clinical_NonClinical	Scheme
Y	Clinical	CNST
Y	Clinical	DH CL
Y	Clinical	ELS

NHSLA_Notification_Year	Number of Claims
2015/16	343
2016/17	446
2017/18	443
2018/19	416
2019/20	592
Total	2240

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Table 2 : Number and costs of claims where Primary Cause is 'Fail To Warn-Informed Consent' Closed/Settled with damages paid between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Closed_Settled	Clinical_NonClinical	Claim_Outcome_FOI				
Y	Clinical	Damages Paid				
Closure_Year_or_PPOs_Settlement_Year	Number of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid	
2015/16	136	£11,015,377	£1,835,341	£9,193,984	£22,044,702	
2016/17	162	£11,077,999	£2,238,282	£10,659,828	£23,976,109	
2017/18	209	£23,897,666	£2,872,805	£12,816,537	£39,587,008	
2018/19	216	£22,494,703	£3,232,459	£11,920,581	£37,647,742	
2019/20	289	£43,268,437	£4,774,479	£18,046,642	£66,089,557	
Total	1012	£111,754,182	£14,953,365	£62,637,572	£189,345,118	

Data corrected as at 9/30/2020
Table 3 : Analysis of Specialties for claims Closed/Settled where Primary Cause is 'Fail To Warn-Informed Consent' with damages paid between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Closed_Settled	Clinical_NonClinical	Claim_Outcome_FOI				
Y	Clinical	Damages Paid				
FOI_Specialty	Number of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid	
Vascular Surgery	22	£2,958,372	£547,718	£1,963,834	£5,469,924	
Urology	58	£3,181,408	£422,291	£2,293,508	£5,897,207	
Surgical Speciality - Other	17	£2,775,571	£257,491	£1,272,093	£4,305,154	
Rheumatology	★	★	★	★	★	
Respiratory Medicine/ Thoracic Medic	8	£816,340	£127,510	£776,656	£1,720,506	
Radiology	10	£675,858	£79,552	£788,381	£1,543,790	
Psychiatry/ Mental Health	★	★	★	★	★	
Podiatry	★	★	★	★	★	
Plastic Surgery	27	£2,110,873	£527,608	£2,148,350	£4,786,831	
Paediatrics	★	★	★	★	★	
Paediatric Surgery	★	★	★	★	★	
Otorhinolaryngology/ ENT	41	£2,645,009	£562,271	£2,218,360	£5,425,641	
Other	★	★	★	★	★	
Orthopaedic Surgery	197	£18,919,108	£3,426,456	£13,564,488	£35,910,051	
Oral & Maxillo Facial Surgery	53	£1,402,630	£404,821	£1,695,047	£3,502,497	
Ophthalmology	30	£2,226,215	£377,587	£1,532,499	£4,136,301	
Oncology	12	£1,059,896	£192,838	£800,375	£2,053,109	
Obstetrics	63	£26,864,399	£1,574,487	£6,039,563	£34,478,449	
Not Specified	★	★	★	★	★	
Neurosurgery	17	£11,770,884	£864,417	£2,662,314	£15,297,616	
Neurology	★	★	★	★	★	
Intensive Care Medicine	★	★	★	★	★	
Infectious Diseases	★	★	★	★	★	
Haematology	★	★	★	★	★	
Gynaecology	176	£10,163,157	£1,672,889	£8,479,660	£20,315,706	
Geriatric Medicine	★	★	★	★	★	
Genito-Urinary Medicine	★	★	★	★	★	
General Surgery	142	£12,415,387	£2,111,246	£9,533,602	£24,060,234	
General Practice	★	★	★	★	★	
General Medicine	10	£484,416	£166,864	£525,939	£1,177,218	
Gastroenterology	15	£500,617	£127,048	£582,105	£1,209,770	
Endocrinology	★	★	★	★	★	
Emergency Medicine	★	★	★	★	★	
Dermatology	12	£193,115	£38,547	£266,970	£498,632	
Dentistry	21	£318,575	£114,398	£458,208	£891,182	
Community Medicine/ Public Health	★	★	★	★	★	
Cardiology	13	£266,595	£123,465	£577,233	£967,294	
Cardio Surgery	7	£2,313,583	£311,316	£866,587	£3,491,486	
Anaesthesia	18	£5,137,440	£421,370	£1,668,540	£7,227,349	
Total	1012	£111,754,182	£14,953,365	£62,637,572	£189,345,118	

Data corrected as at 9/30/2020

Table 4 : Analysis of Primary Injuries for claims where Primary Cause is 'Fail To Warn-Informed Consent' Closed/Settled with damages paid between financial years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20

Closed_Settled	Clinical_NonClinical	Claim_Outcome_FOI
Y	Clinical	Damages Paid

Primary Injury Types	Number of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Addiction/Dependency	★	★	★	★	★
Adtnl/unnecessary Operation(s)	197	£9,076,240	£2,007,701	£8,508,333	£19,592,274
Amputation - Lower	7	£1,205,456	£137,627	£525,271	£1,868,354
Amputation - Upper	★	★	★	★	★
Anal Fissure	★	★	★	★	★
Anaphylact Shock/Allergic Shock/allergy	★	★	★	★	★
Aneurysm	★	★	★	★	★
Arterial Damage	★	★	★	★	★
Bile Duct Damage	★	★	★	★	★
Bladder Damage	48	£3,129,946	£353,752	£2,220,556	£5,704,254
Blindness	7	£349,468	£93,827	£388,229	£831,524
Bowel Damage/ Dysfunction	45	£9,107,673	£1,437,627	£6,415,583	£16,960,882
Brain Damage	★	★	★	★	★
Bruising/ Extravasation	★	★	★	★	★
Burn(s)	★	★	★	★	★
Cancer	★	★	★	★	★
Cardiac Arrest	★	★	★	★	★
Cardiovascular Condition	★	★	★	★	★
Cerebral Palsy	★	★	★	★	★
Compartment Syndrome	★	★	★	★	★
Cosmetic Disfigurement	20	£799,125	£147,221	£748,356	£1,694,702
Deafness	6	£446,357	£99,486	£469,860	£1,015,703
Dental Damage	11	£153,025	£40,230	£225,591	£418,846
Erb's Palsy	★	★	★	★	★
Failed Sterilization	★	★	★	★	★
Fatality	35	£4,193,803	£676,809	£3,051,683	£7,922,295
Fistula	7	£231,415	£47,359	£277,031	£555,806
Foot Drop	6	£373,776	£60,601	£285,464	£719,841
Fracture	7	£429,486	£115,394	£423,375	£968,254
Hemiparesis	★	★	★	★	★
Hernia	★	★	★	★	★
Impotence	★	★	★	★	★
Incontinence	23	£1,607,869	£274,663	£1,418,505	£3,301,037
Infectious Diseases	★	★	★	★	★
Infertility	15	£1,034,471	£179,580	£1,192,498	£2,406,549
Joint Damage	19	£945,956	£326,293	£1,288,015	£2,560,264
Liver Damage	★	★	★	★	★
Loss Of Baby	6	£580,000	£112,222	£390,564	£1,082,787
Loss Of Kidney	★	★	★	★	★
Loss Of Sexual Function	6	£247,063	£33,205	£163,829	£444,097
Loss Of/Damage To Breast	7	£272,856	£53,259	£227,241	£553,356
Multiple Injuries	★	★	★	★	★
Nerve Damage	92	£9,548,160	£1,617,148	£6,654,836	£17,820,144
Not Specified	★	★	★	★	★
Oedema	★	★	★	★	★
Other	10	£276,668	£82,347	£344,989	£704,004
Other Infection	8	£672,000	£85,207	£401,940	£1,159,147
Other Visual Problems	20	£2,069,978	£296,689	£1,187,917	£3,554,584
Pacemaker Installation	★	★	★	★	★
Paraplegia	★	★	★	★	★
Partial Hearing Loss	★	★	★	★	★
Partial Paralysis	★	★	★	★	★
Perforation	19	£1,710,923	£323,118	£1,117,845	£3,151,886
Poor Outcome - Fractures Etc.	35	£2,784,982	£525,948	£2,128,249	£5,439,178
Premature Onset Of Menopause	★	★	★	★	★
Pressure Sores	★	★	★	★	★
Psychiatric/Psychological Dmge	42	£1,235,009	£278,320	£1,470,167	£2,983,495
Removal Of Cervix	★	★	★	★	★
Removal Of Fallopian Tube	6	£85,250	£12,042	£63,675	£160,967
Removal Of Testicle	★	★	★	★	★
Renal Damage/ Failure	6	£762,566	£134,373	£814,648	£1,711,587
Respiratory Disorder/ Failure	★	★	★	★	★
Rupture	★	★	★	★	★
Scarring	33	£1,141,273	£203,812	£1,229,481	£2,574,566
Spinal Damage	9	£8,027,344	£606,696	£2,073,000	£10,707,039
Stillborn	★	★	★	★	★
Stroke	★	★	★	★	★
Tendon Damage	7	£138,915	£43,801	£186,190	£368,906
Tetraplegia/ Quadraplegia	★	★	★	★	★
Thrombosis/Embolism	9	£1,171,267	£175,625	£427,781	£1,774,673
Thyroid Condition	★	★	★	★	★
Tissue Damage	★	★	★	★	★
Unnecessary Pain	135	£6,897,450	£1,476,929	£6,258,131	£14,632,510
Unwanted Pregnancy	★	★	★	★	★
Viral Infection	★	★	★	★	★
Vocal Cord Damage	★	★	★	★	★
Wrongful Birth	★	★	★	★	★
Total	1012	£111,754,182	£14,953,365	£62,637,572	£189,345,118

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Table 5 : Number of Open claims where Primary Cause is 'Fail To Warn-Informed Consent' received between financial years 2015/16, 2016/17, 2017/18 , 2018/19, 2019/20.

Notifications	Clinical_NonClinical	Scheme	Status_Flag
Y	Clinical	CNST	Open
Y	Clinical	DH CL	Open
Y	Clinical	ELS	Open

NHSLA_Notification_Year	Number of Claims
2015/16	23
2016/17	62
2017/18	126
2018/19	163
2019/20	361
Total	735