



## Resolution

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November 2020  
FOI\_4840

The following information was requested on 1 November 2020:

*Can you please tell me how many claims have been brought against anaesthetists for this rather specific indication: the performance of an epidural during labour that (a) the patient later claims was performed without valid consent, and (b) where injury occurred?*

*If this is too specific, perhaps you could tell me how many claims were brought against anaesthetists for negligence to consent appropriately?*

### 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 *epidural during labour* 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 *epidural during labour*. 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:

*If this is too specific, perhaps you could tell me how many claims were brought against anaesthetists for negligence to consent appropriately?*

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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**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 with analysis of Primary Injuries received between financial years 2009/10 to 2019/20 where "Fail To Warn-Informed Consent" is the primary cause for speciality Anaesthesia](#)

**Table 1: Number of Claims with analysis of Primary Injuries received between financial years 2009/10 to 2019/20 where "Fail To Warn-Informed Consent" is the primary cause for speciality Anaesthesia**

Notifications	Y
Scheme	CNST

Year of Notification	No. of Claims
<b>2009/10</b>	<b>8</b>
Anaesthetic	#
Multiple Injuries	#
Other	#
Perforation	#
Spinal Damage	#
Unnecessary Pain	#
<b>2010/11</b>	<b>#</b>
Adtnl/unnecessary Operation(s)	#
Unnecessary Pain	#
<b>2011/12</b>	<b>9</b>
Dental Damage	#
Incontinence	#
Nerve Damage	#
Partial Paralysis	#
Spinal Damage	#
Unnecessary Pain	#
<b>2012/13</b>	<b>9</b>
Anaphylact Shock/Allergic Shock/allergy	#
Bladder Damage	#
Dental Damage	#
Foot Drop	#
Nerve Damage	#
Spinal Damage	#
Unnecessary Pain	#
<b>2013/14</b>	<b>8</b>
Joint Damage	#
Nerve Damage	#
Psychiatric/Psychological Dmge	#
Respiratory Disorder/ Failure	#
Unnecessary Pain	#
<b>2014/15</b>	<b>5</b>
Adtnl/unnecessary Operation(s)	#
Nerve Damage	#
Unnecessary Pain	#
<b>2015/16</b>	<b>9</b>
Adtnl/unnecessary Operation(s)	#
Anaesthetic	#
Bowel Damage/ Dysfunction	#
Dislocation	#
Nerve Damage	#
Scarring	#
Spinal Damage	#
Unnecessary Pain	#
<b>2016/17</b>	<b>8</b>
Dental Damage	#
Nerve Damage	#
Respiratory Disorder/ Failure	#
Unnecessary Pain	#
<b>2017/18</b>	<b>8</b>
Cardiac Arrest	#
Deafness	#
Dental Damage	#
Fatality	#
Psychiatric/Psychological Dmge	#
Unnecessary Pain	#
<b>2018/19</b>	<b>13</b>
Adtnl/unnecessary Operation(s)	#
Bladder Damage	#

**Table 1: Number of Claims with analysis of Primary Injuries received between financial years 2009/10 to 2019/20 where "Fail To Warn-Informed Consent" is the primary cause for speciality Anaesthesia**

Notifications	Y
Scheme	CNST

Year of Notification	No. of Claims
Dental Damage	#
Nerve Damage	#
Paraplegia	#
Perforation	#
Unnecessary Pain	5
Vocal Cord Damage	#
<b>2019/20</b>	<b>10</b>
Blindness	#
Brain Damage	#
Dental Damage	#
Nerve Damage	#
Psychiatric/Psychological Dmge	#
Respiratory Disorder/ Failure	#
Spinal Damage	#
Unnecessary Pain	#