



Resolution

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

December 2020
FOI_4862

The following information was requested on 1 December 2020:

[Follow up to FOI_4829]

We are mainly interested in the obstetric claims and whilst obviously we appreciate the confidentiality we would be grateful for as much information as you can provide to help our efforts to understand these cases.

In particular we are interested in

- a) year of case/settlement*
- b) allegations*
- c) which NHS Trust was involved +/- co-defendants*
- d) damages paid*

We are surprised that in relation to brain damage the number of cases of cerebral and Erb's palsy in Table 4 is under 5 and wonder if there is an explanation for these low numbers that we are not appreciating?

Our Response

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

We have suppressed low figures and we are unable to provide details of individual cases or the names of the Trusts involved 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.

In terms of your query regarding Erbs Palsy cases, Erb's Palsy is a birth injury involving paralysis of the arm and is commonly caused by excessive pulling of the child's head, neck and shoulders during delivery which then damages the upper arm and neck nerves.

Most of the claims we receive will be based on allegations that excessive force was used during delivery. Few claims are based on consent issues, so a low number is not surprising.

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: Analysis of Primary Injuries for Obstetrics Claims with cause being Fail To Warn-Informed Consent Closed/Settled with damages paid between financial years](#)

Table 1: Analysis of Primary Injuries for Obstetrics Claims with cause being Fail To Warn-Informed Consent Closed/Settled with damages paid between financial years 2015/16 - 2019/20.

Closed_Settled	Y
Clinical_NonClinical	(All)
Claim_Outcome_FOI	Damages Paid

Year of Closure (Settlement Year for PPOs) ----- Primary Injury Types	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2015/16	6	167,047	109,267	385,100	661,415
Fatality	#	#	#	#	#
Unnecessary Pain	#	#	#	#	#
Adtnl/unnecessary Operation(s)	#	#	#	#	#
Rupture	#	#	#	#	#
Fistula	#	#	#	#	#
2016/17	8	614,474	136,392	330,646	1,081,512
Psychiatric/Psychological Dmge	#	#	#	#	#
Adtnl/unnecessary Operation(s)	#	#	#	#	#
Infertility	#	#	#	#	#
Loss Of Baby	#	#	#	#	#
Stillborn	#	#	#	#	#
Unwanted Pregnancy	#	#	#	#	#
2017/18	16	10,526,716	420,366	1,723,871	12,670,953
Fatality	#	#	#	#	#
Psychiatric/Psychological Dmge	#	#	#	#	#
Unnecessary Pain	#	#	#	#	#
Wrongful Birth	#	#	#	#	#
Cerebral Palsy	#	#	#	#	#
Infertility	#	#	#	#	#
Loss Of Baby	#	#	#	#	#
Incontinence	#	#	#	#	#
Erb's Palsy	#	#	#	#	#
Respiratory Disorder/ Failure	#	#	#	#	#
2018/19	13	4,298,565	467,939	1,499,500	6,266,004
Fatality	#	#	#	#	#
Psychiatric/Psychological Dmge	#	#	#	#	#
Unnecessary Pain	#	#	#	#	#
Cerebral Palsy	#	#	#	#	#
Scarring	#	#	#	#	#
Adtnl/unnecessary Operation(s)	#	#	#	#	#
Bladder Damage	#	#	#	#	#
Cardiac Arrest	#	#	#	#	#
Other Infection	#	#	#	#	#
Erb's Palsy	#	#	#	#	#
2019/20	20	11,534,801	440,523	2,100,446	14,075,770
Fatality	#	#	#	#	#
Psychiatric/Psychological Dmge	5	113,618	43,522	158,605	315,745
Unnecessary Pain	#	#	#	#	#
Wrongful Birth	#	#	#	#	#
Bladder Damage	#	#	#	#	#
Infertility	#	#	#	#	#
Brain Damage	#	#	#	#	#
Stillborn	#	#	#	#	#

Table 1: Analysis of Primary Injuries for Obstetrics Claims with cause being Fail To Warn-Informed Consent Closed/Settled with damages paid between financial years 2015/16 - 2019/20.

Closed_Settled	Y
Clinical_NonClinical	(All)
Claim_Outcome_FOI	Damages Paid

Year of Closure (Settlement Year for PPOs) ----- Primary Injury Types	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Bowel Damage/ Dysfunction	#	#	#	#	#
Unwanted Pregnancy	#	#	#	#	#
Grand Total	63	27,141,603	1,574,487	6,039,563	34,755,653