NHS Resolution

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October 2022
FOI_5552

The following information was requested on 30 August 2022:

1. Please could you provide me with the total number and the total value of claims paid out by the NHSLA for the financial year 2021/2022 where 'surgical/foreign body left in situ" is one of the grounds for claiming showing damages paid and costs paid.
2. Please also provide the individual amounts of compensation paid for the five biggest awards and please state what the foreign body was?
3. For the last financial year 2021/2022 how much compensation has been paid out in total by the NHSLA as a result of wrong site surgery? (i.e. operating on the right leg instead of the left etc.).
4. For the last financial year 2021/2022 what was the largest single payment made for compensation as a result of wrong site surgery?
5. For the last financial year 2021/2022 what was the total number of claims paid out as a result of compensation for wrong site surgery? Also, provide a list giving a brief explanation of each wrong site surgery claim. E.g. wrong eye, wrong knee, wrong kidney etc.

Please note that this question refers to claims paid out in 2021/22 regardless of when the claim was lodged or when the incident took place.

Our Response

Please find attached the requested information for Qs 1, 3 & 5.

Table 1 shows:- Number and Cost of Claims Closed in the financial year 2021/22 with damages paid relating to **surgical/foreign body left in situ**.

Table 2 shows:- Number and Cost of Claims Closed for the financial year 2021/22 with damages paid relating to **wrong site surgery**.

In terms of part **Q5** of your request for: *Also provide a list giving a brief explanation of each wrong site surgery claim. E.g. wrong eye, wrong knee, wrong kidney etc.*

In order to obtain this information 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 subjective

short free-text field (also known as the incident description field). This approach would also be reliant on the precise phrase hand and or wrong eye 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 and does not represent the accurate picture.

The only way to extract this information would be to manually review individual case files and it would exceed the appropriate limit set under the FOI Act to carry out this exercise.

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 20 minutes to locate, retrieve and extract the requested information from an individual file.

In respect of ***Qs 2 & 4*** we are unable to provide this information as we believe that disclosure of information with this level of granularity is exempt under Section 40(2) by virtue of section 40(3A)(a) of the FOI 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.

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.

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, Deputy Director of Corporate and Information Governance, Data Protection Officer 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/

Freedom of Information Request# 5552
Data correct as at: 2022-08-31

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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 and Cost of Claims Closed/Settled with damages paid in financial year 2021/22 relating to surgical/foreign body left in situ

Table 2: Number and Cost of Claims Closed/Settled with damages paid in financial year 2021/22 relating to wrong site surgery

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Table 1: Number and Cost of Claims Closed/Settled with damages paid in financial year 2021/22 relating to surgical/foreign body left in situ

Closed_Settled	Y
Clinical_NonClinical	Clinical
Claim_Outcome_FOI	Damages Paid

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2021/22	130	3,277,161	548,795	3,417,374	7,243,331
Grand Total	**130**	**3,277,161**	**548,795**	**3,417,374**	**7,243,331**

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Table 2: Number and Cost of Claims Closed/Settled with damages paid in financial year 2021/22 relating to wrong site surgery

Closed_Settled	Y
Scheme	(All)
Claim_Outcome_FOI	Damages Paid

Year of Closure (Settlement Year for PPOs)	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
2021/22	54	7,777,633	439,063	2,137,505	10,354,200
Grand Total	**54**	**7,777,633**	**439,063**	**2,137,505**	**10,354,200**