



# Resolution

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FOI\_5756

The following information was requested on 11 January 2023:

*For datasets pertaining to claims under injury codes: brain damage **and/or** respiratory failure; **both with** the speciality code: intensive care medicine; from the years 2017 to 2021 in England.*

## Our Response

Please find attached the requested information.

**Table 1 shows:-** Number and Cost of Claims Closed between financial years 2016/17 and 2021/22 with damages paid (includes the damages paid to date for any claims settled on a periodical payment order basis) where the specialty is 'Intensive Care Medicine' and primary injury is 'Brain Damage' or 'Respiratory Disorder/ Failure'.

Please note claims notified/received and open are not guaranteed to be settled in the same year and can take many years to be concluded. Claims notified/received in any given year will often relate to incidents that have occurred many years prior. Due to the nature of clinical negligence claims and the level of investigation needed to bring them to a resolution, claims received and notified in a specific year may take years to settle.

Many of the claims notified will have been repudiated and settled without damages paid. For clarification, Table 1 only includes cases which have resulted in a payment of damages and closed or have settled as a PPO (as below). It does not include repudiated cases.

## PPOs

The information disclosed includes damages paid out in the relevant period under Periodical payment orders (PPO) previously agreed on cases, which may have been resolved several years ago. It does not include sums, which have been committed on settlements in the relevant period under a PPO, which may not be paid out until future years. PPOs are an agreement between the parties, to pay an initial lump sum and regular future payments covering the injured party's ongoing care needs, usually for life

i.e. a percentage of the full value of the claim is paid at the point of settlement with the balance paid at regular intervals over subsequent years.

### **Low Numbers**

Please note 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(3A) (a) 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.

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](#), 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/>

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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 between financial years 2016/17 and 2021/22 with damages paid \(includes the damages paid to date for any claims settled on a periodical payment order basis\) where specialty is 'Intensive Care Medicine' and primary injury is 'Brain Damage' or 'Respiratory Disorder/ Failure'](#)

**Table 1: Number and Cost of Claims Closed between financial years 2016/17 and 2021/22 with damages paid (includes the damages paid to date for any claims settled on a periodical payment order basis) where specialty is 'Intensive Care Medicine' and primary injury is 'Brain Damage' or 'Respiratory Disorder/ Failure'**

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FOI View scheme	Closed Settled (All)
Claim_Outcome	Successful

Primary Injury	No. of Claims	Damages Paid	NHS Legal Costs Paid	Claimant Legal Costs Paid	Total Paid
Brain Damage	12	14,771,377	867,793	3,327,250	18,966,419
Respiratory Disorder/ Failure	#	#	#	#	#