



Resolution

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FOI_4043

The following information was requested on 22 October 2019:

In relation to clinical negligence, how much has the NHS spent since 1995 on compensation in wrongful conception claims? Especially in relation to children with disabilities.

Also, how many claims of wrongful conception has the NHS received? And how many has the NHS been successful with?

[You clarified this to mean]

Yes, I mean in terms of failed sterilisation, like failed vasectomy for example.

Our Response

Please find attached the information we are able to provide.

It should be noted that we define “wrongful birth” as a clinical negligence claim brought by the parents of a child born with birth defects, alleging that negligent treatment or advice deprived them of the opportunity to avoid conception or terminate the pregnancy.

Our coding does not enable us to distinguish whether the claims related to birth of children who were healthy.

It is possible there are other cases which have been coded under less specific codes that relate to incidents under the more general umbrella of ‘parents not having been warned that the child would be born with a specific disability’ for reasons other than failed screenings. Therefore, on the issue of data quality, it should be noted that the database was designed primarily as a claims management tool rather than for research purposes, that it records only a limited amount of information, and that a claim may be multi-factorial and/or settled on a number of bases. It is our view, therefore, that the figures provided should be treated with caution and that they should not be relied on as a basis for audit or research.

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(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.

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

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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 received between financial years 1995/96 and 2018/19 where one of the Injuries is "Wrongful Birth"](#)

[Table 2: Number and Cost of Claims Closed/Settled with damages paid between financial years 1995/96 and 2018/19 where one of the Injuries is "Wrongful Birth"](#)

[Table 3: Number of Claims Closed without damages paid between financial years 1995/96 and 2018/19 where one of the Injuries is "Wrongful Birth"](#)

Table 1: Number of Claims received between financial years 1995/96 and 2018/19 where one of the Injuries is "Wrongful Birth"

Notifications	Y
Clinical_NonClinical	Clinical

Notification Year	No. of Claims
1996/97	12
1997/98	#
1998/99	12
1999/00	17
2000/01	31
2001/02	47
2002/03	22
2003/04	27
2004/05	22
2005/06	15
2006/07	17
2007/08	21
2008/09	30
2009/10	15
2010/11	31
2011/12	17
2012/13	31
2013/14	26
2014/15	23
2015/16	19
2016/17	22
2017/18	19
2018/19	16
Grand Total	#

Table 2: Number and Cost of Claims Closed/Settled with damages paid between financial years 1995/96 and 2018/19 where one of the Injuries is "Wrongful Birth"

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
1998/99	#	#	#	#	#
1999/00	5	843,500	83,942	154,773	1,082,216
2000/01	#	#	#	#	#
2001/02	5	604,215	109,752	116,205	830,172
2002/03	7	3,295,651	111,521	352,353	3,759,525
2003/04	10	2,001,507	177,893	351,650	2,531,050
2004/05	15	2,442,087	355,393	540,193	3,337,672
2005/06	15	3,216,173	343,159	754,490	4,313,822
2006/07	12	3,909,275	450,604	834,107	5,193,986
2007/08	9	4,437,996	328,338	1,238,206	6,004,539
2008/09	11	4,294,000	376,313	945,040	5,615,353
2009/10	13	6,241,059	250,063	1,103,463	7,594,585
2010/11	25	12,521,113	783,805	2,417,400	15,722,317
2011/12	13	14,675,004	742,937	2,272,087	17,690,027
2012/13	17	11,276,806	804,278	2,183,905	14,264,989
2013/14	11	11,418,946	489,550	1,826,512	13,735,009
2014/15	6	8,158,352	697,434	3,010,572	11,866,358
2015/16	13	17,313,513	1,029,280	3,290,267	21,633,060
2016/17	13	12,520,949	526,102	2,117,851	15,164,902
2017/18	16	13,363,110	660,150	2,407,847	16,431,107
2018/19	10	17,296,750	316,130	1,683,615	19,296,495
Grand Total	232	151,110,006	8,752,103	27,754,111	187,616,220

Table 3: Number of Claims Closed without damages paid between financial years 1995/96 and 2018/19 where one of the Injuries is "Wrongful Birth"

Closed_Settled	Y
Clinical_NonClinical	Clinical
Claim_Outcome_FOI	NIL Damages

Year of Closure (Settlement Year for PPOs)	No. of Claims
1996/97	#
1998/99	#
1999/00	#
2000/01	#
2001/02	10
2002/03	21
2003/04	15
2004/05	15
2005/06	14
2006/07	10
2007/08	6
2008/09	#
2009/10	5
2010/11	8
2011/12	5
2012/13	10
2013/14	15
2014/15	11
2015/16	9
2016/17	10
2017/18	6
2018/19	#
Grand Total	184