

## Freedom of Information request 467-23

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### Request

1. In each year since 2018/19, on how many occasions have patients taken legal action against this health board.
2. In relation to Q1, please provide as much detail as possible on each case.
3. In relation to Q1, please provide the legal costs of these cases for each year.
4. In relation to Q1, please also provide information on which case cost the most in each year, and how much it cost.

### Response

1. Please find the number of occasions that patients have taken legal action against NHS Borders:

Year	No of patient claims received
2018/19	21
2019/20	13
2020/21	5
2021/22	6
2022/23	9
2023/24 (to 31 May 2023)	<5

2. Please find below details on each case:

	Investigation, diagnosis and treatment problems	Mental Health	Procedure Complications	Consent issues	Obstetric & Gynae	Medication event	Patient experience	Fall, Slip, Trip
2018/19	11	<5	<5	<5	<5	<5	<5	0
2019/20	10	0	<5	0	0	0	<5	<5
2020/21	<5	0	<5	0	0	0	0	0
2021/22	6	0	0	0	0	0	0	0
2022/23	5	0	<5	0	<5	0	0	<5
2023/24 (to 31 May 2023)	0	0	0	0	<5	0	0	0

As the number of events in some areas are very small and in accordance with the Code of Practice for Official Statistics any number that is less than five, actual numbers and potentially identifiable information is withheld to help maintain patient confidentiality due to potential risk of disclosure. Further information is available in the [ISD Statistical Disclosure Control Protocol](#).

In line with Section 36(2) of the Freedom of Information (Scotland) Act 2002, to disclose further information relating to the incidents in the table above would constitute an “Actionable Breach of Confidentiality” as an individual’s medical history is confidential.

3. Please find below the legal costs for each year requested:

Year	Total Legal Costs £*
2018/19	183,341
2019/20	122,368.40
2020/21	46,043.23
2021/22	23,745.09
2022/23	41,659.93

\*It should be noted that not all costs are within the same year as the claim is lodged as in most cases as it can take some time for claims to be settled/closed.

4. Please note that the highest payment cannot be disclosed as given the rarity of such cases and the small populations within our rural communities, we believe the identity of the claimant(s) would be well known and release of this information would lead to the amount they were awarded being made public. This would breach our duties under the Data Protection Act 2018. We are therefore withholding this data under Section 38(1)(b) of the FOI(S)A 2002.

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If you are not satisfied with the way your request has been handled or the decision given, you may ask NHS Borders to review its actions and the decision. If you would like to request a review please apply in writing to, Freedom of Information Review, NHS Borders, Room 2EC3, Education Centre, Borders General Hospital, Melrose, TD6 9BS or [foi.enquiries@borders.scot.nhs.uk](mailto:foi.enquiries@borders.scot.nhs.uk).

The request for a review should include your name and address for correspondence, the request for information to which the request relates and the issue which you wish to be reviewed. Please state the reference number **467-23** on this request. Your request should be made within 40 working days from receipt of this letter.

If following this review, you remain dissatisfied with the outcome, you may appeal to the Scottish Information Commissioner and request an investigation of your complaint. Your request to the Scottish Information Commissioner should be in writing (or other permanent form), stating your name and an address for correspondence. You should provide the details of the request and your reasons for dissatisfaction with both the original response by NHS Borders and your reasons for dissatisfaction with the outcome of the internal review. Your application for an investigation by the Scottish Information Commissioner must be made within six months of your receipt of the response with which you are dissatisfied. The address for the Office of the Scottish Information Commissioner is, Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife.