

Submission from the Faculty of Pathology, Royal College of Physicians of Ireland (RCPI) to the Expert Group to Consider Alternative Mechanisms to the Court Process for Resolving Clinical Negligence Claims.

The Faculty of Pathology at the RCPI was established in 1982 and it is the professional and training body for Pathology in Ireland. It seeks to ensure the highest standards of laboratory medicine in Ireland and delivers postgraduate basic and higher specialist training in histopathology, haematology, microbiology, chemical pathology and immunology.

- i. The Faculty recognises that in accordance with the Group’s terms of reference, much of the work of the Group will be related to legal and administrative issues. There are, however, points on which the Faculty feels that input from medical subspecialties would be of benefit to the Group, and ultimately to those people affected. Some of these are addressed below, with particular reference to the expertise that pathologists, as Members and Fellows of the Faculty, bring to this area.
- ii. This submission is made under section b) of the areas of a) - e) listed in the request for submissions and as published in national newspapers.
- iii. The area that is the most costly in financial terms is the area of neurologic damage in the newborn infant, resulting in some cases in a diagnosis of cerebral palsy (CP).
- iv. The Faculty is concerned that use of the term “birth injuries” by the Group will perpetuate the idea that all such injuries are caused by labour and its management. “Birth injury” is a nineteenth century term that is now outmoded, and the current scientific medical literature recognises that some 85% of cases of CP are part of a process of abnormal development, with damage occurring before labour and delivery (1, 2).
- v. In jurisdictions that have a CP register, such as Western Australia, the number of cases of CP has remained constant at 2-2.5/1000 births, despite increases in the rate of caesarean sections (CS) from 5% to 30%, comparable to the CS rate seen in Ireland.
- vi. The Faculty believes that failure to incorporate information about events before birth may lead unnecessarily to an undue, exclusive focus on intrapartum events, failing to give parents and both medical and midwifery staff an understanding of underlying disease processes. This in turn may add to parental distress by giving the impression that the neurological injury was the direct result of the action or inaction of an individual and as a consequence, in some cases, lead to litigation that might be averted. These parents need support to care for their child but this should be available by means not dependant on litigation. Inappropriate litigation may also distract from a better understanding of causative mechanisms that is required for prevention leading thereby to a reduction in the incidence of neurological injury.
- vii. Examination of the placenta is key to explaining antepartum events to all involved in an adverse outcome. Expert examination of the placenta requires health care systems

to support a structure that captures this information in the most relevant and cost-effective way, and to provide it to parents and clinical staff. The Faculty has worked with the Health Service Executive via its Laboratory Medicine and Women and Infant's Programmes in an effort to advance this development. Equally, participation by obstetricians, midwives and neonatologists would add similar specialist input, to provide a global understanding of the mechanisms involved in causation in these cases.

- viii. Most areas of healthcare have some laboratory input, and the Faculty believes that its Fellow and Members can and should be involved in informing those concerned in areas where allegations of clinical negligence are made. Healthcare-associated infections are an example of this, and have received much attention in recent years, but where multiple factors impact on their occurrence. There are similarly other areas in the various disciplines of pathology where allegations of negligence are made and where the input of specialists involved would be helpful.

In summary, the Faculty strongly advises that the Expert Group mandate that such information should be a core part of the mechanism, and that an expert assessment be available to parents, patients and others, at an early stage. This may be facilitated, in part, by ensuring that the medical profession is represented as a core member of the Expert Group.

References

Copies of these references will be supplied on request.

- 1) MacLennan AH. Cerebral Palsy: causes, pathways and the role of genetic variants. *Am J Obstet Gynecol* 2015;779-788.
- 2) Redline RW. Cerebral palsy in term infants: a clinicopathologic analysis of 158 medicolegal case reviews. *Ped Develop Pathol* 2008;11:456-464.

The Faculty of Pathology, RCPI

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