

REVIEW OF THE LAW OF TORTS AND CURRENT SYSTEM FOR THE MANAGEMENT OF CLINICAL NEGLIGENCE CLAIMS

- (d) EXAMINE THE ROLE OF THE STATE CLAIMS AGENCY IN MANAGING CLINICAL NEGLIGENCE CLAIMS ON BEHALF OF THE HSE TO DETERMINE WHETHER IMPROVEMENTS CAN BE MADE TO THE CURRENT CLAIMS MANAGEMENT PROCESS**

1. INTRODUCTION

The Medical Protection Society (MPS) welcomes this opportunity to provide comments on this review of the law of torts and current system for the management of clinical negligence claims. MPS is the world's leading member-owned, not-for-profit protection organisation for doctors, dentists and healthcare professionals.

MPS protects and supports the professional interests of more than 300,000 members around the world, including more than 16,000 medical and dental members in Ireland.

MPS in-house experts can assist with the wide range of legal and ethical problems that arise from their professional practice. This may include assistance with clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS has an in depth knowledge of the medico-legal environment for healthcare professionals in Ireland and significant experience of the Irish civil litigation system, and would be very happy to provide further evidence to the review in addition to this submission.

2. MPS APPROACH TO CLAIMS RESOLUTION

MPS believes that the starting point for prompt resolution of claims is through the use of a pre-action protocol. This allows early investigation and the fair, just and timely settlement of disputes. MPS benefits from in-house clinical advisers working alongside the legal team. This collaboration enables early identification of claims which should be settled while allowing the correct resource to be directed to claims requiring further investigation.

By having the early input of both clinical and legal advisers, MPS is able to take a proactive rather than a reactive approach to a clinical negligence claim. This has reduced the shelf life of claims which benefits both doctor and patient. The SCA has engaged with MPS in attempting to pilot a voluntary pre-action protocol. It is however clear that a pre-action protocol requires sufficient in-house resource to determine strategy and direct resolution. MPS recognises that this would likely require significant investment at the SCA in both clinical and legal resource.

MPS has found that its ability to take a proactive approach to claims resolution is directly linked to the availability of clinical records at the outset. This includes access to records relating to breach, causation, condition and prognosis and quantum before proceedings are served.

3. SCA APPROACH TO CLAIMS RESOLUTION

MPS is not aware of the precise details of the claims handling process used by the SCA. The legal advisers at the SCA are experienced and capable lawyers and specialists in their field. Both MPS and the SCA seek to co-operate to avoid unnecessary legal costs and duplication of effort.

The respective claims handling processes differ as a result of MPS' emphasis on early investigation as directed by our in-house clinical and legal advisers who agree a joint strategy. The requirement of the SCA to obtain expert evidence before resolving a claim can cause delay and ultimately increase costs.

4. CHALLENGES IN COMMON

Both MPS and the SCA are impeded by the current civil justice system which encourages an adversarial approach to claims resolution. Neither organisation can improve efficiency of claims handling in the absence of reform with particular emphasis on:

- The introduction of a statutory pre-action protocol which requires -
 - Early and full disclosure of all relevant clinical records.
 - Provision of a detailed letter of claim which includes allegations of negligence grounded on expert evidence, evidence of harm suffered and a breakdown of financial losses with vouching.
- The publication of an equivalent to the Judicial College Guidelines in England & Wales, the purpose of which is to provide a clear and logical framework for the assessment of damages in personal injury cases and which are consistently relied upon by the courts. Unlike the current Book of Quantum, this would not include claims which have been compromised.
- The introduction of a specialist PI/clinical negligence Court with specialist judges and procedural rules designed to ensure early engagement of parties and adequate judicial case management.
- The use of formal written offers similar to other jurisdictions, where they are made in a prescribed form with the aim of encouraging early resolution. A party will face costs consequences if it refuses a reasonable offer to settle.
- Costs penalties for both sides where they fail to seek to frustrate the resolution of the claim during either the pre-action or litigation process.