



7th August 2018

Dear Sirs,

RE: Negligence Claims

I had the privilege of being a member of the O'Connor Tribunal into similar matters many years ago. Despite very much work and much acclaim, most of the major recommendations were not acted upon, due to the indifference of the politicians and/or the intransience of the Departments. By and large – with one exception- the problems are not much different. The difference is that earlier awards were a major economic issue, whereas clinical negligence has become highly emotive.

The basic issue is that the legal system is highly adversarial. Add to this, that saying "sorry" is simply not allowed, either by insurers, or the state claims agency, or one's own legal team. Irish people are generally very fair and forgiving, possibly from an older Catholic ethos. Everyone can make a mistake sometime and saying "sorry" is often sufficient to resolve matters. However, modern society has become very litigious.

I discussed this with an eminent Supreme Court Judge [for obvious reasons of a legal nature, I cannot divulge his name]. He strongly felt that if the tort was separated into two areas, liability and secondly quantum, this would hugely reduce time, costs and settlements. An absolute requirement is to establish liability first – with no mention of quantum allowed – and this should be done at Circuit Court level in almost all cases – just establishing the facts. Subject to the liability decision, quantum could then by negotiation, or in enormously serious cases by a specialist group, be set up for this purpose – most cases would be settled.

He hadn't considered whether this could be done without litigation but felt this could be very possible.

All of this should now be implemented, it could be arranged very simply and without much delay and very little cost. I commend it to you and your group for serious consideration.

Yours