

I am writing this submission as a former nurse, solicitor and mediator who worked until relatively recently for a large law practice in the area of medical litigation defence on behalf of the State Claims Agency, the Medical Protection Society and Allianz. I also have family members who are involved in the medical profession at both senior Consultant level and as a trainee non consultant hospital doctor so I have a perspective that includes both the legal and medical professions. I left this area of work not because I did not enjoy it or find it a very good fit for my particular skill set, but rather because of the frustrations I encountered in a number of areas of this work and hence my opinion in relation to reform of same.

My frustrations centred on the following:-

- The length of time that cases were taking to complete. This was due in part to the delays in the court system but mainly in my experience from the prevarication involved within the State Claims Agency. This may have been due to budgetary constraints but it took forever to get the Claims Handlers that I dealt with to make any kind of decision. I would write a very comprehensive letter of advices once proceedings commenced and again on receipt of the expert reports but yet could wait for over a year and sometimes longer to even get a reply from the claims handler, despite a number of gentle reminder letters in the interim. In the meantime I would be receiving irate letters and phone calls from the Plaintiff's Solicitors demanding to know why matters were taking so long. There could be numerous Motions for Defence etc. all serving to escalate costs and further upset and frustrate the Plaintiff.
- The eye watering legal fees that were being charged for medical negligence claims. I have no doubt that this area of work is viewed as a 'gravy train' within the profession. At one stage when I questioned the level of fees being demanded I was told "not to bite the hand that feeds me". I appreciate that this view would not make me popular within the profession but in my opinion so much of what is usually taxpayers money is being incorrectly used to discharge enormous legal fees in these cases instead of being directed to an underfunded health service (which sadly is also in need of reform). I was involved in one spurious claim in which the Plaintiff was offered a relatively small amount of money at the outset to settle the matter, which was declined. The Plaintiff's solicitor informed me that perhaps if we increased the offer tenfold he would consider recommending it to his client. The matter dragged on for about four years and eventually on the morning the trial was due to start in the High Court we received the Plaintiff's past medical records which essentially disproved her case. Our Senior Counsel came to us after consulting with the Plaintiff's Senior Counsel saying he could get the Plaintiff's side to withdraw the case if we committed to paying their legal fees. Needless to say we did not acquiesce to this request but the fact that it was even asked of us I think speaks volumes in this regard. As far as I am aware the State Claims Agency never pursued the Plaintiff's side for the costs of defending the case to the Round Hall of the Four Courts.
- I have encountered Medical Experts for the Plaintiffs who are happy to give reports in more than one area of medical specialism, this would suggest that it is not overly difficult to obtain a "hired gun" who for a hefty fee will give an "expert opinion"

thereby enabling proceedings to be commenced. I am not suggesting that this practice is widespread but I have encountered it. Therefore I am of the opinion that this area is seen as huge money spinner for Plaintiff Solicitors and that there is very little to be lost by encouraging a client to take a case.

### **Proposals for Reform**

- In addition to the longstanding calls for legislation to be fully enacted allowing for open disclosure and apologies at an early stage not being interpreted as an admission of liability thereby encouraging doctors and hospitals to act in a less defensive manner, and also allowing for periodic payment offers to be made etc. I would make the following proposals:-
- I cannot comprehend why there is a need for essentially a double layer of bureaucracy on the defence side once proceedings are initiated. The claims handlers within the State Claims Agency are as far as I am aware qualified Solicitors and I know many are also trained in Mediation. Therefore I cannot understand why this agency does not deal with clinical negligence claims in-house. I appreciate this may require a re-modelling of the current system with the addition of more staff and funding to allow for this but I think it would be a far more cost effective manner in which to handle these claims.
- I think it is also worth exploring further the concept of a Medical Injuries Assessment Board much like the Injuries Board that is manned by an expert panel of medics and lawyers that would serve to keep as many cases as possible out of the court system.
- I am of the opinion that any cases that would then proceed to litigation should be case managed by specially trained judges much like within the Commercial Court with pre-action protocols .