



Rialtas na hÉireann
Government of Ireland

Expert Group to review the law of torts and the current
systems for the management of clinical negligence claims
Terms of Reference

Prepared by the Department of Health & the Department of Justice & Equality

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1 Background / Context

The Programme for Partnership Government stated “*we will tackle the rising cost of claims by establishing an expert group to report within 6 months on options for reforming the law of torts and the current claims process, particularly when it comes to birth injuries and catastrophic injuries, and injuries that can result from vaccination.*”

Cognisant of the broad range of initiatives undertaken by the Minister for Justice and Equality on tort reform, the Minister for Health and the Minister for Justice and Equality, in association with the Minister for Finance will establish an Expert Group to review current systems for the management of clinical negligence claims. This Group will examine tort law as it currently applies to personal injuries arising in the healthcare context and consider options for reform of relevant tort law. It will also examine whether clinical claims management systems are adequate and whether there may be an alternative mechanism by which claims could be managed and determined more efficiently and effectively from the perspective of the person who has made the claim and the culture of patient safety.

The new reforms, comprising the introduction of the Pre-Action Protocol and Periodic Payment Order legislation, have yet to be promulgated and will require time to be embedded in the tort system to see what changes they will bring about. It is proposed that the Expert Group will conclude its deliberations within 6 months. However, this will not be long enough to accurately measure the effectiveness of the new legislative provisions. In particular, the Pre-Action Protocol ought to bring about far-reaching changes, following its introduction, in relation to the way the parties will engage with each other in a less adversarial way in clinical negligence actions. The bedding-in of the Protocol will require at least a year or so to measure its impact.

2. Scope and Role of the Expert Group

The Expert Group will concentrate on clinical indemnity claims in the health system.

The Expert Group will:

- a) review the law of torts from the perspective of the management of clinical negligence and personal injury claims in order to assess the effectiveness of the legal framework and to advise on and make recommendations on what further legal reforms or operational changes could be made to improve the current system (the Group needs to ensure that its work does not duplicate the work of the President of the High Court, Justice Peter Kelly on the Review of the Administration of Civil Justice on behalf of the Minister for Justice and Equality);
- b) consider whether there may be an alternative mechanism to the court process for resolving clinical negligence claims, or particular categories of claims, particularly from the perspective of the person who has made the claim. To do this, the Group will examine whether a mechanism could be established which would deal more sensitively and in a more timely fashion with catastrophic birth injuries, certain vaccine damage claims, or with claims where there is no dispute about liability from the outset. It will also examine whether an alternative dispute resolution mechanism or a no-fault system would be effective in some cases;
- c) examine the role of the HSE in addressing the problems encountered by persons involved in clinical negligence claims and addressing the health needs of persons affected by clinical negligence, with consideration given to whether particular care packages could be made available for persons with specific injuries, e.g. cerebral palsy following birth;

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.

e) consider the impact of current tort legislation on the overall patient safety culture, including reporting on open disclosure.

The Expert Group may carry out its own analysis and research or commission research, if necessary. This would include examining how clinical negligence claims are managed in other jurisdictions.

3. General

3.1 Membership

The membership of the Expert Group shall be comprised of a nominated senior representative from the following organisations:

- Independent Chairperson
- Department of Health (Clinical Indemnity Unit and National Patient Safety Office)
- Department of Justice and Equality (Civil Law Reform and Courts Policy)
- Department of the Taoiseach
- Department of Public Expenditure and Reform
- HSE (HSE Legal, Patient Safety and Chief Operations Officer)
- State Claims Agency
- Attorney General's Office
- Courts Service
- A recognised patient advocacy representative.

Consideration will also be given to appointing a person or persons with more dedicated expertise onto the Group, who have background knowledge/experience of managing clinical negligence cases.

The Expert Group may also consult with whomever it wishes. It will be assisted in its work through consultation with all relevant parties, including patient groups, the Medical Protection Society, Medisec and Challenge Insurance, the Private Hospitals Association, the Irish Hospital Consultants Association, the Personal Injuries Assessment Board, the Judiciary, the Law Reform Commission, the Legal Aid Board, the Legal profession and the general public.

3.2 Chairperson

The Right Honorable Mr Justice Charles Meenan will be the independent Chairperson of the Expert Group.

Meetings will be convened by the Chairperson and supported by the Secretariat, to be jointly provided by Department of Health and Department of Justice and Equality, supplemented by others with particular expertise.

3.3 Format of meetings

All agenda items will be forwarded to the Secretariat by close of business five working days prior to the next scheduled meeting.

The agenda, with attached meeting papers, will be distributed at least two working days prior to the next scheduled meeting.

The minutes of each Expert Group meeting will be prepared by the Secretariat.

Full copies of the minutes, including attachments, will be provided to all Expert Group members no later than three working days following each meeting.

The Expert Group will meet at least one a month, with more frequent meeting allowed as required and agreed by the Chairperson.

3.4 Quorum requirements

A quorum will require at least the Chairperson and one representative from each of the Department of Health, Department of Justice and Equality, State Claims Agency and one other member.

4 Timeline

It is envisaged that the Expert Group review will be undertaken in stages. The Chairperson will provide an interim report to the Minister for Health and the Minister for Justice and Equality after three months from the establishment date.

The Chairperson will provide the Expert Group's final report to the Ministers for Health and Justice and Equality with findings and recommendations within a 6 month timeframe from its establishment date.

