

# CHALLENGING THE COST OF CLINICAL NEGLIGENCE – THE CASE FOR REFORM

**W**ith nearly 300,000 members worldwide and more than 16,000 medical and dental members in Ireland, MPS has an in-depth knowledge of the medicolegal environment for healthcare professionals. This knowledge and experience, coupled with our international expertise, provides us with a strong insight into the deteriorating claims environment in Ireland.

These are unquestionably challenging times and MPS understands that the increases in its subscription rates, caused by the rise in the cost of clinical negligence, are painful and are having a significant impact. In the policy paper 'Challenging the Cost of Clinical Negligence; The Case for Reform' MPS makes bold but achievable recommendations to government, to address the factors contributing to this unsustainable situation.

MPS recognises the important role we must play. MPS commits in this paper to trialling a pre-action protocol to help make the system more efficient. But more importantly, we will continue to encourage and support members to embrace open disclosure. In MPS's experience this can help ensure that patients and their families are provided with the answers they need and avoid unnecessary escalation.

## THE PROBLEMS

The deterioration in the claims environment has been happening for a number of years, and significantly so in the last two years, in some areas of practice. For example, earlier this year when considering the claims environment for private hospital consultants in particular, the actuarial estimates of the cost of indemnity for claims per member had increased by over 90% over the last two years.

This is a result of large increases in both the rate at which private hospital consultants are being sued and the

average size of those claims. As a consequence, we had to increase our subscription rates. As a responsible not-for-profit organisation owned by members, we have an obligation to ensure that we collect sufficient subscription income to meet the expected future costs of claims against members so we can be in a position to defend their interests long into the future.

MPS does not believe that the recent claims experience (increase in both the actuarial estimates of frequency and severity) in Ireland reflects a deterioration of professional standards. We believe that there are a multitude of complex factors contributing to this.

Whilst the deterioration in the claims experience against private hospital consultant members we have seen over the last two years may not continue at such a pace, the experience to date merits deep consideration of tort and procedural reform.

## THE IMPACT

MPS believes that the deterioration of the claims environment – and therefore for the increased cost of professional protection – impacts negatively not only on the healthcare profession, but on wider society as well.

For some specialties, the claims experience (and therefore the cost of protection) risks threatening the sustainability of some areas of private practice. If this causes a shift in the workload

to the public sector, it could increase pressure on public services. Added to which there is a risk that specialised private provision could be lost and some people's healthcare needs may not be met as a result.

MPS is also concerned that if some healthcare professionals find the cost of practising in the private sector in Ireland unsustainable, more doctors may consider working abroad. The impact is likely to be damaging.

Added to this, the inefficient and unpredictable legal process which causes delays can be negative for patients. Delays in the legal system mean that plaintiffs may not have the early closure on a case that they deserve and those plaintiffs with meritorious claims may suffer financial hardship while they wait for compensation.

## THE PROPOSALS

### PROCEDURAL REFORM

- Urgent introduction of a pre-action protocol
- Creation of a specialised High Court list comprising clinical negligence actions presided over by a High Court Judge

### TORT REFORM

#### GENERAL DAMAGES

- MPS recommends that a tariff of general damages is created in statute
- MPS recommends a limit on general damages.

#### SPECIAL DAMAGES

- MPS recommends a limit on future earnings and that future financial losses are limited to proven earnings
- MPS recommends a limit on future care costs

#### FREQUENCY OF CLAIMS

- MPS recommends a 'Certificate of Merit' be introduced
- MPS recommends a cap on lawyers' fees in smaller value cases to introduce proportionality

#### DEFINITION OF CLINICAL NEGLIGENCE

- MPS recommends that government introduces a Bill that defines the tort of clinical negligence and confirms that a tort is established by both breach of duty and that breach must have caused the injury. It would also assert that the burden of proof is placed on the plaintiff

#### LENGTH OF LIMITATION PERIODS

- MPS recommends full implementation of the recommendation of the 2011 Law Reform Commission review on limitation
- MPS recommends an ultimate limitation period of ten years