

Health sector priorities for the new government

2016

The issue

With the health budget under pressure, changing demographics and the need to create an open culture, healthcare professionals are facing challenging times. It is important that the new government prioritises supporting these professionals so that they can do what they entered their profession to do – care for patients.

We suggest that one priority should be addressing the significant deterioration in the clinical negligence claims environment as a result of an increase in both the cost and frequency of claims. As a consequence, the cost of professional indemnity for doctors and dentists has increased. For some, such as private hospital consultants, this cost has been significant.

While the claims experience for GPs has not had the marked deterioration that we have seen for private consultants, there is still nevertheless a significant concern about the increasing cost of clinical negligence for GPs and dentists.

Benefits of reform

We appreciate that difficult decisions about healthcare funding are made every day. The significant cost of clinical negligence to the state should not be seen as unconnected from this. It is crucial that society asks whether it is appropriate and affordable to continue to pay such large sums in damages and costs. We believe that these funds could be better spent on patient care.

Reform could save public money, which would be better spent on patient care and benefitting society generally. Furthermore, reform of the legal system will make it quicker, fairer and more efficient for healthcare professionals and their patients.

The current situation

At end 2014, the State Claims Agency (SCA) had 2,844 clinical claims under management, with an outstanding estimated liability of €1.16 billion¹ of public money.

Alongside this significant financial cost to the public purse, the knock-on impact of the rising cost of clinical negligence is also worrying. We are concerned that an increasing number of healthcare professionals are finding the cost of practising in the private sector unsustainable and more are considering working abroad or giving up practice altogether.

In addition, any reduction in private practice services will inevitably result in increased demand on the public sector, where the costs of provision and the liability for any claims for clinical negligence would lie with the SCA in their entirety.

1. [http://stateclaims.ie/about-our-work/key-figures/General Medical Council, October 2014, 'The state of medical education and practice in the UK report: 2014](http://stateclaims.ie/about-our-work/key-figures/General%20Medical%20Council,%20October%202014,%20The%20state%20of%20medical%20education%20and%20practice%20in%20the%20UK%20report:%202014)

Recommendations

Legal and procedural reform

We are concerned that if no action is taken, this situation will continue to deteriorate and patient care will suffer. We are calling on the new government to pursue both procedural and tort reform to help make the claims environment more affordable.

These reforms include among others:

- The swift introduction of a pre-action protocol following the inclusion of a measure to allow this in the Legal Services Regulation Act

A pre-action protocol will allow for better management of clinical negligence claims and help resolve claims more efficiently for all involved, patients and healthcare professionals. It should introduce predictability, discipline and transparency to the claims process. It could also help the patient/healthcare professional relationship by encouraging a climate of greater openness.

- Limits on lawyers' fees in smaller value cases

Plaintiff costs can be exceptionally high. One method to cut legal costs, and potentially reduce the number of small value unmeritorious claims would be the introduction of a cap on lawyers' fees in smaller value cases. Costs in smaller value cases can be easily disproportionate to the compensation awarded.

- A debate on the merits of a limit on damages (special and general)

In our experience, special damages claims have increased in recent years. As part of the debate around healthcare costs and what society can afford, society should consider the potential impact of limits on future earnings and future care costs in special damages awards and general damage awards.

Other countries have introduced such limits. In some Australian states there are limits on the loss of earnings at typically a multiple of two or three times the average weekly earnings.

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Tasmania puts a limit on loss of earning capacity at 4.25 times the adult average weekly earnings. As a society we need to explore whether a limit based on average weekly earnings would have benefits in Ireland.

- Tariff of general damages created in statute

There is currently a large degree of unpredictability about the size of awards. To achieve greater predictability, we recommend the introduction of legislation that allows for the creation of a tariff of general damages. This Tariff would provide a range of damages for an extensive list of specific injuries from catastrophic brain injuries to dental damage.

Short-term measure

As a short-term measure, we would like to see indemnity caps on the Clinical Indemnity Scheme reduced for private practice claims. This will help to address the costs of professional indemnity and help ensure a continued strong private medical practice. However, for the long-term cost of professional indemnity to be sustainable, we ask government to pursue tort reform as a matter of urgency.

Open disclosure and the importance of prevention

We advocate a policy of full and open communication. An open and honest explanation may be what is needed to reassure a patient and avoid escalation. Contrary to popular belief, apologies tend to prevent formal complaints rather than the reverse. Above all, this is the most ethical approach.

About MPS

The Medical Protection Society Limited ("MPS") is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of more than 300,000 members around the world. Membership provides access to expert advice and support together with the right to request indemnity for complaints or claims arising from professional practice.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional

practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.