

MEDICAL PROTECTION SOCIETY

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Minister O'Callaghan
 Minister for Justice, Home Affairs and Migration
 Department of Justice
 51 St Stephen's Green
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Friday 9th May 2025

Dear Minister O'Callaghan and Minister Carroll MacNeill

The urgent implementation of pre-action protocols to reduce the human and financial cost of clinical negligence claims

Congratulations on your recent appointments as Minister of Justice and Minister of Health. We wish you both every success in your new roles.

We are writing to urge you to reduce the human and financial costs associated with clinical negligence claims, by taking the final steps needed to implement pre-action protocols.

When a patient or family experiences an adverse event as a result of their healthcare, the expected course of action from the clinicians involved is openness, honesty and transparency, as outlined in the Department of Health's Open Disclosure Framework and in line with their ethical, regulatory and statutory duties.

Should a patient or family be unsatisfied with the approach or response from individual clinicians or healthcare providers, next steps for investigations or redress become limited.

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For some, seeking a clinical negligence claim may allow them to fully investigate what happened and access financial redress.

The HSE Patient Engagement Roadmap¹ acknowledges that there is a power imbalance in healthcare where patients might not feel that they are equal partners. When something goes wrong, it is a difficult decision to seek legal redress. As well as the personal and financial risk, they face a protracted claims system which is ‘overburdened, deeply traumatic’² and ‘adds insult to injury’³. Our legal system should seek to mitigate further harm to patients and families.

For the healthcare professionals involved, the claims process is described as having ‘a profound emotional and psychological impact on medical practitioners’⁴, with research finding that the protracted claims processes cause psychological damage for doctors and dentists, resulting in anxiety, depression and for some, the consideration of ending their clinical career or even suicidal thoughts⁵.

A protracted process without clear, standardised routes for early information sharing also leads to increased legal costs. This can impact all parties, as well as having an onward impact on the amount of public finances otherwise better invested in the provision of high-quality healthcare.

We believe that the implementation of pre-action protocols, would go some way towards fixing a system that does not currently benefit anyone involved.

Pre-action protocols are a set of guidelines, laid out through legislation, which explain the conduct and steps a court expects parties to take before claims proceedings can commence. This encourages claims to be settled outside of the court where possible and should help to reduce the time the claims litigation process takes for those claims which cannot be resolved pre proceedings. Pre-action protocols are not only a critical tool for reducing the impact on patients and healthcare professionals, but also beginning to bring down legal costs involved in a claim.

The delivery of pre-action protocols is long overdue and has been a commitment of successive Ministers for both Justice and Health departments.

Most recently, the September 2024 report from the Interdepartmental Working Group on the Rising Cost of Health-Related Claims called for the implementation of this reform without

¹ HSE Better Together: The Health Services Patient Engagement Roadmap

² Forrest, C., O'Donoghue, K., Collins, D.C. and O'Reilly, S. (2023) 'Current Irish medicolegal landscape: an unsustainable trajectory', BMJ Open Quality, 12(3). Available at: <https://doi.org/10.1136/bmjog-2023-002433>

³ Tumelty, M.E. (2021) 'Exploring the emotional burdens and impact of medical negligence litigation on the plaintiff and medical practitioner: insights from Ireland', Legal Studies, 41(4), pp. 633–656. Available at: <https://doi.org/10.1017/lst.2021.20>

⁴ Ibid

⁵ Medical Protection (2024) 'The human and financial cost of clinical negligence claims: the case for pre-action protocols'. Available at: <https://www.medicalprotection.org/docs/medicalprotectioninternationallibraries/pdfs/ireland/medical-protection-tort-reform-policy-paper-final.pdf>

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delay. We were pleased to see commitment to the Working Groups recommendations in the Draft Programme for Government, published on 15th January 2025.

Previously, the introduction of pre-action protocols was backed by the Review Group chaired by Mr Peter Kelly in 2020 and was accepted in the 2022, 2023 and 2024 Justice Plans. Pre-action protocols were also recommended earlier in 2012, by the Working Group on Medical Negligence and Periodic Payments chaired by Ms Justice Mary Irvine and by the Expert Group report to review the law of torts chaired by Mr Justice Charles Meenan.

The provisions for pre-action protocols already exist in section 219 of the Legal Services (Regulation) Act 2015.

Ireland remains an outlier when it comes to both the length of proceedings and the legal costs incurred. The system does not however have to continue working in this way and we believe it is possible to reduce both the human and legal costs associated with the process.

As organisations working with health and dental professionals, patients, lawyers and researchers, we would welcome your focus on this crucial tort reform and to take the final steps needed to ensure it is implemented without delay.

The ambition of our combined request of you, in your ministerial roles, is to use the gift of your positions to relieve needless suffering for all concerned.

Yours sincerely

Medical Protection
Dental Protection
Patients for Patient Safety Ireland
Irish Patients Association
Patient Empowerment
Irish College of General Practitioners
Royal College of Surgeons in Ireland
College of Anaesthesiologists of Ireland
Irish College of Ophthalmologists
Association of Anaesthetists
Irish Dental Association
Irish Dental Hygienists Association
Hayes Solicitors LLP
Carson McDowell
Matheson LLP

cc: Minister Chambers, Minister for Public Expenditure, Infrastructure, Public Services
Reform and Digitalisation

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