REPORT ON AN ALTERNATIVE SYSTEM FOR DEALING WITH CLAIMS ARISING FROM CERVICAL CHECK

8th October, 2018

Report on an Alternative System for Dealing With Claims Arising From CervicalCheck

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8th October 2018

Chapter One: Forward

On 2nd August, 2018 I was asked by the Government to make recommendations on how claims arising out of CervicalCheck could be resolved outside the court process.

My terms of reference were:

1. Engage with the women, their families and their representatives to assess what, in their opinions, could be done to provide an alternative to court.
2. Assess the management of cases, liability and quantum that arise, in conjunction with the State Claims Agency and other relevant bodies (State parties, laboratories, insurers, indemnifiers and affected parties).
3. Have regard to the work of the Dr. Gabriel Scally's related scoping inquiry and the International Clinical Expert Panel Review led by the Royal College of Obstetricians and Gynaecologists.
4. Report to the Minister for Health within two months. The report to recommend a way through which these cases can be resolved, in a sensitive and timely manner, that is appropriate to these cases involving complex liability issues and multiple parties, outside of adversarial court processes.

In the course of my work I met with the State Claims Agency, representatives of women involved, laboratories and their insurers. As they were based in the United Kingdom, I had discussions with Royal College of Obstetricians and Gynaecologists (RCOG). In addition, I received submissions from affected parties.

In particular, I met with women and their families who told me of their experiences of dealing with the devastating consequences of cervical cancer and the effects of the non-

disclosure, or disclosure in an unacceptable way, of the results of audits carried out following diagnosis. I would like to recognise and record their courage and fortitude.

I am very grateful to all those who met with me, often at short notice, and at a time of the year when many were on annual leave.

I met with Dr. Gabriel Scally concerning his related Scoping Inquiry. Dr. Scally's report (the Scally Report) was published in September, 2018. The contents of this report were of considerable assistance to me.

In my report I have advised that a Tribunal to hear and determine claims arising out of CervicalCheck be established. In Appendix 1, I have set out the matters that need to be provided for in a statute to establish such a Tribunal. In Appendix 2, I have set out pre-hearing protocols and rules for case management so as to allow for speedy and less adversarial hearings.

In February, 2010 the then President of the High Court established a "Working Group On Medical Negligence and Periodic Payments". In March, 2012 under the chairmanship of Ms. Justice Mary Irvine, a report on pre-action protocols and draft rules was published. In April, 2013, also under the chairmanship of Ms. Justice Mary Irvine, a further report dealing with case management of medical negligence claims and draft rules was published. These reports were of immense value to me. Indeed, if I did not have the benefit of this work I could not drafted the appendices to my report within the stated time frame.

In producing my report, I had the invaluable assistance and advice of Nuala Butler S.C., Nicola Carroll B.L. and Olivia Crehan B.A., L.L.M, my Judicial Assistant. I wish to thank them and acknowledge their contributions.

In the course of my report I have referred to issues of liability and quantum. Such are, of course, my views based on the information before me but are not "findings".

Since commencing my work I am aware that a number of women have died from cervical cancer. These tragic events underline the need to avoid delay should the Government decide to act upon the proposals which I have made I believe that the detail in Appendices 1 and 2 would assist in speedy implementation. I would be pleased to give any further assistance if required.

Finally, I believe that the establishment of the Tribunal which I have advised would, with modification, have application to other medical negligence claims.

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Mr. Justice Charles Meenan

High Court

8th October, 2018

Chapter Two: Introduction

In his report Professor Gabriel Scally states:

> *"[C]ervical cancer is the fourth most common cancer in woman worldwide and there are over a half million cases diagnosed every year. In Ireland in 2015 (the most recent year for which data is published), there were 241 cases of cervical cancer. This means the lifetime risk of a woman getting cervical cancer was one in thirty-five"*[1]

Professor Scally continues:

> *"Screening" is the method used to detect a disease, or possibly early signs by means of a test or examination for people who have no obvious clinical indications or symptoms"*[2]

CervicalCheck provides free cervical screening to woman aged between 25 and 60. The aim of CervicalCheck is to detect pre-cancerous cervical cell changes and thus reduce the incidence of cervical cancer amongst women in Ireland.

Following a pilot programme in 2000 on 1st September, 2008 a national roll-out of CervicalCheck took place.

Between April and July, 2018 a number of legal actions were commenced against CervicalCheck and certain laboratories who were contracted to read smear tests. In general, the issues in these cases were, firstly, allegations that the smear tests had been negligently

[1] Dr. Gabriel Scally, Scoping Inquiry into the CervicalCheck, Pg. 2. This report may be accessed at: https://health.gov.ie/wp-content/uploads/2018/09/Scoping-Inquiry-into-CervicalCheck-Final_Report.pdf.

[2] Dr. Gabriel Scally, Scoping Inquiry into the CervicalCheck, Pg. 2

read and, secondly, a failure to disclose to the women and their families the results of audits carried out on the smear tests when cervical cancer had been diagnosed.

There was considerable publicity and comment concerning these cases. Further, there was a serious concern that the hearing of these cases in public in the High Court, which involved the giving of evidence of a particularly intimate nature, was wrong. Hence the request that I prepare a report to consider an alternative system to deal with such claims.

It should be noted that, despite considerable controversy surrounding the claims against CervicalCheck, there is full agreement on the enormous benefits of the screening programme and the incontrovertible fact that it has saved the lives of many women.

Chapter Three: Executive Summary

1. Smear tests are a screening not a diagnostic process. There are serious issues on liability on the reading of the smears. A significant number of smears will be reported as showing no abnormalities despite there being possible abnormalities present. This does not, of itself, amount to negligence on the part of the person(s) reading the smear.
2. There are issues of liability on non-disclosure of the results of the audits to the women and families involved. However, these issues may legally be of a less contentious nature.
3. Given the issues on liability, a Redress Scheme based on no-fault liability is not appropriate.
4. Any alternative system to hear and decide claims arising from CervicalCheck must recognise: -
    - The issues of liability.
    - The Constitutional right of access to the courts.
    - The Constitutional right to fair procedures.

    Thus any alternative system must be voluntary.
5. Evidence of the injuries suffered by women arising from the treatment of cervical cancer is of an intimate and harrowing nature. This, similarly, applies to the evidence of partners and families where women have died as a result of cervical cancer.

6. No women or family member should feel deprived of the right to take legal action because of fear of publicity or the Court process.

7. I am proposing that a Tribunal be established to hear and determine claims (including claims where proceedings have already issued) arising from CervicalCheck.

8. The Tribunal will adopt pre-hearing protocols and case management procedures specifically designed to deal efficiently and effectively with claims arising.

9. The advantages of the Tribunal over a hearing in the High Court are: -

    - Hearings will be heard in private and be less formal.
    - As the Tribunal will adopt pre-hearing protocols and case management procedures, claims will be dealt with more expeditiously.
    - Less costly for the parties involved.
    - The adoption of pre-hearing protocols and case management procedures will reduce the adversarial nature of hearings.
    - The Constitutional and legal rights of the parties involved are not compromised.
    - There is a right of appeal to the High Court by way of full re-hearing and a subsequent appeal in accordance with law. Such appeals will be heard in private.

10. Where liability is not being contested, e.g. in claims relating solely to non-disclosure, such claims can be "fast tracked" through the Tribunal.

11. In situations where women and/or their families do not wish to be involved in legal proceedings but seek full information concerning their case the Chairperson of the Tribunal will facilitate meetings between the women and/or their families and the relevant medical professionals involved.

12. The Tribunal established to deal with claims arising from CervicalCheck could, with modification, have wider application to hear and determine other medical negligence claims.

Chapter Four: Liability

Essentially there are three areas of liability that arise in the CervicalCheck claims:-

(i) the reading of the smear test;

(ii) non-disclosure;

(iii) issues between CervicalCheck and the laboratories involved;

(i) The reading of the smear test

Firstly, CervicalCheck is a screening process and is not diagnostic. This has implications on the central issue of liability that a smear test was misread thus leading to a failure to detect the development of cervical cancer at an early stage.

In this context the term "false negative" is used. This means:-

> *Samples where the test is originally reported as negative but on review abnormal cells are found.*

I refer to the following extract from the Scally Report:-

> *"It is generally recognised that the best quality analysis of current medical evidence is produced through the Cochrane Systematic Review process. In 2018 Cochrane published a review of the evidence from 40 studies comparing the traditional cytology test (the smear test) with the new HPV test …"*
>
> *"The review put the comparison between the two testing approaches very clearly:*
>
> *This review found that for every 1,000 women screened, around 20 women will have pre-cancerous changes. The HPV test will correctly identify 18 of these women*

(but will miss 2 women). The PAP (the smear test) will identify 15 of the women (but will miss 5 women). The women who are missed could develop cervical cancer."[3]

These figures show both the benefits and the limitations of the smear test. Although the smear test will identify a very significant number of women who have pre-cancerous changes at the same time a significant percentage of women may have abnormal cells which will be missed. However, "missed" does not mean "negligence".

For a woman – or her family to establish negligence evidence would have to be given from a suitably qualified expert that the reading of the smear fell below the appropriate standard required. Thus where a woman develops cervical cancer following a false negative this is not, of itself, sufficient to prove negligence. Each woman has her own individual smear history, thus a finding of negligence (or no negligence) in one case does not necessarily apply to another.

Therefore, any alternative system to hear and determine claims arising out of CervicalCheck must recognise this issue of liability.

(ii) Non-disclosure

Claims under this heading arise out of an alleged failure to inform, or inform in an acceptable way, women or their families of the results of audits carried out on the smear tests where cervical cancer had been diagnosed. The circumstances of this have been set out in considerable detail in the Scally Report. The legal right of a patient, or her family, to be informed of the result of an audit is the subject of some legal debate. A duty to disclose has

[3] Dr. Gabriel Scally, Scoping Inquiry into the CervicalCheck, Pg. 10

now been put on a statutory basis. Thus there is a basis for claims arising from non-disclosure.

It must be borne in mind that it appears to be the case that, as the audits followed the diagnosis of cervical cancer, the non-disclosure itself did not delay or affect the treatment given. Any liability for non-disclosure would appear to rest with the State and not the laboratories involved.

(iii) Issues between CervicalCheck and the laboratories involved

Smears are read, on a contractual basis, by a number of independent laboratories. These contracts contain indemnity clauses that cover, *inter alia,* false negatives. There may be issues between CervicalCheck and the laboratories that are not covered by the indemnity. Any alternative system to deal with claims should be capable of resolving these issues though I note there are dispute resolution mechanisms set out in the contracts which should be availed of.

Chapter Five: Damages

In the course of preparing this report, I met a number of women who underwent treatment for cervical cancer, a partner of a woman who died from cervical cancer and a woman whose cancer returned and now has a terminal diagnosis.

The pain and suffering involved cannot be overstated. The loss of a young mother is not only a tragedy for the family but also has serious financial consequences for the care and support of young children involved. Some of the effects of the surgery to deal with the cervical cancer are harrowing in nature. Not only can there be a loss of fertility but the complications post-surgery can include lymphoedema, incontinence, impact on sex life/intimacy, depression, scarring, chronic pain, nerve damage and compromised immune system.

Therefore, as has been shown by High Court cases already settled, damages arising from a negligent misreading of a cervical smear are potentially very significant.

The damages arising from non-disclosure of the results of an audit (where there has been no consequent impact on either the treatment or the prognosis for the woman involved) are significantly lower. However, arising from my meetings with the women and families involved, the upset and anger arising from non-disclosure should not be underestimated. In addition, this has resulted in a loss of trust in the medical professionals involved which is significant where there is ongoing treatment.

Chapter Six: Adversarial Nature of Litigation

A person who makes a claim has to give evidence of the claim and the injuries suffered. A person against whom the claim is made has a right to challenge the evidence given. Likewise the claimant has a right to challenge the evidence of the defence. Any alternative system that does not recognise these rights would not withstand Constitutional challenge.

However, this does not mean that every aspect of a claim has to be challenged. As I have set out in the previous paragraphs, the injuries suffered by the women and their families are of a particularly intimate and harrowing nature and ought not to be seriously open to challenge. Medical records and reports speak for themselves. Women and their families could be spared the trauma of having to give such evidence by agreed written statements. Such evidence could also be given in private. I note that under s. 65(2) of the Medical Practitioners Act 2007 that, though Fitness to Practice hearings are heard in public, evidence of "personal matters" may be heard in private. There ought to be a similar provision for cases arising from CervicalCheck and, indeed, other Personal Injury cases.

Under s. 27 of the Civil Law (Miscellaneous) Act 2008 certain evidence can be reported in a way that does not identify the person(s) involved.

I should emphasise nothing in these proposals should in any way restrict the right of a woman or her family to give such evidence in public in the High Court if that is her/their wish.

Chapter Seven: Redress Schemes

Over the years the State has established a number of Redress Schemes. These include the Hepatitis C and HIV Compensation Tribunal, the Residential Institutions Redress Board, the Lourdes Hospital Redress Scheme, the Symphysiotomy Payment Scheme and the Restorative Justice Scheme. Some of these schemes are on a statutory basis, in particular the Hepatitis C Compensation Tribunal Act 1997 (as amended).

As is clear from the title of these various Schemes, they were designed as an alternative to the court system to provide compensation for personal injury loss and damage arising from a number of "wrongs". Though each of these Schemes required claimants to prove eligibility in each case it was not necessary to prove negligence or breach of duty for compensatory damage. The payments were, essentially, *ex gratia* in nature.

Given the issues of liability that arise in the CervicalCheck claims, which I have set out at Chapter 4, a Redress Scheme is not appropriate.

However, in cases where liability is not being contested, e.g. in claims relating solely to non-disclosure, such claims should be "fast tracked" in the alternative system which I am proposing.

Chapter Eight: Alternative System

Any alternative system to hear and determine claims arising out of CervicalCheck must recognise:-

(i) the issues of liability involved;

(ii) the Constitutional right of access to the courts;

(iii) the Constitutional right of the parties involved to fair procedures.

Arising from this, in my view, any alternative system has to:-

(i) be voluntary;

(ii) be of benefit to the parties involved without compromising their legal/constitutional rights;

(iii) provide for a full right of appeal to the High Court.

Chapter Nine: Proposal

In considering the proposal for an alternative system my initial thoughts were to suggest a system under the Arbitration Act 2010. However, in my view, the necessity to provide for a full right of appeal to the High Court is an essential feature. The point of arbitration is that, save for limited grounds, an award of an arbitrator is final. Thus any arbitration system to deal with these claims would require legislation to amend the Arbitration Act 2010, which may not be desirable.

No matter what alternative system is proposed legislation is going to be required. Thus there is an opportunity to establish a body specifically designed to deal with claims arising out of CervicalCheck. As I have said earlier, such a body, with modifications, could be utilised to deal with other medical negligence claims.

I propose that a Tribunal be established to hear and determine claims arising out of CervicalCheck. Appendix 1 to this Report sets out in detail what I consider necessary to be covered by statute. The principal features of such a Tribunal will be:-

(i) that the sole member of the Tribunal, the Chairperson, will be a serving or retired judge of the Superior Courts (the High Court, Court of Appeal or the Supreme Court).

(ii) The Chairperson may be assisted by an expert(s) from the relevant fields involved.[4] However, such expert(s) would not be involved in making the decision of the Tribunal.

[4] Under s. 20 of the Civil Liability and Courts Act 2004, a Court has power to appoint an expert.

(iii) The Chairperson would, on the same basis as that of a Judge of the High Court, have power to:-

- determine issues of liability, including apportionment of liability;
- award damages;
- make orders for legal costs, including the taxation of such costs.

(iv) The consent of the parties involved would be necessary for the Tribunal to hear and determine claims (including claims where legal proceedings have already been initiated).

(v) The Statute of Limitation Acts (1957-91) would apply in the same way to claims made before the Tribunal as they do in other legal proceedings.

(vi) Hearings before the Tribunal to be held in private.

(vii) Determinations of the Tribunal may be published in anonymized form.

(viii) For the purposes of research, learning and education the Chairperson of the Tribunal to produce a report outlining his/her findings in various cases.

(ix) Parties who consent to having their claim heard by the Tribunal waive their entitlement to bring or maintain legal proceedings in respect of the claim.

(x) That there is a right of appeal to the High Court by way of a complete rehearing and a further right of appeal to the Court of Appeal and/or the Supreme Court as is provided for in law.

As for the pre-hearing protocols and the case management of claims before the Tribunal I have adopted, with modification, the proposals in Modules 2 and 3 of the

"Working Group on Medical Negligence and Periodic Payments"[5] under the chairmanship of Ms. Justice Mary Irvine (then of the High Court). The adoption of these procedures should result in an efficient and streamlined procedure for the hearing of claims. Further, the adoption of pre-hearing protocols and case management should considerably reduce the adversarial nature of proceedings.

[5] Report of the Working Group on Medical Negligence and Periodic Payments Modules 1 & 2. The reports may be accessed at: http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/5CEEA19C4A5959BC802577DC0055C9F4/$FILE/Medical%20Negligence%201.pdf and http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/198EDA1022AB0D27802581B50042CE26/$FILE/Report%20of%20Working%20Group%20on%20Medical%20Negligence%20-%20Module%202.pdf

Chapter Ten: Advantages of CervicalCheck Claims Being Heard and Determined by a Tribunal as Opposed to the High Court

In my view the following are the advantages:

(i) The hearings will be held in private.

(ii) The adoption of pre-hearing protocols and case management rules which are specific to claims arising out of CervicalCheck will make hearings faster and more efficient.

(iii) The adoption of pre-hearing protocols and case management will reduce the adversarial nature of hearings.

(iv) Hearings will be less formal.

(v) There would be a specific forum to hear and determine claims.

(vi) Hearings will be less costly for the parties involved.

(vii) Where liability is not being contested (e.g. claims for non-disclosure) such cases can be "fast tracked".

(viii) In any event, there is a right of a full rehearing to the High Court with such hearing being held in private.

It may be that women and/or their families will opt to bring their claim in the High Court. It would be wrong for persons who wish to make a claim to be deterred from doing so because of fear of publicity or the Court process. The Tribunal, which I am proposing, would clearly be of significant advantage to such persons.

Chapter Eleven: High Court Hearings

A number of cases have already come before the High Court. The Judge in charge of the Personal Injuries list, Mr. Justice Kevin Cross, with the co-operation of the solicitors and barristers involved, has ensured that these cases have been dealt with in an efficient and timely way. The proposal to establish a Tribunal to hear and determine these claims is designed to overcome some of the features inherent in the trial of actions in the High Court without compromising the legal rights of those involved.

However, as I have emphasised, these proposals do not interfere with a person's right of access to the Courts. Should a woman, or her family, wish to bring or maintain High Court proceedings or the defendants opt to have a claim dealt with in the High Court a number of steps could be taken:-

(a) Statutory change to enable evidence of a personal or intimate nature to be given in private.

(b) Use of written statements.

(c) Use of s. 27 of the Civil Law (Miscellaneous) Act 2008

(d) Use of a video link.

I understand that the implementation of pre-trial protocols for medical negligence claims are at an advanced stage.

Chapter Twelve: Restoration of Trust

The Scally Report records in detail the distress, upset and anger arising out of non-disclosure, or disclosure in an unacceptable way, of the results of audits with consequent loss of confidence in the medical profession. It may be the case that a number of women and/or their families feel they have to take legal proceedings not for the purpose of compensation but rather on the grounds that legal proceedings are the only way that they can discover exactly what went on in their particular case. It seems to me that to provide for such persons there ought to be a system, alternative to a legal process, where this can be achieved.

I refer to the Scally Report which states:-

> *"In my progress report, I recommend that there should be process established enabling structured conversations with every woman effected who wishes to have her experience documented, or with appropriate surviving family members in cases where the patient has died, if they so wish."*[6]

With this in mind, I propose that the Chairperson of the Tribunal could facilitate meetings between women and/or their families and the medical professionals involved. The purpose of these meetings would be to ensure that in each case full and complete information would be given to those involved. The Chairperson would provide a room and related facilities as a "neutral space" for the holding of such meetings. These meetings would take place on the basis that the contents of discussions would be inadmissible were there to be subsequent legal action.

[6] Dr. Gabriel Scally, Scoping Inquiry into the CervicalCheck, Pg. 141

Chapter Thirteen: Conclusion

The Tribunal which I have advised be established will require legislation. There is a clear urgency that this legislation be passed without delay. With this in mind, I have set out, in Appendix 1 the statutory requirements and in Appendix 2 procedures for the hearing of claims. I would be pleased to give further assistance on this.

Appendix 1

The legislation necessary for the establishment of a Tribunal to hear and determine claims arising out of CervicalCheck should contain the following: -

- A Tribunal shall be established to hear and determine any claim by a person, or a personal representative or dependent of a deceased person, seeking damages for negligence, breach of statutory duty, breach of contract arising from any act or omission concerning the CervicalCheck programme.
- The Tribunal shall consist of a Chairperson being its sole member. The Chairperson shall be a serving or retired Judge of the Superior Courts.
- The Tribunal shall only hear and determine claims on the consent, in writing, of the claimants and respondent(s) involved. Where a Third Party is involved, the consent, in writing, of the Third Party is required.
- The Chairperson may appoint at his/her discretion an expert(s) who will assist in the hearing of any claim. The expert(s) shall not have any role in the decision making process of the Tribunal. The views and reports of any expert(s) so appointed shall be conveyed to the parties involved and be subject to examination.
- The Tribunal shall hear and determine all issues of negligence, breach of duty, breach of statutory duty and breach of contract in the same manner as such are determined by the High Court.
- The Tribunal shall award damages on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of

damages in the law of tort, breach of statutory duty, breach of contract and any relevant statutory provisions.

- The Tribunal shall be entitled to award costs and make an order that costs be taxed in default of agreement on the same basis as that of the High Court.
- Hearings before the Tribunal shall be heard otherwise than in public.
- Parties appearing before the Tribunal shall be entitled to be legally represented.
- Evidence shall be heard on oath.
- The Tribunal may publish its determinations in an anonymised form.
- The provisions of the Statute of Limitation Acts (1957– 991) will apply to all claims made before the Tribunal.
- Regulations shall be made to provide for the hearing and determination of claims and appeals to the High Court in a timely and efficient way.
- On the making of a claim (Letter of Claim) before the Tribunal the claimant shall waive his/her entitlement to bring or maintain such claim by way of Court proceedings.
- There shall be a right of appeal to the High Court by way of full re-hearing from all or any part of a determination by the Tribunal. Such appeal shall be heard in private. The determination of the appeal maybe published in anonymised form. The appeal to be initiated by Notice of Motion.
- There shall be a right of appeal from the High Court as is provided by law. Such appeals will be heard in private.

- Where a respondent wishes to a join a Third Party to a claim the Tribunal may grant such application on the same basis as is provided for in the Rules of Superior Courts. Where the Third Party consents to having all issues determined by the Tribunal the matter will proceed before the Tribunal. In the event of the Third Party not so consenting the hearing between the claimant and the respondent(s) will proceed before the Tribunal but subject to the right of the respondent(s) to seek an indemnity and/or contribution as is provided for in the Civil Liability Act 1961 (as amended) in subsequent Court proceedings.
- In the event of an award made by the Tribunal not being satisfied an application may be made to the High Court to make such an Order of Court.
- The Tribunal shall have power to order discovery, inspection and the attendance of witnesses. In the event of a failure to comply with such order without reasonable explanation, the Chairperson of the Tribunal may transfer the claim to the High Court. On such transfer the High Court may give such directions it considers appropriate including that the claim proceed in the High Court as if commenced by legal proceedings. The hearing of such claim shall be heard otherwise than in public.
- If necessary, there may be a number of divisions of the Tribunal.
- The Tribunal shall employ a secretariat. Costs associated with the Tribunal, including remuneration and expenses, to be borne by the relevant Minister.

Appendix 2

Pre-hearing protocols and case management

(I refer to the Reports, Modules 2 and 3 of the "Working Group on Medical Negligence and Periodic Payments" chaired by Ms. Justice Mary Irvine).

1. The purpose of pre-hearing protocols is to enable claimants and respondents to engage with each other prior to the commencement of any litigation –

- To exchange information so as to enable them to consider alternative means of resolving any dispute.
- To seek settlement before litigation and
- In the event that this was not feasible, to facilitate the expeditious conduct of proceedings.

2. The first step to initiate proceedings before the Tribunal will be the service of a "Letter Seeking Information". The receipt of such a letter will stop time running for the purposes of the Statute of Limitation Acts (1957-1991).

3. The "Letter Seeking Information" should be directed to the Tribunal and the respondents involved. This letter will contain a request for the relevant records and, set out, in general terms, the nature and basis of the claim. The records sought are to be furnished within 28 days, or such further time the Chairperson of the Tribunal directs.

Following the receipt of the relevant records the next stage in the process is for the claimant to issue a "Letter of Claim". This letter shall contain

- A clear summary of the facts on which the claim is based;
- The main allegations of negligence;

- Describe the claimant's injuries, present condition and prognosis;
- Outline the financial loss incurred. Give an indication of the amount of damages being claimed and the scale of the loss;
- Provide a chronology of the relevant events, particularly if the claimant has been treated by a number of different health care providers;
- Refer to any relevant documents including health records.

On receipt of the "Letter of Claim" within 21 days, or such further time as maybe allowed by the Chairperson of the Tribunal, on notice to the claimant, the respondents shall provide a "Letter of Response" this letter shall contain: -

- If the claim is admitted such should be stated in clear terms;
- If only part of the claim is admitted it shall make clear which issues of breach of duty and/or causation are admitted which are denied and why;
- If the claim is denied, there should be specific comments on the allegations of negligence, breach of duty or breach of statutory duty and breach of contract. If a synopsis or chronology of relevant events has been provided and disputed then the respondents version is to be provided;
- If additional documents are relied upon and these should be provided;
- Identify Third Parties, if any;
- Issues between Respondents.

4. On expert evidence, the following rules shall apply:

(a) The claimant and the respondent(s) may each offer evidence from one expert only in a particular field, save where the Chairperson is satisfied that more than one such expert is necessary for the purposes of a fair hearing.

(b) In proceedings where there are two or more respondents, the respondents shall jointly offer evidence on one expert only on any issue relating to:

(i) Quantum of damages

(ii) The physical condition of the claimant

(iii) The mental or (psychological) condition of the claimant

(iv) The prognosis as to the physical or mental condition of the claimant save where the Chairperson is satisfied that more than one such expert is required for the purposes of a fair hearing.

(c) The Chairperson may instruct, on behalf of the Tribunal an expert(s).

(d) The experts in each particular field (including any expert instructed by the Tribunal) shall meet and identify, in writing:

(i) Issues on which there is agreement.

(ii) Issues on which there is no or only partial agreement.

This shall constitute a "Joint Report of the Experts".

5. On non-expert evidence (including the evidence of the claimant and/or her family): -

(i) Each witness shall produce a written statement of the evidence he/she intends to give.

(ii) Such statements should be agreed and admitted into evidence without the necessity of having such witnesses examined or cross-examined.

6. The next stage in the procedure is for a Preliminary Hearing to take place before the Chairperson. The following matters shall be dealt with at this hearing: -

(i) Parties shall be directed to engage in mediation (the costs of the mediator to be borne by the Tribunal).

(ii) All expert reports shall be exchanged.

(iii) Joinder of any Third Party.

(iv) Exchange of offers.

7. Should the matter not be resolved following the Preliminary Hearing the next stage is a Case Management Hearing. At this hearing the Chairperson may give any of the following directions or make following orders:

(i) Directions as to the defining of issues by the parties or any of them including the exchange between the parties of memoranda for the purpose of clarifying issues;

(ii) To identify any issues of fact or law including any issues as to causation or liability be determined;

(iii) Following the Case Management Hearing a "Case Booklet" shall be produced by the parties comprising:

  (i) an agreed outline of the case;

  (ii) a list of those issues and events which are agreed;

  (iii) a list of those issues and events which are in dispute;

  (iv) a list of witnesses to be called by the parties;

  (v) a book of medical records;

  (vi) a book of expert reports, including joint reports.

8. Following the case management hearing and the production of the "case booklet" the Chairperson will establish what steps, if any, remain to be taken to prepare the matter for

hearing, the length of the hearing, the arrangements, if any, for witnesses (including evidence by video link) and any other arrangements required for the hearing as maybe necessary.

9. A date is then set for the hearing.

Tribunal