New practice directions on medical negligence proceedings

Two new practice directions should have an immediate and positive impact on how claims are managed by the Courts, writes Stephen O'Leary

THERE HAVE BEEN RECENT welcome developments in the management of High Court clinical negligence claims. Two new practice directions came into effect on April 28, 2025. The two new practice directions, HC131, which deals with applications for hearing dates and HC132, which introduces a new, specialised clinical negligence hearing list, will apply to all clinical negligence cases from that date, regardless of when the case was issued.

While it is still extremely early days, these new practice directions should have an immediate and positive impact on how these claims are managed by the Courts.

Background

It is fair to say that there have been numerous calls over the past 20 years in particular for reforms to be introduced to how litigation, and especially clinical negligence litigation, is dealt with in Ireland. All parties are agreed that the current processes are slow, time-consuming and expensive. Many of the issues with the clinical negligence process were highlighted in 2004 when the Legal Costs Working Group was established and its report issued in 2005. [1]

In 2020, the Final Report of the Expert Group on Tort Reform and the Management of Clinical Claims was published (Meenan Report) [2] and in March 2024 the Interdepartmental Working Group on the Rising Cost of Health-Related Claims Report was published (Interdepartmental Working Group report). [3]

Anyone who has been involved in the clinical negligence claims process will agree that the system needs to be improved. To date, the process is too slow for plaintiffs awaiting compensation and it is too slow for clinicians and entities seeking to defend the care that they provided. It is welcome, therefore, that significant change has been introduced.

These new practice directions, in conjunction with recent changes requiring parties to plead their cases in more detail should result in an end to 'trial by ambush', with cases resolving earlier where possible. For cases that cannot be settled, defendants will have a much clearer understanding of the case they have to defend.

It is to be hoped that the new practice directions are just a first step. Pre-action protocols, in place in the UK since 1999, provided for in Ireland by the Legal Services Regulatory Act 2015, and recommended by both the Meenan Report and the Interdepartmental Working Group report, are still awaited.

Practice Direction HC 131: Clinical Negligence Actions – Applications for Trial Dates

Currently, clinical negligence cases are getting hearing dates in 2026 in the expectation that the parties involved will be ready for trial by the time the hearing date comes around. This is most unsatisfactory because right up to, and including at trial, updated witness schedules can be provided, new reports delivered and claims for special damages expanded upon.

In addition to causing great uncertainty for defendants, this can also require trying to obtain further expert reports at short notice and possibly adjourning the trial date, which is stressful and disruptive.

The new Practice Direction HC131 states: "Its principal purpose and objective is to facilitate the earlier resolution of claims while also ensuring that cases are properly prepared for trial and enhancing efficient case management generally."

So what is new?

As a result of the new practice direction, in order for either party to apply to the new clinical negligence list (addressed further below) for a hearing date, the new practice direction requires that the applicant must ensure that they have:

- Fully pleaded all aspects of their case to identify and define all issues they wish to advance at the hearing of the action, including particulars of negligence, grounds of defence, pleas regarding causation, contributory negligence and any required amendments to the pleadings or defence
- Provided particulars of all injuries suffered as well as particulars of special damages (whether incurred or future

expenses) together with the vouching documentation to support these
- Provided particulars of any quantum reports that they intend to rely on within six weeks of receiving the report. If the defendant wishes to investigate or contest this aspect of the claim, they must instruct an expert within six weeks of receiving the particulars. If the defendant then intends to rely on any such expert report, they must provide details of that within six weeks
- Complied with all discovery obligations and requests for voluntary discovery of documents
- Exchanged, or offered to exchange, a schedule of all witnesses that are to be called. This includes both factual and expert witnesses. All expert reports must similarly be exchanged, or offered to exchange (except where otherwise permitted by law).

The practice direction also introduces formal requirements for engaging in mediation. As a condition of applying for a trial date, the applicant must offer mediation to the opposing party within three weeks of the date on which the trial was fixed, and to engage in such mediation within six weeks of the offer being accepted.

There is an obligation on both parties to engage with the mediation process constructively, and to comply with the reasonable directions of the mediator. However, it should be noted that while the applicant for a trial date must offer mediation within three weeks of applying for a trial date, there is no deadline by which that offer must be accepted.

There is also provision for the party applying for a trial date to persuade the Court that mediation will not assist the parties in achieving settlement, though it is anticipated that any such case will be the exception rather than the norm.

Mediation is now a widely used process for resolving cases. Mediation is particularly beneficial as it is a private process, which affords both parties more time and space in a less pressurised environment to understand the merits of the other side's case and if relevant, negotiate an appropriate settlement.

Often in clinical negligence cases, an acknowledgement or apology from the clinician or hospital, where appropriate, can be as important, if not more important, than the level of compensation that is paid. Mediation provides a far more conducive atmosphere for discussing such options than a public trial.

Importantly, the practice direction provides for sanctions, including appropriate orders for costs, if a party fails to comply with the provisions of the practice direction.

Practice Direction HC 132: Clinical Negligence List

The second new practice direction, HC 132, introduces a new clinical negligence list within the Dublin Personal Injuries List. This new list is "for the purpose of managing clinical negligence proceedings in a structured manner to ensure that such cases receive focused attention and enhanced case management generally by experienced judges."

The clinical negligence list will be dealt with by the same judges assigned to the personal injuries list currently. However, this new list will provide a formal mechanism for case management of clinical negligence claims. Given the complexity of clinical negligence cases, which can often involve multiple defendants, issues affecting a wide class of other plaintiffs, and time urgency depending on the plaintiff's condition, this is particularly welcome.

The practice direction states that on the application of either party, the Court can issue case management directions to facilitate the efficient preparation and hearing of clinical negligence proceedings. Such directions may include:
- Timetables for the exchange of expert reports
- Directions, where the law permits, for mediation
- Orders relating to witness statements or expert evidence
- Any other directions necessary to ensure the fair and expeditious resolution of clinical negligence proceedings.

Conclusion

Litigation will always be stressful for the parties involved. These new practice directions, as well as recent changes regarding detailed pleadings, will help to make the litigation process clearer and, hopefully, quicker, which should help to reduce the toll the process takes on those involved.

Currently, it is estimated that there is approximately a 2.5-3-year delay between an incident occurring and notification of a claim being received. Given that delay, any measures which assist in ensuring any claim is dealt with in the most efficient way possible are to be welcomed. Such measures reduce costs, reduce stress and contribute to reducing the waiting time for trial dates by facilitating the settlement of appropriate cases earlier in the process.

Taken together, the two new practice directions should also drastically reduce the number of cases which have to be adjourned at short notice due to late updates in the claim, whether that is new expert reports being provided or a significantly expanded claim for special damages. The new practice directions should also limit the instances where a defendant has to deal with a new or expanded claim late in the day, but is unable to get an adjournment given the particular circumstances arising in that case.

Plaintiffs and defendants will be obliged to investigate their respective claims and defence and commission the appropriate expert reports sooner than often occurs currently. The significant benefit of having clinical negligence cases actively case managed is that any party that is not progressing their investigations appropriately is likely to be criticised by the Court, and there may be costs consequences for them.

Crucially, the two new practice directions should also help ensure that where a case is being contested, both parties are going into the trial with a much clearer understanding of what their opponent's case is, as well as the full value of the claim as valued by both sides, which should result in a more focused hearing on the central issues that need to be determined.

While these new practice directions are welcome, it is hoped that further changes, such as pre-action protocols, will be introduced in order to further improve the claims process. If you are involved in a claim, or concerned that you might be, you should contact your indemnifier for further guidance as soon as possible.

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References on request