

Financial Management Directorate



HSS (F) 28/99

**The Chief Executive of each Health and Social Services Board
The Director of Finance of each Health and Social Services Board
The Chief Executive of each Health and Social Services Trust
The Director of Finance of each Health and Social Services Trust
The Chief Executive of the Central Services Agency
The Director of Finance of the Central Services Agency
The Chief Executive of the Northern Ireland Blood Transfusion
(Special Agency)
The Chief Executive of the Regional Medical Physics Agency**

29 July 1999

Dear Sir or Madam:

**CLINICAL NEGLIGENCE CLAIMS – PROCEDURES FOR
SUBMISSION OF SETTLEMENTS OVER £250,000 FOR APPROVAL**

The purpose of this circular is to advise HSS bodies of the arrangements which must be followed when requesting approval to settle clinical negligence claims at an amount in excess of £250,000.

Background

Circular HSS (F) 20/98 "Clinical Negligence Claims: Claims Handling" issued in May 1998 detailed the guidance which HSS bodies are required to follow in the handling of clinical negligence claims. The Circular advised that HSS Trusts are responsible for the handling of claims relating to incidents occurring after their establishment and HSS Boards are responsible for claims relating to incidents prior to the establishment of Trusts. HSS (F) 20/98 further advises that all HSS bodies must have in place adequate procedures to ensure the proper handling of clinical negligence claims.

Delegated Limits

HSS (F) 20/98 advises that the delegated limit for HSS bodies to approve out of court settlements of clinical negligence claims is £250,000. Claims which may settle in excess of £250,000 must be submitted for approval in advance to Finance Policy and Accountability Unit of the HSS Executive.

Summary

The arrangements which HSS bodies must follow for the submission of a settlement for approval to the HSS Executive are detailed in Appendix 1 to this Circular.

The attached annexes summarise the documentation that must be submitted in support of an application for approval.

Circular HSS (F) 20/98 requires that HSS bodies maintain a database containing certain information on all clinical negligence claims. Annex B of HSS (F) 20/98 summarises the information which must be included within the claims database. Annex B of Circular HSS (F) 20/98 is reproduced in abridged form as Annex 1 to this Circular for convenience. Items 1 to 25 from Annex 1 must be submitted to the HSS Executive in support of all requests for approval of settlement.

Circular HSS (F) 38/98 Guidance on Losses and Special Payments includes a checklist of information, which must accompany a request for approval of a payment. The checklist appropriate to a Category 6 Ex Gratia payment is applicable to payments of clinical negligence out of court settlements. This checklist of information must be submitted to the HSS Executive in support of a request for approval of a settlement amount. The checklist is reproduced as Annex 2 to this Circular for convenience.

Any enquires concerning the content of this Circular should be addressed to Finance Policy and Accountability Unit, D3 Castle Buildings, Belfast 765656.

Yours faithfully

PAULA A. MAGEE

Appendix 1

Clinical Negligence Claims: Settlements in excess of £250,000

Procedures for Submission of Settlements for Approval

General

HSS bodies hold a delegated limit of £250,000 for the approval of out of court settlements of clinical negligence claims. Clinical negligence claims which are liable to settle in excess of this amount must be submitted for approval in advance to the HSS Executive.

The following guidance must be followed when submitting a settlement for approval.

1. Role of HSS body

The HSS body must inform Finance Policy and Accountability Unit of the HSS Executive immediately there is a possibility that a claim will be settled out of court for over £250,000 as the approval of the HSS Executive is required.

The possibility of a settlement will be deemed to have occurred when both parties enter into substantive discussions to negotiate an out of court settlement.

The HSS body will in effect be requesting the approval of the HSS Executive to negotiate up to a specified amount, which will be in excess of £250,000.

The limit requested must be based on a written opinion from senior legal counsel stating the best estimate of the settlement amount.

2. Information to be submitted

The following information must be submitted to Finance Policy and Accountability Unit by HSS bodies in support of a request for the approval of a settlement amount.

- I. Information from the claims database as required under Annex B of Circular HSS (F) 20/98. Submission of information under headings 1-25 is compulsory. A summary of the information required is attached as Annex 1 to this Circular.
- II. Circular HSS (F) 38/98 "Guidance on Losses and Special Payments" detailed the information to be submitted to Finance Policy and Accountability Unit when seeking approval for a special payment. This Circular provided a checklist of the information to be submitted to Finance Policy and Accountability Unit when requesting approval for a clinical negligence payment. This checklist is reproduced as Annex 2. This checklist must be completed and signed by a suitably qualified claims manager (with delegated authority as required under Circular HSS (F) 20/98).

- III. A copy of the most recent written advice from Counsel advising the HSS body of the potential outcome of the case and the estimated settlement amount.
- IV. A statement from the Claims Manager on behalf of the Board that the HSS guidance contained in Circular HSS (F) 13/98 Clinical Negligence: Claims Handling has been followed.
- V. A statement from the Claims Manager that a Structured Settlement has been considered but has not been acceptable to the plaintiff (A structured settlement must be considered for all settlements in excess of £250,000).

3. Settlement Amount

The information required by the HSS Executive includes an estimate by Senior Counsel of the settlement amount. This will be the amount that the HSS Executive will consider for approval and once approved this will be the amount to which the HSS body will have the authority to negotiate a settlement. In the event that the settlement cannot be finalised within this amount, the HSS body must request further approval from Finance Policy and Accountability Unit to negotiate to a higher amount. The HSS Executive will require further written evidence of advice from Senior Counsel of the increased estimate of the settlement amount. The HSS Executive will consider the request for approval and advise the HSS body accordingly.

4. Role of the HSS Executive

The approval of the HSS Executive for all settlements of clinical negligence in excess of £250,000 is required. The HSS Executive have a delegated limit of £1m in respect of such approvals. The HSS Executive will request approval in respect of all potential payments in excess of £1m from the Department of Finance and Personnel on behalf of the HSS body.

The nature of clinical negligence payments means that in essence it is the authority to negotiate to a specified amount in excess of £250,000 which is requested. The HSS Executive will give the HSS body the authority to negotiate to a specified amount but it is the HSS body which continues to handle the claim and take advice from Counsel. The HSS Executive will not be adopting the role of claims handler.

Given the nature of these settlements, the timescale for the approval of the amounts can be very tight, therefore it is essential that all necessary information is submitted at the time of the request for approval.

5. Settlement of the Claim

If the claim is settled within the limit approved, the HSS body is required to notify the HSS Executive immediately of the outcome of the out of court negotiations.

The HSS body must then submit a letter from its legal advisor stating the liability of the HSS body and the final settlement amount. The final report of Senior Counsel on the case must also be submitted immediately upon receipt.

ILLUSTRATIVE CONTENTS OF TRUSTS CLAIMS DATABASE
(Extracted from Annex B to HSS (F) 20/98)

Information Required

1. Patient details (name, date of birth, age, date of death)
2. Plaintiff's name
3. Plaintiff's solicitor
4. Details of all members of staff involved, including specialty and degree of involvement
5. Location of incident
6. Date of incident
7. Date of notification of claim
8. Specialty of Department of treatment
9. Nature of incident
10. Resulting harm or disability
11. Estimate of quantum
12. Estimate of plaintiff's costs
13. Other parties involved in claim and proportionate share of costs
14. Probability
15. Defence solicitor
16. Estimate of defence costs
17. Stage of claim
18. Outcome
19. Nature of proposed defence
20. Names of possible expert witnesses
21. Expert advice obtained – negligence/causation
 - A. internal

B. external

C. exchange of witness reports?

22. Expert advice obtained – quantum

A. medical

B. nursing

C. housing etc.

D. exchange of witness reports?

23. Was the incident also the subject of a complaint under the complaints procedure? Outcome?

24. Has an alternative form of dispute resolution been considered/attempted?

25. (For large claims) is structuring feasible? acceptable to the plaintiff?

ANNEX 2

FOR HSS BODIES USE

Checklist to be used when compiling the summary of the case

<p>CATEGORY 6 – EX GRATIA PAYMENTS (including clinical negligence and personal injury claims)</p> <p>Type of Case-</p> <p>Reference Number-</p> <p>HSS Body (name)-</p>
<p>1. Explain the amount involved and the reasons why the case has arisen and the category of ex gratia payment in terms of the guidance eg maladministration.</p>
<p>2. Have other options been considered? If not, why not? Explain why an ex gratia payment offers the best value for money.</p>
<p>3. Has appropriate legal advice been sought? If not, why not? If advice has been sought, what recommendations were made and have these been followed? If not, why not?</p>
<p>4. Confirm that the proposed payment does not place the claimant in a better position than if the error had not occurred? If it does, why? In cases of hardship record what evidence exists on this.</p>
<p>5. Provide detailed calculations to support the proposed payment and demonstrate why the proposed sum is in accordance with the relevant paragraphs of this guidance.</p>
<p>6. For settlements on termination of employment, has relevant central guidance on such payments been followed in all respects? If not, why not?</p>
<p>7. For clinical negligence and personal injury cases has the relevant central guidance for such cases been followed in all respects? If not, why not?</p>
<p>8. Identify any failings in the actions of employees including supervisors? Having considered this, is there a need for disciplinary action? Record what action has been taken or is proposed, or if no action is to be taken, explain why? Include dates, names of individuals and positions.</p>