

Scope of CIS Cover Mental Health Commission



Introduction:-

- The Clinical Indemnity Scheme (CIS) was established in July 2002 and is managed by the State Claims Agency. Under the scheme, the State assumes full responsibility for the indemnification and management of all clinical negligence claims against enterprises and practitioners covered by the scheme. For more information on which enterprises are covered by the scheme, please go to www.stateclaims.ie, or, consult the Schedules to the National Treasury Management Agency (Delegation of Functions) Order, 2003 (SI No 63 of 2003), and the National Treasury Management Agency (Delegation of Functions) (Amendment) Order, 2007.
- The Mental Health Commission (MHC) was designated as an enterprise under the terms of the National Treasury Management Agency (Delegation of Functions) (Amendment) Order, 2007. The cover, however, is retrospective to 1st July 2002, save to the extent that a relevant insurance policy for any period prior to 2nd May 2007 had already been put in place.
- The indemnity cover provided under the terms of the CIS relates to personal injury claims brought by patients/service users alleging medical malpractice arising from the provision of “professional medical services”, as defined in the National Treasury Management Agency (Delegation of Functions) Order, 2003 (SI No 63 of 2003), as amended by the National Treasury Management Agency (Delegation of Functions) (Amendment) Order, 2007.

Covered:-

MHC

- The MHC as an entity is covered under the terms of the CIS in the event that a patient/service user joins the MHC in a personal injuries action alleging medical malpractice in the provision of care and treatment. For the avoidance of any doubt, we confirm that an allegation that a personal injury was caused due to negligence on the part of MHC in producing Codes of Practice & Rules of Treatment comes within the scope of cover of the CIS.

Panels

- We are advised by the MHC that it is obliged to maintain the following panels:- (i) Panels of Mental Health Tribunal members (ii) Panels of Consultant Psychiatrists to conduct independent medical examinations and reports for the MHC.
- We confirm that the cover provided by the CIS to the MHC extends to members of the above panels in respect of “professional medical services” provided by members of the above panels for and on behalf of the MHC. We confirm, for the avoidance of any doubt, that the decision of a Mental Health Tribunal to affirm or revoke an involuntary order constitutes the provision of a



“professional medical service” for and on behalf of the MHC.

- We further confirm that the cover provided by the CIS to the MHC applies to such panel members irrespective of where the patient is detained (public or private or voluntary sector).
- We further confirm that cover under CIS applies irrespective of whether the relationship between the MHC and the panel member is “for services” or “of service” i.e. whether independent contractor or employee.

Not Covered:-

- Consultant Psychiatrists employed by privately owned and operated healthcare providers are not covered by CIS in respect of their own “day –to –day” work, including in respect of legal proceedings brought by patients alleging negligence in relation to the original decision to involuntarily detain the patient. Consultant Psychiatrists working for such organisations would rely on whatever indemnity arrangements they have put in place with their medical defence organisations.
- As stated above, cover under CIS relates to personal injury claims brought by patients/service users alleging medical malpractice arising from the provision of “professional medical services”. CIS does not, for example, provide cover in respect of claims for defamation, claims for pure financial loss, claims for property damage, claims brought by staff, claims brought by third parties that are unrelated to the provision of “professional medical services” to the patient/service user, or in respect of investigations carried out by the Medical Council or other disciplinary bodies.
- Cover under CIS does not extend to the MHC Inspectorate on the basis that the functions of the Inspectorate do not constitute the provision of “professional medical services” to patients/service users.
- Cover under CIS does not extend to the administrative/clerical staff of the MHC on the basis that such staff do not provide “professional medical services” to patients/ service users. However, if it is alleged in any individual claim that a member of the administrative or clerical staff did have a role in the provision of “professional medical services” to patients/service users then the CIS will consider on a case by case basis whether cover under CIS applies.
- Cover under CIS does not apply to solicitors who provide legal aid to patients.
- Cover under CIS does not apply to witnesses called by Mental Health Tribunals.
- The State Claims Agency recommends that the MHC purchase and maintain a Directors & Officers insurance policy for its members.

