

Assessing personal injuries in The Republic of Ireland

In recent years, personal injury claims in the Republic of Ireland have been dealt with according to a regime set up by the Personal Injuries Assessment Board Act 2003.

The Act established the Personal Injuries Assessment Board (PIAB), an independent statutory body representing consumers, unions, employers and others. PIAB, whose executive members are appointed through public competition, assesses quantum - not liability. At first, PIAB acted only where employees were claiming against their employers; but, since September 2005, it has been empowered to deal with all non-medical personal injury cases.

Civil Liability and Courts Act

Close to the time when the PIAB was set up, the Civil Liability and Courts Act 2004 (CLCA) came into force. Among other things, the CLCA introduced a two-year limitation period for personal injury actions (ie "from the date of accrual of the cause of action or the date of knowledge of the cause of action which ever occurs later"). The Act also brought in a Book of Quantum - to be published by PIAB - and actuarial tables, which can be amended from time to time by the Minister for Justice, Equality and Law Reform. Under the CLCA, it is an offence to give false instructions to a solicitor or expert in the context of a personal injury case.

Current procedure

In personal injury cases, the current procedure is:

- The plaintiff submits an application, with a medical report, to PIAB. (Although the system was intended to avoid the need for plaintiffs to use solicitors, it is believed that nine out of ten plaintiffs still do so because they have to engage medical experts and identify potentially liable defendants.)
- PIAB then asks the defendant whether liability is to be disputed.
- If the defendant declares an intention to defend liability, PIAB issues a formal authorisation number; this allows the plaintiff to issue court proceedings. (Without PIAB's authorisation, there can be no contest through the courts.)
- If the defendant accepts liability, PIAB considers the merits of the case so as to assess quantum. This is done on the basis of documents provided by the parties and involves medical and other experts. PIAB goes on to

announces its assessment, which will be based on the Book of Quantum and actuarial tables mentioned above.

- Insurers have 90 days to confirm whether they will accept the assessment. The penalty for missing the deadline is €900 (payable to the PIAB) and so insurers tend to make efforts to settle in time.
- If the parties accept the assessment of quantum, the case ends and the plaintiff will pay medical experts' and legal costs out of the award.
- If one or other party decides not to accept the assessment within the time limit, PIAB gives a letter of authorisation so that the plaintiff can issue court proceedings. It is understood that almost 40% of assessments have been rejected by claimants. This tactic currently has the effect of exerting pressure on defendants and their insurers, who often prefer to settle for a figure above the PIAB's assessment rather than prolong the case and increase exposure to costs. At present, plaintiffs who go to court but then fail to win an award exceeding the PIAB assessment are not at risk for the extra legal costs incurred. However, insurers normally make an offer at about the same level as the PIAB assessment and the plaintiff is at risk of paying costs if the court's award does not exceed that sum. PIAB has championed legislation - currently in draft - which may tidy up this area: it is proposed that the court will be told of the PIAB assessment and, if the plaintiff fails to beat it, they will be at risk for costs.

Comparisons with old regime

The new system has been in existence since 1 June 2004 and comparisons with the previous system have emerged.

The process is faster: the courts used to take up to three years to deal with claims, whereas PIAB makes its assessment within nine months. But it is not clear whether the headline statistics compare like with like - for example, should time taken to process PIAB assessments be contrasted with "quantum-only" court cases, rather than with all personal injury cases previously going through the courts?

The cost of pursuing claims in 2003 is estimated at €450m, with approximately €1bn recovered in damages. PIAB is credited with 88% savings on Circuit Court costs and 97% on High Court costs. This translates into average savings per case of €6,373 in the circuit courts and €27,703 in the High Court.

And the number of claims being pursued through the courts has fallen significantly: in 2004, 15,000 High Court writs and 20,000 circuit court writs were issued, whereas, in 2005, the equivalent figures were 750 and 3,000 respectively.

Certain costs are now hidden. While awards have (arguably) not declined since the introduction of PIAB, the successful plaintiff pays legal and medical costs out of the award. It may be that the courts' awards will be increased slightly to reflect medical expenses.

Insurance premiums have reduced as a result of the introduction of the PIAB scheme; readers should not be surprised if there is an impetus to bring in something similar in their own jurisdictions.

Sean Craig
Belfast
s.craig@kennedys-law.com

(Sean Craig is qualified in England & Wales, Republic of Ireland and Northern Ireland and is a resident partner in our Belfast office).