



Important Changes to Personal Injuries Awards

Judicial council formally adopt the personal injuries guidelines

This is seen by many as the most significant development in the area of the quantification of damages in personal injuries claims in Ireland since the publication of the original Book of Quantum in 2004 and it is expected that the Guidelines will alter the landscape for personal injuries claims in Ireland not only in relation to the level of awards but also in the practice of litigation.

Adopted by the Judicial Council on 6th March 2021, these long-awaited Judicial Council guidelines on general damages in personal injury claims will come into effect once S.99 of the Judicial Council Act 2019 ("The Act") has been commenced and at the latest by 01 August 2021.

This follows much consultation with the legal profession, particularly the judges. The Judicial Council was divided [83 for : 63 against] the adoption of the new personal injuries guidelines and once enacted, the personal injuries guidelines will replace the Book of Quantum.

An aim of the guidelines, is to seek to "promote a better understanding of the principles governing the assessment and award of damages for personal injuries with a view to achieving greater consistency in awards notwithstanding that cases will invariably have their own unique features."

70%+ • Reduction rate for minor injuries

The good news is that the damages have been significantly reduced for minor (in particular) and for even moderate, serious and severe personal injuries. The rate of reduction varies from as much as 70% to 90% for minor injuries followed by reductions ranging from 40% down to about 20% as the injuries increase in severity. There will also be curtailment of damages available for psychiatric injuries but changes also with the manner in which these claims will be handled, with the Personal Injuries Assessment Board (PIAB) playing a role in the assessment of quantum. Previously, the PIAB did not become involved in the assessment of damages in cases in which the injuries were wholly or partly psychological.

40-20% • Reduction rate as the injuries increase in severity

The bad news is that these Judicial Council guidelines will not be retroactive. Any case which has already passed through the PIAB process and/or is in litigation, will benefit the claimant/plaintiff to the tune of the higher levels of damages available under the Book of Quantum or from the courts. This will create a type of two-tier system whereby those who submitted a claim which was not resolved at PIAB stage and entered the court process (perhaps moving very slowly due to the C-19 restrictions) could have their case in court long after the



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introduction of the Judicial Council guidelines and still benefit from the higher level of damages for personal injuries. At the same time, there will be more recent claims to be resolved on the basis of the lower-level personal injury damages as set out under the terms of the Judicial Council guidelines.

Conclusion

This is not the immediate silver bullet which the insurance industry and Corporate Ireland had hoped for. Unfortunately, it will take time for the impact of the lower level damages to be reflected in premiums and in the cost of insurance. Time will tell if the awards go far enough to result in decreased insurance costs.

Nevertheless, it is a very positive step forward in aligning the compensation system in Ireland with our nearest neighbours and those in Continental Europe. Interested groups have broadly welcomed the new guidelines, but many will argue that there is a lot more work to be done if Ireland is to achieve the same level playing field as exists in the rest of Europe when it comes to the compensation system.

Please contact us should you require advice on matters that may affect you and your business at this time.

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