

**MARCH 2021****NEW PERSONAL INJURY GUIDELINES APPROVED**

A simple majority of the Judicial Council voted to adopt the new Personal Injuries Guidelines on 6th March 2021 (the **Guidelines**).

The Guidelines have been introduced with the stated intention of achieving greater consistency in awards for general damages for personal injuries. Their introduction follows a series of decisions of the Court of Appeal in which general damages were reduced. You can read more about those cases in our previous briefing here.

Effect

Forming part of the Government's Action Plan for Insurance Reform, it was widely predicted that the Guidelines would reduce personal injury awards across the board, and it appears that is what has been achieved.

The Guidelines contain a catalogue of injuries which have different levels of awards provided depending on their severity. Of particular note are the substantial reductions for minor injuries and whiplash-type injuries from which there is full recovery, a greater number of which may now fall within the €15,000 jurisdiction of the District Court. Higher compensation levels are reserved for more complex and serious injuries and indeed the existing cap of €500,000 for catastrophic injuries has been increased to €550,000.

Each party to a personal injury action will now be required to make submissions at the end of the hearing in relation to the relevant category and severity of damages that the injury should fall into. The principles of fairness and proportionality of awards to the seriousness of the injury emphasised by the Court of Appeal in the series of decisions referenced above are reiterated.

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Guidance is provided in relation to cases involving multiple injuries where there is an acknowledged risk of overcompensation if all the categories were to simply be added up. It is advised that the bracket which best represents the most serious of the injuries should be selected for such cases, and that the judge should increase that amount to ensure that any additional pain and discomfort resulting from the lesser injuries is fairly compensated.

A complete copy of the Guidelines can be viewed [here](#). They are to be reviewed every three years.

Application

The Guidelines will replace the Book of Quantum for claims made within the Personal Injuries Assessment Board (**PIAB**) and those that proceed to court.

Sections 98 and 99 of the Judicial Council Act 2019 (the **Act**) amend section 54 of the Personal Injuries Assessment Board Act 2003 (the **PIAB Act**) and section 22 of the Civil Liability Act 2004 respectively. Once those sections have been commenced, PIAB will no longer be responsible for publishing and reviewing the Book of Quantum and it will be mandatory for judge to have regard to the Guidelines when assessing damages for personal injuries. However, in light of the importance of the separation of powers of the Government and Judiciary, and given the variety of circumstances which must be taken into account when assessing a particular case, judges have retained a discretion under section 99 of the Act to depart from the Guidelines in the interests of justice, so long as they provide their reason(s) for doing so in their judgment. It appears likely this discretion will be particularly useful for more serious and complex cases.

Implementation

It was announced in October 2020 that the Guidelines would come into force on 31 July 2021. However, it is now reported that the Minister for Justice intends for the Guidelines to come into force “*within weeks*”.

Sections 98 and 99 of the Act are required to be commenced by statutory instrument and it was announced yesterday that the Minister has secured cabinet approval to amend the Act and the PIAB Act as part of the Family Leave Bill 2021 (which is currently under consideration by the Oireachtas) to provide for the transition from the current system as soon as possible.

We will need to see precisely what is provided in the implementing legislation to assess what effect it will have on existing claims. However, the Minister has indicated that the

Guidelines will apply to all applications before PIAB other than those for which an assessment has already been made. The Book of Quantum will continue to apply to applications that have already been assessed by PIAB and/or are being dealt with by the courts.

The Minister has undertaken to report on the implementation and initial impact of the Guidelines by the end of 2021.

Commentary

The Guidelines will undoubtedly play a much more significant role in personal injuries litigation than the Book of Quantum has to date. It will be interesting to see how judges will apply it in practice, and to what extent the judicial discretion to amend awards provided for particular injuries in the Guidelines will be utilised. It seems apparent that the District Court will need to adapt quickly to deal with an inevitable increase in the number of personal injuries cases falling under its jurisdiction.

For further information in relation to the issues covered by this article, please contact a member of our [Personal Injury Defence Team](#).

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