

Personal
Injuries
Assessment
Board

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PERSONAL INJURIES ASSESSMENT BOARD

Introduction

The Injuries Board (formerly known as the Personal Injuries Assessment Board) is a statutory body, which came into force under the Personal Injuries Assessment Board Act, 2003, (the “2003 Act”). The 2003 Act has commenced in its entirety since the 22nd July 2004. The Injuries Board, together with the Civil Liability and Courts Act, 2004, (the “2004 Act”) which was brought into effect on the 20th September 2004, have changed practice and procedure in civil actions in Ireland.

The function of the Injuries Board is to assess compensation to be paid to individuals for pain and suffering in respect of personal injury where legal issues are not in dispute. Claimants are also entitled to claim for financial loss arising as a result of personal injury.

The establishment of the Injuries Board was motivated by lobbying on behalf of the business and insurance industries. The insurance industry blamed the high cost of insurance on the legal costs associated with litigation. The government’s ambition was to put in place an organisation to assess the amount of damages a person should receive in respect of injuries, without the necessity of bringing legal proceedings.

Since the establishment of the Injuries Board, Claimants are not entitled to issue court proceedings in civil actions but must apply firstly to the Injuries Board to have their claim assessed. Exceptions to this rule are:-

- (a) claims arising out of a medical or surgical procedure (medical negligence);
- (b) claims where as well as damages for personal injuries there is a bona fide intention to pursue damages in respect of other causes of action (such as for example slander);
- (c) Garda compensation claims made under the Garda Síochána Compensation Acts, 1941-1945;
- (d) claims where it is alleged that there has been a breach of a provision of the Constitution;
- (e) claims pursued under Section 3 of the European Convention on Human Rights Act, 2003;
- (f) claims which involve the Motor Insurers’ Bureau of Ireland as a Respondent/Defendant, does not appear to be covered by the 2003 Act which

specifically only applies to a civil action by a person against another person arising out of that others ownership, driving or use of a mechanically propelled vehicle.

Discretion not to arrange an Assessment

Under Section 17 of the 2003 Act, the Injuries Board can exercise its discretion not to arrange an assessment and this may occur where:-

- (a) there is no case law or a sufficient number of settlements in relation to a particular type of personal injury to which the claim relates;
- (b) the medical issues in the claim are particularly complex involving the interaction between a number of different injuries including pre-existing conditions;
- (c) the injuries consist wholly of one part of psychological damage, the nature and extent of which it would be difficult to determine in an assessment;
- (d) there is a bona fide claim for aggravated or exemplary damages;
- (e) the claim arises out of a trespass to the person;
- (f) the gravity of the injury is such that there is a real danger that the Claimant might die and an early trial would be ordered;
- (g) the period of time for making the assessment would have to be deferred beyond nine months (in order that a long term prognosis in respect of the injury can be made);
- (h) the person purporting to act as Next Friend or Guardian or Respondent has a conflict of interest;
- (i) the claim is of a type which the Injuries Board has the consent of the Minister for Justice, Equality and Law Reform declared that there are good and substantial grounds for its not arranging an assessment.

The Injuries Board Application

An application can be made to the Injuries Board in accordance with Section 46 of the 2003 Act. The application is made by way of a Form A, which is available to download from the website of the Injuries Board. The form must be returned to the Injuries Board with a fee of €50.00 imposed on the Claimant by the Injuries Board. The Application Form must be accompanied by a Letter of Claim (as specified under Section 8 of the 2004 Act); copies of correspondence relating to the claim; a medical report; and any documentation which the Injuries Board considers relevant.

The official date of the making of an application under Section 11 of the 2003 Act (which is the date on which the clock stops for the Statute of Limitations) is the date on which the fully completed Form A and the information required by the Injuries Board under Section 11 of the Act, is acknowledged in writing as having been received by the Injuries Board.

The Letter of Claim to be Submitted with the Injuries Board Application

There is interplay between the 2003 Act and the 2004 Act. Under Section 8 of the 2004 Act, a Plaintiff is required in a personal injuries action to serve a notice in writing to the alleged wrongdoer, before the expiration of two months from the date of the cause of action, setting out the nature of the wrong alleged to have been committed by him. If a Plaintiff fails to do this, the court can award cost penalties against the Plaintiff at the trial of the case. The letter of claim is an important element in the application process to the Injuries Board. The Letter of Claim must be submitted when applying to the Injuries Board.

In circumstances where there is more than one Defendant/Respondent, the Letter of Claim is even more important. In these circumstances the Letter of Claim becomes an “O’Byrne Letter”, which addresses the issue of liability as between the Respondents. The O’Byrne letter is similar to the Letter of Claim but must also deal with the following issues:-

- ▣ claim that the accident was caused by the wrongdoing of one or other potential Respondent but that the Claimant is unable to say which was responsible;
- ▣ call upon the recipient to admit liability within a certain specific time period;
- ▣ call upon the recipient to make proposals to compensate the Claimant;
- ▣ warn the recipient that if there is no admission of liability and/or proposals to compensate the Claimant, an application will be made to the Injuries Board for an assessment of damages against all the named potential Respondents;
- ▣ warn the recipient that if it becomes necessary to issue court proceedings against all of the Respondents/Defendants the O’Byrne letter will be used to fix the unsuccessful Defendant with costs payable to the Defendants who are found to have no liability;
- ▣ request an Indemnity from the recipient in relation to the costs of the unnecessary or aborted court proceedings against any of the potential Respondents who will not participate in the Injuries Board assessment or do not accept the amount assessed;
- ▣ warn the recipient that in the absence of the Indemnity outlined above the Claimant will seek to recoup these costs in separate court proceedings and that the O’Byrne letter will be used to fix the wrongdoer with the costs of such proceedings.

The question arises as to whether a court will punish a Claimant/Plaintiff in terms of costs, which it is entitled to do under the 2004 Act, for the Claimant's failure to serve a Letter of Claim or an appropriate O'Byrne Letter. It is fair to say, most Claimants would not even know that such a letter exists without the advice of a solicitor.

The Injuries Board Process

Once the Injuries Board acknowledges receipt of Form A and the accompanying documentation, the Injuries Board will notify the Respondent. The Respondent has ninety days from the issue of a formal Section 13 Notice of Application to respond to the Injuries Board in writing, stating that it does not consent to an assessment being made. It will cost a Respondent €850.00 to participate in the Injuries Board process. If the Respondent does not respond in writing to the notice within ninety days, the Injuries Board will proceed with the assessment as if the Respondent had consented. It is important to note that under Section 16 of the 2003 Act, a Respondent consenting to assessment, or failing to reply to the notification of assessment from the Injuries Board, does not constitute an admission of liability and cannot be used in evidence in a court case.

If the Respondent agrees to an assessment by the Injuries Board, the Injuries Board will assess compensation to be paid to the Claimant for pain and suffering in accordance with the Book of Quantum. There is no oral hearing. The Book of Quantum contains a guideline of injuries and their related values.

The Injuries Board must make the assessment within a period of nine months, which can be extended to fifteen months, and the Claimant and the Respondent are informed of the amount of the assessment after the expiration of that time.

Acceptance and Rejection of the Injuries Board Assessment

Both the Claimant and Respondent are notified of the assessment by the Injuries Board. If either Claimant or Respondent rejects the assessment then the Injuries Board must issue an authorisation for court proceedings.

The Claimant has twenty eight days to write to the Injuries Board to accept or reject the award, in default of which he/she is deemed to have rejected it and an authorisation for court proceedings must issue.

The Respondent has twenty one days to reject the assessment, in default of which, it is deemed to have accepted the assessment and the Injuries Board will issue an Order to pay against the Respondent, which has the same status as a Court Judgment.

Claimants and Respondents must take into account the existence of other Respondents at the outset of a claim in particular from a costs point of view. For instance situations can arise where the Injuries Board makes an assessment of damages against a participating Respondent and issues an authorisation for proceedings against a non-participating Respondent.

In the above circumstances the Claimant can still issue court proceedings against the non-participating Respondents. The issue of costs in court proceedings against the non-participating Respondents would then arise. In this regard the wording of the O'Byrne letter is very important as the Claimant will want to be assured that the participating Respondents will bear responsibility for not releasing the non-participating Respondent at an earlier stage.

A situation could also arise where the participating Respondent only pays a portion of the amount assessed or if the participating Respondent becomes insolvent and does not pay the full amount specified in the Order to pay. In those circumstances the Claimant/Plaintiff can issue court proceedings against the non-participating Respondents in respect of the balance of the award outstanding.

If a participating Respondent accepts an assessment of damages it must take into account that an Order to pay, which operates as if it were a Judgment of court, will be issued against it for the whole amount assessed. If the claimant is paid in full by the participating Respondent this has the legal effect of a satisfaction by one wrongdoer which discharges all other concurrent wrong doers in accordance with the provisions of Section 16 of the Civil Liability Act, 1951.

As a Respondent, if there is any issue between multiple Respondents in relation to liability, it would be unwise to consent to an assessment as it could find itself having to pay the entire amount of the assessment on foot of the Order to pay and the fee of €350.00, as well as the costs of the Claimant's court action against the non participating Respondents and potentially the court costs of the other Respondents if they do not succeed in securing an Indemnity from them.

The Statute of Limitations and the Injuries Board

Section 7 of the 2004 Act, reduces the time period under the Statute of Limitations for a person to issue court proceedings in a personal injury case from three to two years from, 'the relevant date'. The relevant date is the date of accrual of the cause of action, or the date of knowledge of the person concerned as to the cause of action, whichever occurred later.

Both the submitting of a claim to the Injuries Board and the issuing of an authorisation from the Injuries Board have a significant effect upon the Statute of Limitations.

The date on which a Claimant makes an application to the Injuries Board, is the date the clock stops running under the Statute of Limitations. It is important to note for any claimant whose time for issuing proceedings is close to expiring under the Statute of Limitations that the 'official date', of making of an application under Section 11 of the 2003 Act, is the date on which the fully completed Form A is acknowledged in writing, 'as having been received by the Injuries Board'. Therefore it must be taken into account that the date on which time stops running under the Statute of Limitations is taken out of the control of the Claimant.

Under Section 50 of the 2003 Act, time starts running under the Statute of Limitations after the expiration of six months from the date of issue of an authorisation from the Injuries Board. The Injuries Board can seek an extension of time in which to deal with claims beyond the period of nine months, for a further six months and therefore, the effect of Section 50 of the Act is to prolong the limitation period by a further six months in those circumstances.

The Injuries Board does not bar claims on the basis that the limitation period has expired but the Respondent only has to refuse to consent to an assessment in such a case and defend the action in court on the basis that it is statute barred.

Costs

Part of the motivation behind the Injuries Board is to remove the cost of legal advice from the personal injuries process. Much of the criticism directed at the Injuries Board has been on the basis that it is unjust to Claimants/Plaintiffs to deny them the cost of seeking advice from lawyers.

Section 7 sub section 1 of the 2003 Act specifically states that nothing in the 2003 Act can be read as effecting the right of any person to seek legal advice in respect of his or her claim. Initially the Injuries Board refused to deal with solicitors acting on behalf of Claimants. However this was deemed to be unconstitutional in the case of Declan O'Brien .v. Personal Injuries Assessment Board and the Attorney General.

With regard to the Claimant being entitled to his or her costs, it seems that it will be a natural progression that the issue of legal costs will be the subject of the next action taken against the Injuries Board as it would seem to follow that if an applicant is entitled to seek legal representation, they are equally entitled to their legal costs if successful in the Injuries Board process.

Section 12 Applications

There is one area within the Injuries Board process where solicitors may be entitled to their costs and that is under Section 12 of the 2003 Act. Under Section 12 of the 2003 Act an application may be made to court to have material evidence preserved until such time as the Injuries Board has assessed the claim.

The issue of costs of that application is at the court's discretion, however it is usual that the costs would follow the successful application. It would be unwise for a Claimant to bring an application, from a costs point of view, without first giving the Respondent an opportunity to either admit liability or undertake to preserve the evidence as this could lead to a situation where the Claimant could be left with the costs of the application where a Respondent subsequently admits liability or disposes of the evidence. In this regard the Letter of Claim or the O'Byrne letter should also deal with the issue of preserving evidence if necessary.

Settlement and Assessment

There is nothing in the 2003 Act which precludes a Claimant or his or her solicitor from settling the claim with any of the Respondents or their insurers at any stage in the Injuries Board process. Again however, Claimants must take into account that any legal costs associated with the settlement of their claim may be taken from settlement amount in accordance with any agreement entered between the Claimant and his or her solicitor.

Conclusion

The role of the Injuries Board is to make assessments of compensation without the necessity of legal advice or court proceedings. Whilst it is the Plaintiff's choice not to seek legal advice, it would appear that any Claimant who does so is putting himself/herself at a disadvantage, especially in circumstances where there is more than one Respondent and where liability is in issue. It is important to bear in mind that liability can be put in issue subsequent to the Respondents participating in an assessment and therefore liability potentially remains in issue in every case until it is settled or determined by the courts.

If Claimants continue to seek legal advice, the Injuries Board has failed in its prerogative to provide a legal cost free system. Claimants are now left having to pay for independent legal advice when ultimately they are successful in their claim. It must also be taken into account that many of the Respondents against whom they are claiming against will have insurers who are specifically advised on all issues concerning the Injuries Board by their legal advisers.

From a Respondent's point of view, there are also set backs for those who do not have the benefit of independent legal advice, especially where multiple Respondents occur. Also Sections 14 and 30 of the 2003 Act have the effect of creating a legally enforceable liability on the part of the Respondent who does not communicate with the Injuries Board. This has been seen as unfair and potentially unconstitutional, as there would appear to be no appeal mechanism where an award is made against a Respondent.

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