



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Insurance Reform

Public consultation on
enhancing and reforming the
Personal Injuries Assessment
Board

22 March 2021

Public consultation on enhancing and reforming PIAB

Background

The Department of Enterprise, Trade and Employment is committed to the continuous improvement of legislation, aiming to simplify the regulatory environment and to support business and consumers. Arising from a commitment in the Programme for Government the Department is considering the role and remit of the Personal Injuries Assessment Board (PIAB) with a view to enhancing and reforming the Agency. In line with Action 18 of the Action Plan for Insurance Reform, the Department is now seeking observations from the public and interested parties on the role of PIAB and the operation of the PIAB Acts 2003-2019.

PIAB was established in April 2004 to fairly, promptly, and transparently compensate the victims of accidents involving personal injuries, in a cost-effective manner. Through PIAB, certain classes of personal injury claims, where liability is uncontested, can be settled without the need for many of the costs associated with litigation, which can contribute to the high cost of settling such claims. To date, PIAB has received over 450,000 claims, of which consent to assess was received in over 230,000 cases, and awards with a value of over €3.5 billion were made in over 150,000 cases. The PIAB system annually saves tens of millions of euro which would otherwise be paid in costs by the parties, and ultimately by policyholders.

The Central Bank of Ireland has produced two reports on motor insurance claims ([December 2019](#), [November 2020](#)) which show that the pursuit of litigation is contributing significantly to overall settlement costs, and that the cost of claims settled by litigation has increased significantly since 2015. The reports show that average legal costs associated with settling claims through litigation accounted for 67% of the actual compensation amount, adding substantially to the overall cost of the claim, bringing the total average claim cost through litigation to over €40,000. This compares to legal costs under PIAB of less than 4% of the compensation amount, bringing the total average claim cost to less than €24,000 - a difference of over €16,000 per claim. In addition, the time taken to resolve claims differed significantly, with claims in 2019 under the litigation model taking on average 4.7 years to settle compared with 2.9 years with PIAB.

As a self-funding agency, PIAB has been successful in reducing both the costs associated with claims and the time taken to resolve claims at no cost to the exchequer. PIAB continues to work successfully during the current pandemic – delivering its services to customers, while supporting public health measures. However, the number of cases being finalised through PIAB has fallen in recent years and the impact of Covid-19 is also expected to have an impact on the number of cases submitted to PIAB. In reviewing the number of cases being processed by PIAB, PIAB reports that nearly 20,000 cases are released into the litigation system every year. These include cases where a PIAB assessment was not consented to, a PIAB award was rejected, and cases released to the courts for various reasons such as non-payment of fees, or the claim involves injuries of a wholly psychological nature. PIAB have no powers to decide whether cases are proceeded with through litigation.

In the context of delivering on Government's commitment to enhance and reform PIAB there are a number of elements to consider as to what enhancements and reforms can be made in the PIAB legislation, that would empower and support PIAB to bring more cases within its ambit. The Department would also welcome views as to whether there are non-legislative changes which would support this goal.

Proposals to enhance and reform PIAB must also be considered in the context of the cross-Government approach to insurance reform that is set out in the [Action Plan for Insurance Reform](#). The Action Plan sets out 66 actions for reform which taken together should facilitate a reduction in insurance costs. In addition, on March 6, 2021, the Judicial Council adopted the Personal Injuries Guidelines. Transparency, consistency, and certainty with regard to award levels is critical to facilitating a more stable market for insurance and a reduction in insurance costs. The Guidelines will replace the Book of Quantum, which was developed by PIAB in 2004 and was based on prevailing court awards and settlements. The Guidelines represent a shift in the manner in which general damages are awarded and in the level of those damages. Awards across all ranges and in all courts, with the exception of awards for the most serious types of injury and catastrophic injury, will be less than heretofore. It is expected the new guidelines will bring more certainty and consistency and will lead to more claims being settled through PIAB, and less cases going to litigation. The Guidelines should result in more predictable court awards. This will mean parties involved in claims should have increased confidence in accepting PIAB awards.

The overarching objective in seeking to enhance and reform PIAB is to bring more cases within PIAB's ambit and reduce the number of cases and time involved in progressing to litigation. Encouraging more claimants and respondents to avail of the PIAB model should lead to cost savings in the claims environment which should ultimately lead to reductions in insurance premiums.

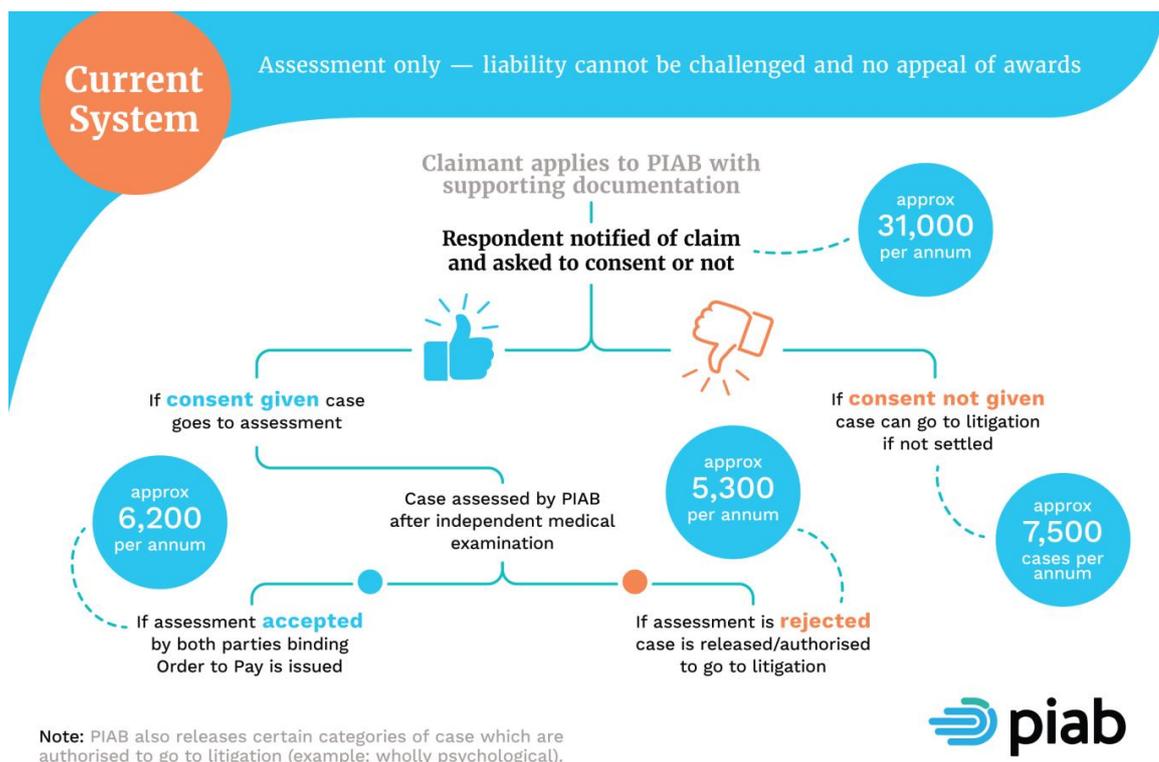
The PIAB process

PIAB independently assesses claims for compensation arising from personal injuries sustained as a result of a motor, workplace or public liability incident. Under the Personal Injuries Assessment Board Acts 2003-2019, all personal injury claims, with certain exceptions, such as medical negligence cases, must be submitted to PIAB unless they are settled by the parties involved at an early stage. The Respondent (usually the insurer) must consent to PIAB assessing the claim. PIAB does not deal with claims where the issue of liability is in dispute, and therefore consent is not usually given for these cases. Where a respondent refuses consent to an assessment, PIAB will issue an authorisation to the claimant so that he or she may take legal proceedings through the courts.

PIAB operates a desk assessment system which does not involve oral hearings. The financial compensation assessed as payable to an individual who suffers a personal injury, includes two types of damages. These are general damages for pain and suffering caused by the injury, and special damages for financial loss – both to date and into the future, for example, loss of wages, cost of medical care etc. An assessment of compensation is made based on medical

evidence and evidence of any expenses that a claimant has/will incur because of the accident. It is a matter for the parties concerned whether they wish to accept the assessment or not. Where either party rejects the award made by PIAB, PIAB will issue an authorisation to the claimant so that he or she may take legal proceedings through the courts.

The chart below outlines the key steps in the PIAB process, with relevant data from 2019.



An application to PIAB is made by submitting a completed application form, a medical report from the treating doctor and a fee of €45/€90 dependent on whether submitted on-line or by hard copy. On receipt of a completed application, PIAB considers if the application is appropriate for assessment and if so, it notifies the respondent. The respondent has 90 days to consent to the assessment of the claim. If they consent, they pay a fixed fee of €600 and the assessment process proceeds.

PIAB has 9 months from the date the respondent consents to assessment to assess the claim. If it cannot be assessed within the 9 months, PIAB in accordance with Section 49, can extend the time to assess by 6 months by notifying both parties of the intention to defer i.e., assess within 15 months from the date of consent. PIAB does not hold any claims beyond 9 months unless they are deferred in accordance with section 49. If the claim cannot be assessed within the 15 months PIAB can further extend the time to assess but only with consent of the claimant. At any stage of the process parties can agree a settlement between them and PIAB will not take any further action once notified of this. Settlements occur during the pre-consent stage, during the 90-day period to consent, and post consent/pre-assessment.

In a typical year (pre-Covid-19) PIAB receives approximately 30,000 cases per annum. Approximately 18,000 cases are consented to (i.e., respondents agree to PIAB making an assessment) with PIAB thereafter making approximately 12,000 assessments on an annual basis. During 2020 PIAB awarded total compensation to accident victims of €206 million, managing 26,009 personal injury claims. In 2020, motor claims volumes were 14,137; public liability claims numbered 6,823; and employers' liability claims volumes were 5,049. Where both parties accept the assessment, the matter is resolved without recourse to litigation, resulting in legally enforceable awards. In 2020 PIAB achieved an average claim processing timeframe of 8.9 months and at a cost of 6.5% of accepted awards.

Submissions or comments are invited in respect of the questions listed below:

1. Potential amendments to section 17 of the PIAB Acts 2003-2019

PIAB reports that out of a potential 30,000 claims per annum, approximately a third are released to the courts under the provisions section 17 of the PIAB Acts 2003-2019. Under Section 17 of the PIAB Acts PIAB is not required to make an assessment where in the opinion of PIAB:

- there is insufficient case law or previous settlement information available in relation to the particular type of injury referred to by the claim;
- it would be inappropriate to do so because:
 - there is a complexity relating to the claim made in relation to interaction between a number of injuries sustained or interaction between injuries sustained and any pre-existing injury or condition;
 - the injury consists wholly or in part of psychological damage the nature or extent of which would be difficult to determine by assessment under the Act;
 - there are bona fide aggravated and exemplary damages sought to be recovered in the claim;
 - the relevant claim arises out of a trespass to the person and the making of an assessment under the Act would not respect the dignity of the claimant.
 - the injury\illness is severe enough that an early trial would be necessitated by the high risk of the claimant dying;
 - the period of time required to make an assessment would have to be deferred, in order for a long-term prognosis to be made, and this deferral would likely result in the maximum timeline for assessment outlined in Section 49 not being complied with – currently 6 months;

- the person purporting to act as next friend/guardian of the claimant or respondent has a conflict of interest or would otherwise not be entitled to act in that role were the claim to be the subject of proceedings;
- the claim falls within a class of relevant claims that PIAB, with the consent of the Minister for Enterprise, Trade and Employment and the Minister for Justice, has declared there to be good and substantial reasons for not arranging for an assessment to be made.

The PIAB (Amendment) Act 2019 added the following categories to this list:

- The statutory notice to the respondent fails to be served;
- The respondent has notified PIAB of his/her intention not to accept the assessment when made;
- In the opinion of PIAB the claim falls within a class of relevant claims to which Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) applies;
- In the opinion of PIAB the claim is one that has been negotiated for the benefit of a minor or person of unsound mind to be approved by the court.

Question 1 (a)

Do you think there is scope to amend section 17 of the PIAB Acts 2003-2019 to increase the number of claims assessed by PIAB?

Question 1 (b)

Do you think there is scope to amend other sections of the PIAB Acts to increase the number of claims assessed by PIAB?

Question 1 (c)

Do you think there are non-legislative changes that could be made to increase the number of claims assessed by PIAB?

Please provide detail in support of your response.

2. An enhanced role for PIAB

PIAB operates a desk assessment system which does not involve oral hearings. The introduction of an alternative dispute resolution process such as mediation to the PIAB process could offer benefits in terms of increasing the number of cases administered through the PIAB system and reducing the number of cases that exit the PIAB process and proceed into litigation.

Mediation is a confidential, facilitative, and voluntary process in which parties to a dispute, with the assistance of a mediator, attempt to reach a mutually acceptable agreement to resolve their dispute. An advantage of mediation is that parties can avoid potentially prolonged litigation and may arrive at a mutually satisfactory outcome for the parties in a shorter space of time.

Question 2 (a)

Would a mediation process provided by PIAB bring benefits for claimants and respondents and help increase the number of cases administered through the PIAB system?

Question 2 (b)

In what other ways do you think the services provided by PIAB could be enhanced or reformed to incentivise greater use of the PIAB model?

Please provide detail in support of your response.

3. Expanding the use and publication of data held by PIAB

Under Section 54 (1) (d) of the PIAB Acts one of the principal functions of the Board shall be to collect and analyse data in relation to amounts awarded on foot of, or agreed in settlement of, civil actions to which the Act applies. PIAB's data enables it to provide information objectively on matters in the public interest. It does this by publishing information annually on the volume and value of awards, the numbers of claims and other aggregate information by county and by range of awards.

PIAB has substantial amounts of data relating to personal injury claims which could provide more granular data than the Central Bank of Ireland's National Claims Information Database. Such data concerning the type of injuries occurring and the accidents that caused these injuries could prove useful to understanding and preventing accidents. More data and research in this area could provide an important tool for encouraging new entrants into the insurance sector, new product offerings, informing policy, deterring fraud and preventing accidents.

Question 3 (a)

Would providing for greater levels of data to be collected and reported on by PIAB be useful in ensuring a fair and predictable insurance system and in areas such as accident prevention?

Question 3 (b)

Is there scope to use PIAB data for the purposes of fraud detection?

Question 3 (c)

Would there be a benefit in PIAB being mandated to record details of all personal injury settlements agreed in the State?

Please provide detail in support of your response.

4. Additional comments

The Department invites respondents to this public consultation to highlight any other issues which would contribute to the objective of enhancing the role of PIAB.

Question 4

Please provide any additional comments you may wish to make to inform the development and direction of policy on enhancing and reforming the role of the Personal Injuries Assessment Board.

Please provide detail in support of your response.

Deadline for Submissions

The deadline for submissions or comments is 17 April 2021.

A separate response template is attached, completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

Submissions should be sent to:

PIABreform@enterprise.gov.ie

When making your submission please provide the name of the individual, firm or organisation making the submission; contact details and briefly describe your interest in this subject matter.

Freedom of Information Act 2014 and Publication of Submissions

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

General Data Protection Regulation

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose limitation;
- Data minimisation;
- Accuracy;
- Storage limitation;
- Integrity and confidentiality;
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

22 March 2021