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Department of Jobs, Enterprise and Innovation
Earlsfort Centre
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29th July 2014

Dear Sir,

Re Public Consultation on the operation and implementation of the Personal Injuries Assessment Board Acts 2003, 2007.

Thank you for your letter of 19th June 2014 inviting RSA to participate in this consultation.

RSA is committed to paying injured persons fair compensation in a timely fashion. This commitment is broadly aligned with the principles that underpin the Injuries Board. Thus RSA is supportive of the Injuries Board's objectives. Indeed over the last year or so we have increasingly focused on ensuring that as many claims as possible are assessed by the Injuries Board. This focus is borne out of recognition that an assessment by the Injuries Board is an efficient and effective way of resolving an innocent person's injury claim. This has the effect of ensuring that the rights of the innocent party are protected whilst overall claims cost is controlled. This is a win- win scenario.

This benefits the broader Insurance market and the consumers who ultimately pay for inflationary claims costs via increased premiums. However, these financial benefits are limited to those claims where damages are assessed by the Injuries Board. Our experience is that a significant proportion of claims which are suitable for assessment by the Injuries Board fall out of the process. In broad terms, the average cost of a litigated claim is 100% more than the cost of a claim assessed via the Injuries Board process. This variance is driven, in large part, by legal costs. Thus, the financial benefits afforded by the Injuries Board process are offset by the costs of those claims which fall out of the process, notwithstanding their suitability to be assessed within it. This has the knock on effect of prolonging the lifecycle of the claim, to the injured person's detriment. Ultimately, this is a key driver of claims inflation.

For the reasons set out above, we contend that the current process should be revised and improved. In our view, there are 5 key areas where reform should be considered. We would categorise the 5 areas as Process, Scope, Timelines, Quantum Assessment and Communications. We will outline our views in each of these areas.

Process

The current process is capable of being enhanced. At present, there is no obligation on the claimant's solicitor to provide the Injuries Board with complete details of the claim. Too often, the applying solicitor provides an incomplete picture of both the extent of the injury suffered by their client and also the details of any incidental losses sustained. There are instances where a preliminary report is submitted by the applying solicitor in spite of the fact that the injury has developed into something much more serious. Both the Insurer and the claimant's solicitor should have an ongoing duty to provide the Injuries Board with full disclosure of any medical evidence in their possession together with any vouchers / documents in support of incidental losses / special damages. This would afford the Injuries Board a better opportunity to assess the injury properly and would, in our view, increase the current volumes of claims assessed.

The existence of a duty to disclose would afford the Injuries Board an opportunity to make a much more effective determination of damages. In turn, this will give greater weight to the current rules which provide that an assessment by the Injuries Board will be regarded as a Tender in the event that the claim litigates.

Litigation should remain the settlement route of last resort. Therefore, we suggest that in the event that either the Insurer, or the claimant, reject an Injuries Board assessment, a mediation process should begin. We suggest that, following rejection of an award, a compulsory 6 month mediation process should commence. A framework should be designed around the mediation process. A timeline which provides for disclosure and dialogue between the parties should be established.

During the course of this process, the limitation period should remain suspended thus ensuring the claimant is not prejudiced. Litigation should not begin until the conclusion of the mediation process. On rejection of the Injuries Board award, mediation has the potential to allow the parties to narrow the issues and potentially resolve the claim.

Experience from other jurisdictions suggests that there must be sanctions that are capable of being imposed on the parties in the event that they do not engage in the established process. The sanctions should be capable of being imposed upon either the Insurer or the claimant's solicitor in the event they do not, for example, comply with the disclosure duty and / or engage in the mediation process. These sanctions should lie in costs. The ability of a claimant's solicitor to recover costs in full should be dependent upon their adherence to the rules. Equally, an Insurer who has failed to engage properly in the mediation process should be penalised via the payment of inflated costs to the claimant's representative. Thus, the "sanction street" is a 2 way one. In our view, the absence of any "teeth" in the current process represents a critical flaw, which must be addressed.

Timelines

The recommendation in relation to mediation would have the effect of prolonging the current lifecycle of a typical claim. The current legislation should therefore be reviewed with the aim of increasing the period of time allowed for the Injuries Board to assess a claim to give more opportunity for a definite medical prognosis to be given. Our recommendation is that the Injuries Board should be afforded an 18 month window to assess a claim. In the event that the claim drops out of the process because the award is rejected, then a 6 month mediation period should begin immediately thereafter. Litigation should be commenced within 6 months of the mediation ending. More stringent timelines for each phase will provide greater certainty for all the parties and also ensure that the claim is progressed to a conclusion as efficiently as possible.

Scope
We welcome the fact that the volume of higher value injury claims being assessed by the Board is increasing. Nevertheless, we would suggest that consideration should be given to broadening the current scope of claims that fall to be considered. Claims that are wholly psychological for example moderate psychological trauma following wrongful arrest are currently released. This is despite the fact that many psychological claims are relatively minor and thus capable of being readily assessed. Whilst we do not provide insurance to the medical profession, we would suggest that straightforward medical negligence claims should also fall within the scope of the Injuries Board process. This is something which has the potential to deliver real value to the taxpayer whilst also affording innocent victims a speedier remedy.

Assessment
The Book of Quantum is capable of being improved. A more specific book akin to, say, the Judicial College Guidelines employed in England and Wales would be welcome. This would provide both the claimant and the respondent with greater certainty in relation to the likely level of an award. This increased transparency would have the effect of building confidence in the process. This, in turn, is likely to lead to an improved rate of Injuries Board assessments being accepted.

Communication / data
Finally, the market and consumers would benefit from more granular reporting in respect of Injuries Board performance. It would be helpful to understand the rates of rejection at a level that affords the market an opportunity to see rejections by category, (respondent / solicitor/ claimant/ both parties), and injury type. This sort of transparency is more likely, in our view, to drive the right sort of behaviour.

Summary
RSA supports the Injuries Board's aims of controlling claims cost whilst also ensuring injured people are properly compensated. These objectives have been broadly achieved in relation to those claims which are assessed by the Injuries Board. However, the benefits afforded by the Injuries Board are being eroded by claims cost associated with those claims that fall out of the current process. The essence of the submission set out above is that both the scope and the application of the Injuries Board should be broadened. We suggest that this is only possible by creating an environment where litigation becomes the settlement route of last resort. This is currently not the case. Too many law firms are guilty of playing the rules in a deliberate effort to use litigation as the sole means of dispute resolution.

An overriding duty of disclosure combined with the introduction of mediation and sanctions, has the potential to create an environment where litigation rates are contained with the resultant benefit in terms of reduced claims cost. In the absence of reform, we anticipate that we will continue to witness claims inflation. This, in turn, will manifest itself in increased premiums for the Irish consumer.

Thank you for providing RSA with an opportunity to provide a response to this consultation.

Yours faithfully

Geoff Jones
Director, Claims