

PUBLIC CONSULTATION ON THE OPERATION AND IMPLEMENTATION OF THE PIAB ACTS 2003 AND 2007 – INSURANCE IRELAND RESPONSE

31 July 2014

1. Introduction

Insurance Ireland is the representative association for insurance companies in Ireland. Insurance Ireland members write approximately 95% of motor and liability insurance in Ireland, measured by premium income, and are major providers of cover against legal liabilities incurred by Irish individuals and businesses. As such, our members are regular and major users of the Injuries Board and legal system and have a keen interest in the review of the Personal Injuries Assessment Board (PIAB) Acts.

Insurance Ireland believe that the main aims of the PIAB Acts have been achieved in terms of fairly, promptly and transparently compensating victims of accidents involving personal injuries in a cost-effective manner. We are grateful for the opportunity to comment on areas relating to the scope, powers and operation of the Act and do so below.

2. Scope

We understand that consideration is currently being given to extending the remit of the Injuries Board to medical negligence claims. While we understand the rationale for this we believe that this may well transpire to be problematic. Our members insure many hospitals and GPs and it is their experience that many of these claims can be quite complex involving issues of both liability and causation. They also regularly feature multiple defendants, many of whom may have repatriated to their country of origin by the time litigation has commenced. Against this background we would suggest that only a small percentage of medical negligence claims would be suitable for an Injuries Board environment. Therefore any requirement that all medical negligence claims must first go through the Injuries Board notification process could risk creating an unnecessary layer of administration.

3. Powers

3.1 We are concerned that there is potential for abuse of the process within the Injuries Board framework and in this regard we would particularly highlight the following:

- The non-attendance by claimants at Injuries Board arranged medical examinations with no obligation on claimants to attend and no financial penalty being levied against such claimants for doctors' cancellation fees. In such cases the Injuries Board is required to make its award without the benefit of an up-to-date medical report. This inevitably leads to award rejection by the claimant and subsequent litigation. This practice is frustrating the Injuries Board process and is ultimately impacting on one of the aims of the Injuries Board i.e. to reduce the number of claims leading to litigation. It also results in a situation where the respondent is held responsible for the cost of the non-attendance fee even though they have no control over the claimant's attendance at the medical;

- The current PIAB legislation allows the court discretion in respect of ordering the claimant to pay all or a portion of the costs of the defendant where the amount of damages awarded on foot of proceedings does not exceed the amount of the Injuries Board assessment. It is our experience that the courts will in general use this discretion and not penalise the claimant in such instances. This has led to a situation whereby claimants can reject Injuries Board awards without any real risk of costs penalties if court awarded damages do not exceed the Injuries Board assessment. By amending the current legislation to remove this discretion it would hopefully assist in increasing the number of accepted Injuries Board assessments and ultimately further reduce the number of claims in which legal proceedings are issued;
- The decision by claimants not to provide the Injuries Board with full details of their claim for special damages ultimately results in the Injuries Board making an award which does not reflect the full extent of the claimant's claim. This inevitably leads to award rejection by the claimant and subsequent litigation. The claim being dealt with in such litigation will therefore inevitably be different to the claim dealt with by the Injuries Board resulting in cost increases and inefficiency;
- Sometimes extravagant but unsupported claims are made, usually under the heading of loss of earnings. This may be either in terms of amounts claimed which cannot be verified or for losses extending over a period of time far greater than would be supported by the independent medical evidence obtained by the Injuries Board. The Injuries Board usually declines to assess because of the complexity of the issues. The claimant receives an authorisation and is free to litigate without concern for any costs penalty provided in the Act of 2007.

Although the claims falling into the above categories are not by any means the norm we believe that the above areas can frustrate the Injuries Board process and in so far as it is possible should be dealt with by strengthening of the legislation.

3.2 We would advocate the following legislative proposals to address the problems outlined in paragraph 3.1:

- An amendment to the PIAB Acts to provide that a claimant is required to attend medicals arranged by the Injuries Board and to provide that a claimant who refuses to attend a medical examination is not entitled to legal costs in any subsequent litigation;
- An amendment to the PIAB Acts to provide that a claimant who fails to include in his Injuries Board application a claim for any special damages which were known to have been incurred or due to be incurred at the date of application should not be entitled to costs in any subsequent litigation unless the amount of a court award exceeds the sum of the Injuries Board award plus such special damages;
- An amendment to the PIAB Acts to provide that a claimant who is found to have deliberately made unsustainable claims in the course of his Injuries Board application shall not be entitled to any order for legal costs in subsequent litigation;
- An amendment to the PIAB Acts and/or Civil Liability and Courts Act to require the claimant to sign a declaration as to the veracity of his claim for personal injuries and special damages as part of the Injuries Board process. In the event of an award being rejected he/she should be prevented from introducing a new head of injury, sequelae or damage (which was known to the claimant at the time the declaration was signed) in any subsequent proceedings. A procedure should be introduced for an application to be made by the defendant to the courts on this preliminary point and if accepted by the judge an order made accordingly with costs of the application awarded in favour of the defendant.

- 3.3 The limitation period for personal injury claims is generally two years. However this is significantly extended by virtue of the fact that the clock stops during the Injuries Board process and a claimant is then allowed a further six months from the date the claim is released from the Injuries Board. This works against the Government's stated aim of "fairly, promptly and transparently compensating the victims of accidents involving personal injuries in a cost-effective manner".
- 3.4 Our proposal is that an amendment should be made to the PIAB Acts and/or the Civil Liability and Courts Act 2004 to provide that the limitation period for submission of the application to the Injuries Board be reduced to one year and that where an authorisation is issued that proceedings must issue within three months of same or two years from the date of the accident, whichever is the later.

4. Operation

- 4.1 Establishing and maintaining accurate and timely reserves against claims is a critical requirement for any insurer. The procedural rules governing the Injuries Board process can often result in only the most basic of medical information on the nature of the injury and likely consequential losses being provided on the claimant's application/medical form. There then follows a lengthy hiatus between the submission of the application and the award during which insurers can be totally in the dark as to the estimated ultimate cost of the claims.
- 4.2 Insurance Ireland believe that the respondent should receive in a timely fashion a copy of every document submitted by a claimant in support of his/her application and every document obtained by the Injuries Board which may form part of the assessment, e.g. all medical reports and all documents in support of claims for special damages.

Our proposal is that there should be an amendment to the current practice of the Injuries Board supported if necessary by an amendment of the PIAB Acts to provide for the timely furnishing to respondents of all documentation submitted by claimants or forming the basis of assessment, whether or not an assessment is undertaken.

Furthermore, as a general point, Insurance Ireland believe that the Injuries Board should not accept an incomplete application (Form A) or medical assessment (Form B) on behalf of a claimant in any circumstances regardless of whether there are pressing time constraints under the Statute of Limitations. Where further medical reports are obtained on behalf of a claimant in addition to the medical assessment (Form B) there should be a requirement that these be submitted to the Injuries Board before the independent medical examination is arranged. If these further claimant medical reports disclose additional information or injuries which are likely to impact on the assessment a brief (high-level) outline should be communicated by the Injuries Board to the respondent insurer for reserve purposes. Details of the total amount claimed in respect of special damages together with confirmation of the length of time the claimant is or has been off work should be communicated without commentary by the Injuries Board to respondent insurers as soon as this information is obtained.

- 4.3 When the Injuries Board issue notice of their award the breakdown of special damages is only shown at a high level without any detail or supporting documentation provided as to how the different headings of special damages have been assessed and calculated.
- 4.4 Our proposal is that the notice of the award should include a detailed breakdown of the special damages assessment and calculation and be accompanied by a copy of all documentation submitted by the claimant in support of his/her claim. Where the Injuries Board have obtained separate expert reports or statements (e.g. from the Department of Social Protection or Revenue) these should also be included with the notice.

5. Conclusion

The PIAB Acts have helped through the Injuries Board to bring about a culture change for all involved in the claims process, including claimants, policyholders, legal advisers, insurers, doctors and other expert witnesses. In general it is fair to say that the Injuries Board has led to speedier claims investigation and settlement by all involved in the claims process. That said, Insurance Ireland believe that there is a need for some Injuries Board procedures to be finetuned and we have summarised these in this submission together with our suggestions for supporting legislative amendments.

Finally, we acknowledge the efforts of the Injuries Board to reduce their administration fee and we would hope that they continue to reduce their cost base and improve their efficiencies with a view to further reducing their administration fee.