

Terms of Reference for the Personal Injuries Commission

Extract from the Cost of Insurance Working Group Report January 2017

7.6 Recommendations

Recommendation 14

Establish a Personal Injuries Commission

This chapter has highlighted the complexity in assessing the personal injury resolution framework in Ireland. Section 7.2 details how the level of awards for personal injuries is ultimately determined by the Courts. Precedents set by the Courts are followed by the PIAB and the insurance sector.

It is acknowledged that soft tissue injuries (e.g. whiplash) account for a large proportion of claims. The severity of these types of injuries is very difficult to diagnose. Other jurisdictions have established specific qualifications for medical professionals in this area of expertise to facilitate more detailed grading of injuries. Approaches that clearly link the diagnosis, treatment, prognosis and the award of damages should be examined. Such systems require a consistent approach in the classification and reporting of such injuries. It is noted that some jurisdictions use a national panel of trained and accredited medical advisors.

Systems that utilise a scale or rating for soft tissue injuries should be examined. A number of countries use scales/tables to determine quantum in personal injury cases, Spain and Sweden being two examples. Spain has a system of tables. Sweden has adapted the use of the classification system introduced in 1995 by the Quebec Task Force. The Whiplash Associated Disorder (WAD) is classified as 0-4. In Sweden they adapted the 0 to 4 grades system in the context of Soft Tissue injuries and focused on the 1-3 grades.

While the Working Group has engaged in a preliminary analysis of other possible options used in other jurisdictions that could augment the current system, it is recommended that a Personal Injuries Commission be established to investigate some of these issues further. The Commission should investigate other models internationally but focus on those applying to common law jurisdictions.

To ensure appropriate expertise is available to the Commission, it is recommended that it have representatives from the medical profession, the legal profession, the insurance sector and Government. It is recommended that an independent chair is appointed to facilitate the deliberations. The Commission should be supported by a secretariat within the Department of Jobs, Enterprise and Innovation. The Commission should meet at regular intervals and should have the ability to engage external expertise and invite relevant parties to meetings.

A draft phased work programme is outlined below. The Commission may also look at other relevant areas.

Phase One (report due by Q4 2017)

In respect of other relevant jurisdictions, particularly in Europe:

- Complete a comprehensive data gathering exercise to assess systems for handling personal injury claims, particularly soft tissue (whiplash) claims focusing on causes, frequency/incidence, diagnosis, treatment and appropriate compensation level;
- Report on systems where detailed grading of minor personal injuries is in operation;
- Assess the potential for medical professionals to prepare injury claim reports on a percentage disability basis with 100% being the maximum severity case;
- Assess the potential for a national medical panel of trained and accredited medical specialists for completion of reports with a timely medical assessment of the extent and impact of the injury and include a standardisation of reporting methods by assessing specialists;
- Investigate the potential for the establishment of a panel of medical experts for use in Court.

A summary report should be made to the Minister for Jobs, Enterprise and Innovation and the Minister of State for Financial Services which will:

- Make recommendations as to the possible development of such practices in Ireland;
- Indicate the timeframe for, benefits of, and risk associated with the implementation of the above recommendations.

Phase Two (report due end Q1 2018)

- Establish a high-level benchmarking of international awards for personal injury claims with domestic ones as referred to in the Book of Quantum;
- Analyse and report on international compensation levels and compensation mechanisms;
- Analyse and report on alternative compensation and resolution models internationally, focusing on common law systems while taking account of social welfare, healthcare and related factors associated with each jurisdiction;
- Report on “care not cash” models and variations in place internationally.

A summary report should be made to the Minister for Jobs, Enterprise and Innovation and the Minister of State for Financial Services which will:

- Assess the various systems in place and indicate the feasibility or otherwise for the possible development of such systems in Ireland;
- Indicate the timeframe for, benefits of, and risk associated with the implementation of the above recommendations.

Phase Three (report due end Q2 2018)

The Third report from the Commission with a list of recommendations and timelines should be delivered in Q2 2018.

Action Point No.	Action Point	Deadline	Relevant Bodies	Lead/Owner
30	Establish a Personal Injuries Commission (PIC)	Q1 2017	Department of Jobs, Enterprise and Innovation, PIAB, Department of Justice and Equality	Department of Jobs, Enterprise and Innovation
31	PIC to investigate and make recommendations on processes in other jurisdictions which could enhance the claims process in Ireland	Q4 2017		
32	PIC to benchmark international PI awards with those in Ireland and report on alternative compensation and resolution models	Q1 2018		
33	PIC to deliver their third report	Q2 2018		