

SECOND REPORT OF THE PERSONAL INJURIES COMMISSION.

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The second report of the Personal Injuries Commission was published earlier today 18th September 2018.

This report makes ten recommendations and our review and commentary in respect thereof is set out below.

The background to the publication of this second report was by virtue of the establishment of the Personal Injuries Commission which was a recommendation of the Report of the Cost of the Insurance Working Group, published in January 2017.

The Personal Injuries Commission was established thereafter and is chaired by Mr. Justice Nicholas Kearns.

The Cost of the Insurance Working Group Report concluded in regard to Personal Injury Claims that:

- Awards for personal injury claims represent a significant component of an insurance company's pricing model;
- Soft tissue claims representing a significant component of overall personal injury claims;
- Severity in soft tissue claims can be difficult to diagnose; and
- Approaches that link diagnosis, treatment, prognosis and awards of damages should be examined.

The Personal Injuries Commission was required to investigate the above issues further.

The key findings of the first report of the Personal Injuries Commission published on the 7th day of December 2017 suggest adopting a standardised and internationally recognised approach to diagnosis, treatment and reporting on soft tissue injuries, by practitioners who are appropriately competent and trained, which would improve the personal injuries environment in Ireland. The first report made four recommendations notably as follows:-

- A standardised approach to the examination of and reporting of soft tissue injuries;
- The training and accreditation of medical professionals who complete personal injury medical reports;
- Link future publications of the Booklet of Quantum to the newly standardised examination and reporting injury categories;
- Relevant injury data should be collated and published by appropriate bodies.

The first report has received considerable and widespread comment and the second report published the 18th of September 2018 makes further significant recommendations.

These are set out as follows:-

1. The Personal Injuries Commission recommends that a Judicial Council be requested by the Minister for Justice & Equality to compile guidelines for appropriate general damages for various types of personal injury. In doing so, the Commission believes account ought to be taken of the jurisprudence of the Court of Appeal, the results of the Commission's benchmarking exercise and whiplash levels as per the first report. This may involve a Judicial recalibration of the existing Book of Quantum guidelines. It appears legislation would be required to further amend aspects of the Personal Injuries Assessment Board Act 2003 and to the Civil Liability & Courts Act 2004. It would be hoped that such recommendations would lead to a greater consistency in the assessment of general damages.
2. The Personal Injuries Commission has recommended the Judicial Council Bill 2017 be progressed through the Houses of the Oireachtas (Irish Parliament) urgently. It is also envisaged that if there is a delay with the establishment of the Judicial Council that a separate formal framework be established in respect of compiling guidelines to the renewed deadlines for the publication of the next Book of Quantum.
3. The Personal Injuries Commission recommends that the Law Reform Commission which is examining the possibility of legislation to delimit or cap general damages a Court may award takes in to account the Personal Injuries Commission's findings.
4. The Personal Injuries Commission recognises that a "care not cash" system of compensation is incompatible with E.U. law. In recognising this the Commission recommends any person who receives a soft tissue injury ought to receive, timely, appropriate and effective treatment as part of a standard treatment plan. Timely and effective treatment improve patient outcomes and lead to downward pressures on

costs associated with soft tissue injuries. The recommendation is that the development and roll out in all relevant locations of best practice standard treatment plans focus on recovery, alongside awareness and promotion of best treatment practices.

5. The Personal Injuries Commission recommend that where an Insured deals directly with a Claimant no offer in settlement or payment ought to be made unless a medical report has been obtained. This recognises the interests of injured parties.
6. Claimants must provide prompt notification of any personal injury claim to ensure that a proper investigation of the accident circumstances can be undertaken by a defendant.
7. The Personal Injuries Commission recommends the establishment of an Irish Garda Fraud Investigation Bureau. This would mirror or be along the lines of the Insurance Fraud Enforcement Department (IFED) which operates in the U.K. policed by a division of the City of London Police. The report recognises that exaggerated and fraudulent claims have adverse impact on overall costs and impact insurance premium costs. There is currently low detection, little risk of prosecution and little deterrent in regard to false or exaggerated claims.
8. The Personal Injuries Commission recommend that Insurers step up anti-fraud activity through appropriately trained personnel and the further development of technological means. In the event that such a Garda Fraud Investigation Bureau is established as set out at recommendation 7, Insurers ought to provide timely information so that prosecutions may take place.
9. The Personal Injuries Commission recommends that Insurers adopt an internationally recognised injury coding system. Currently, there is a lack of consistency and detail in the industry wide coding of injury data.
10. The Personal Injuries Commission recommends that the insurance industry establish a national medical research study into the prevention and management of soft tissue

(whiplash) injuries. Research should be published as a means of facilitating evidence and improvements to the treatment thereof.

The above recommendations are far reaching and recognise the inconsistency and the high level of personal injury pay-outs in the Republic of Ireland. The recommendations require the establishment of a Judicial Council and the report recognises that such recommendations can only be effective in the event that there is impetus and urgency from government bodies and the Law Reform Commission.

It is clear that there will be amendments required to previous legislative initiatives to tackle personal injuries claims such as the Personal Injuries Assessment Board Act 2003 and the Civil Liability & Courts Act 2004.

The Law Reform Commission's examination of capping damages undoubtedly is constitutionally challenging and the report suggests future initiatives with a view to capping low level soft tissue whiplash claims. There is no dispute that a high level of such claims exist. One estimation is that 80% of motor personal injury claims are whiplash related which, when compared to the U.K. appear to be at a rate of three times higher. This is aside from the evidence that the levels of awards are almost four times higher than the U.K. The report is unambiguous regarding exaggerated and fraudulent claims and the adverse impact overall on the insurance sector. The establishment of an Irish Garda Fraud Investigation Bureau may be controversial particularly if it is funded by the insurance industry however it would appear a necessity at this time. There is also recognition that there is a duty on insurance companies to assist in tackling fraud by retaining appropriate experts, technology and technological means.

There can be little doubt regarding the clear and stringent recommendations in this comprehensive report and the success or otherwise of such recommendations will be incumbent on government, the Law Reform Commission and the insurance sector.

The report notes that an urgency is required to ensure timely implementation of the recommendations of this report and it is the most significant attempt to attack elements of the compensation culture and exaggerated claims in recent times.

The report recognises the limitations of what can be effective and achievable but will require an impetus from other interested parties, notably the clear recommendations that the Judicial Council Bill 2017 be progressed without any delay.

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