

## Briefing Note: Important Changes to the Civil Liability and Courts Act 2004

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Section 8 of the Civil Liability and Courts Act 2004 has not been prevalent feature in any Court decisions to date and the wording of the section may have diffused some of the weight of the intent behind the provision. Delay and late notification of a claim can cripple a Defence to an action because much of the relevant evidence has been lost or recollections have faded with time and thereby impeding the investigation of a claim. The result is quite often that a Plaintiff will have a monopoly on the pertinent facts.

As a protection against this prejudice, Section 8 of the 2004 Act required a Plaintiff to notify his or her intention to bring a claim within two months of the date of an accident or the date of knowledge.

The Cost of Insurance Working Group highlighted a problem with the legislation and noted that the legislation had not achieved its aim. It was clear from the Oireachtas debates at the time that despite the usage of the word “may” instead of “shall” in respect of costs penalties being imposed and inference being drawn by late notifications, the intention in the legislation was clearly that the requirement to submit a letter of claim, or an “initial warning letter” as described by the then Minister, within two months was meant to have far more ‘teeth’ than what transpired in reality. The Working Group concluded that the section was not being complied with and the legislation needed to be strengthened. The Working Group also formed the opinion that it was vital that consumers and victims’ rights be balanced against those of potential defendants.

The Central Bank (National Claims Information Database) Act 2018 amended Sections 8 and 14 of Civil Liability and Courts Act 2004. Recommendation 6 of the Working Group report has been fully implemented in the amendment reducing the period within which a claim should be notified by a potential claimant from two months to one month,

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but also deleting the phrase “or as soon as practicable thereafter”. To reinforce the costs implications the section has replaced the word “may for “shall”, and consequently the Court shall *“(a) draw such inferences from the failure as appear proper, and (b) where the interests of justice so require— (i) make no order as to the payment of costs to the plaintiff, or (ii) deduct such amount from the costs that would, but for this section, be payable to the plaintiff as it considers appropriate.”*

Following the recommendations made by the Working Group, Section 14 (4) of the Civil Liability and Courts Act 2004, has been extended by the insertion of a new Section 4(A). The old Section required a party to a Personal Injuries action to lodge in Court a sworn Affidavit of Verification in respect a pleading within 21 days of service. The new section aligns itself closely to the amendment made to Section 8 of the 2004 Act and it reads as follows:

*“(3) Section 14 of the Act of 2004 is amended by the insertion of the following subsection after subsection (4):*

*“(4A) Where there is a failure to comply with subsection (4), the court hearing the personal injuries action concerned shall—*

*(a) draw such inferences from the failure as appear proper, and*

*(b) where the interests of justice so require—*

*(i) make no order as to the payment of costs to the party responsible for the failure, or*

*(ii) deduct such amount from the costs that would, but for this subsection, be payable to the party responsible for the failure as it considers appropriate.”*

It is clear that the landscape of defence litigation is changing dramatically and potential claimants will be penalised for failing to notify and verify their claims. It also creates a greater duty on potential defendants to be more aware of incidents, to record events correctly and to preserve all relevant evidence to assist in any subsequent investigation of a claim and legal proceedings. Equally the Courts will be required to not only look at the evidence before them but also the timing of the notifications and verification of the facts which will have an impact on Costs Orders made.