Post Enactment Report

Personal Injuries Assessment Board (Amendment) Act 2019

March 2020
Purpose of the Bill

The Personal Injuries Assessment Board (Amendment) Act 2019 (No. 3 of 2019) was signed into law by the President on 25 February 2019 and was commenced on 3 April 2019.

The purpose of the Act is to amend the Personal Injuries Assessment Board Act 2003 to strengthen the Personal Injuries Assessment Board (PIAB) in terms of operational issues to ensure greater compliance with the PIAB process and encourage more claims to be settled through the PIAB model.

Policy Objectives

The Personal Injuries Assessment Board (PIAB) was established under the Personal Injuries Assessment Board Act, 2003. PIAB facilitates objective assessments of damages at a much lower cost and in a far shorter timeframe than possible through litigation. The Central Bank published the National Claims Database – Private Motor Insurance Report 1 in December 2019. That report highlights the costs involved in litigation as a mechanism of resolving personal injury claims during the period 2015-2018. Average legal costs for an injury claim settled through PIAB during that period was €753 compared to average legal costs for an injury claim settled through litigation of €23,031. Additionally, the report outlines that the time taken to settle claims during the same period took an average 2.5 years through PIAB compared to 4.2 years through litigation.

In 2014 the then Minister for Jobs, Enterprise and Innovation considered it was appropriate to examine the operation of the legislation in practice, and to identify any areas relating to the scope, powers or operation of the Act that required change.

Background

In June 2014, the Department of Jobs, Enterprise and Innovation held a public consultation on the operation and implementation of the Personal Injuries Assessment Board Acts, 2003 and 2007. Twenty-nine submissions were received from a range of

In addition to the public consultation on the Personal Injuries Assessment Board Acts 2003 and 2007, a number of Reports made recommendations in relation to maximising the PIAB model so that more claims are settled through PIAB.

The Cost of Insurance Working Group (CIWG) Report on the Cost of Motor Insurance, approved by Government and published on the 10th January 2017 highlighted that the administrative cost of settling claims through PIAB is broadly 7 times less expensive than through litigation. Therefore, encouraging more claimants to avail of the PIAB model rather than resorting to litigation should lead to cost savings in the claims environment and this should ultimately lead to reductions in insurance premiums.

The CIWG Report made a number of recommendations in relation to strengthening the PIAB model.

Recommendation 15 states,

‘Assess within the current review of the PIAB legislation, cases of non-cooperation such as non-attendance at medicals and refusal to provide details of special damages.’

Recommendation 19 states:

‘examine the frequency of future Book of Quantum updates in terms of any future changes to its production.’

The Report on the Rising Costs of Motor Insurance from the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach also recommended enhancing the powers of PIAB.

Based on this a general scheme for a Personal Injuries Assessment Board (Amendment) Bill 2017 was drafted and published in June 2017. Following engagement with the Office of Parliamentary Counsel the Personal Injuries Assessment Board (Amendment) (No. 2)
Bill 2018 was published on 14 August 2018. It passed all stages in Dáil Éireann on 16 January 2019 and all stages in Seanad Éireann on 16 February 2019. It was signed into law on 25 February 2019 and was commenced on 3 April 2019.

**Key features of the Act**

The purpose of the Act is to amend the Personal Injuries Assessment Board Act 2003 to strengthen the Personal Injuries Assessment Board (PIAB) in terms of operational issues to ensure greater compliance with the PIAB process and encourage more claims to be settled through the PIAB model.

Specifically, the objectives of the Act are to:

1. Clarify the documents required from a claimant before a formal notice seeking consent to an assessment will be issued to a respondent. (A claimant will be required to submit to PIAB, the application under section 11, a report prepared by a medical practitioner in respect of the personal injuries and the prescribed fee);

2. Provide for early notification of incomplete claims to respondents;

3. Provide PIAB with discretion not to make an assessment in certain situations where the resolution of the claim is being delayed while with PIAB;

4. Provide for different levels of fees to be levied by PIAB on claimants and respondents for the submission of electronic and paper formats of documents;

5. Ensure consistency in the disapplication of limitation periods under the Statute of Limitations within the PIAB process;

6. Address issues relating to non-cooperation, such as non-attendance at medicals and failure to provide details of special damages or loss of earnings;

7. Provide that the Book of Quantum will be published every three years (see page 12 regarding the Judicial Council Act 2019’s impact on this provision);
8. Provide PIAB with the power to obtain information from any person or body to fulfil its functions;

9. Provide that, in line with Government policy, more appointments to the Board of non-commercial Bodies are appointed following a Public Appointments Service process. Provide also that Board members cannot serve more than 10 years on the Board.

10. Provide for the remittance by PIAB of moneys to the Minister, and

11. Enable PIAB to serve documents electronically or through a document exchange mail service, thus modernising and expediting the administrative process.

**Functioning of the Act**

**AMENDMENTS TO THE PRINCIPAL ACT**

Amendments to Section 13: Clarifies the documents required from a claimant before a formal notice seeking consent to an assessment will be issued to a respondent. (A claimant will be required to submit to PIAB, the application under section 11, a report prepared by a medical practitioner in respect of the personal injuries and the prescribed fee); and provides for early notification of incomplete claims to respondents.

The amendment to Section 13 clarifies what is required before formal notification is served on a respondent to ascertain his or her wishes. A formal notice only issues to a respondent when a completed application form (FORM A), the prescribed fee and a report prepared by a medical practitioner in respect of the personal injuries which are the subject of the claim, has been received from the claimant by PIAB.

Where the application continues to be incomplete 90 days after submission, for example not accompanied by the prescribed fee or a report prepared by a medical practitioner in respect of the personal injuries which are the subject of the claim, PIAB, on an administrative basis, issues an initial notification to the respondent that a claim has been received identifying them as the person the claimant holds responsible for their injuries. A copy of the application form is supplied with the informal notice.
This provides fairness to respondents in facilitating early notification and investigation of a claim while not requiring them to consider consenting or rejecting to an assessment in the absence of receiving all information required to do so.

It is reflective of Government’s stated aim in the initial establishment of PIAB of “fairly, promptly and transparently” compensating the victims of accidents involving personal injuries in a cost-effective manner.

Following commencement of the Personal Injuries Assessment Board (Amendment) Act 2019 PIAB have observed an increase in the percentage of complete claims received. Prior to the Amendment Act 75% of claims received were complete (FORM A, medical report and application fee received). Post Amendment Act the monthly average has increased to 82%.

Between commencement of the Act on 3 April 2019 and end of year 2019, 642 informal notices issued. The outstanding information/documentation was received on 53% of these claims and a Formal Notice of claim issued pursuant to Section 13 of the PIAB Act. Of the remaining, 44% of these claims were closed due to the fact the outstanding documentation was not received and the balance are under review.

**Amendment to Section 17: Provides PIAB with discretion not to make an assessment in certain situations where the resolution of the claim is being delayed while with PIAB.**

The amendment to Section 17 provides PIAB with a general discretion not to make an assessment and is not limited to the situations set out in section 17 of the Principal Act.

Under Section 17 of the Principal Act PIAB is not required to make an assessment where in the opinion of PIAB:

- there is insufficient case law or previous settlement information available in relation to the particular type of injury referred to by the claim;
- it would be inappropriate to do so because:
  - there is a complexity relating to the claim made in relation to interaction between a number of injuries sustained or interaction between injuries sustained and any pre-existing injury or condition;
• the injury consists wholly or in part of psychological damage the nature or extent of which would be difficult to determine by assessment under the Act;
• there are bona fide aggravated and exemplary damages sought to be recovered in the claim;
• the relevant claim arises out of a trespass to the person and the making of an assessment under the Act would not respect the dignity of the claimant.

Where PIAB determines a claim, in its opinion, falls within one of these categories PIAB issues an authorisation.

The Amendment to Section 17 has added the following categories to this list:

a) The statutory notice to the respondent fails to be served;

b) The respondent has notified PIAB of his/her intention not to accept the assessment when made;

c) In the opinion of PIAB the claim falls within a class of relevant claims to which Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) applies;

d) In the opinion of PIAB the claim is one that has been negotiated for the benefit of a minor or person of unsound mind to be approved by the court.
Under the general provisions of section 17 PIAB were already releasing cases under a) and c). d) was covered under a class of claim which the Minister declared appropriate for release. Following the amendment these provisions have been made very specific in the main legislation.

For the period from the commencement of the Act on 3 April 2019 to 5 March 2020, 401 cases had been authorised under b). This facilitates the claimant to proceed with their claim and avoids PIAB unnecessarily assessing claims which are known will be rejected. In effect the claimant can proceed to litigation.

Amendment to Section 22: Provides for different levels of fees to be levied by PIAB on claimants and respondents for the submission of electronic and paper formats of documents.

The Personal Injuries Assessment Board (PIAB) claimant application fee was set at €50 when PIAB was established in 2004. From 1st February 2011 the fee was reduced to €45 and has remained unchanged until 2019. The application fee is usually recouped as part of any settlement.

In June 2019 PIAB proposed a claimant fee increase to €90 (from €45), for paper-based applications. This approach was considered warranted to move closer to covering the costs of a paper-based claim.

The change was also seen as a means to incentivise the use of online services, which saves time for both the claimant and PIAB and encourages efficiency and cost savings, as data input, postage and storage costs are all reduced. At the time of PIAB’s fee change request up to 40% of paper applications were incomplete and required follow up by PIAB to seek additional information.

Consideration was given to a potential lack of access to broadband for claimants but given that 95% of claims are dealt with through a solicitor and that solicitors already interact digitally with many entities, this was not considered a potential barrier to adoption. Direct claimants who do not have access to broadband can still submit a paper application and the fee is recoverable, as noted above. It was noted that other public sector organisations, including the Companies Registration Office, have taken steps to make online processes mandatory in some instances in an effort to encourage online services.
This is in keeping with the aim of the Public Service ICT Strategy to “create a new model for ICT delivery across the Public Service; delivering more efficiency and effectiveness in service delivery through a more integrated, shared and digital environment”.

PIAB’s current fee structure is:

- **Respondent**, set by S.I. No. 523 of 2012 €600
- **Claimant**, set by S.I. No. 363 of 2019 €45 Electronic Application €90 Paper Application

PIAB’s long-term strategy is to move to an entirely paperless process, and this fee change was considered a key step in achieving this goal. The Minister for Business, Enterprise and Innovation signed S.I. No. 363 of 2019 - Personal Injuries Assessment Board (Fees) (Amendment) Regulations 2019 in July 2019 and the change came into effect from 1 September 2019. The volume of online applications has doubled since the introduction of the fee change in September 2019 as set out in the table below.

<table>
<thead>
<tr>
<th>2019 - Month</th>
<th>Total Online Volume</th>
<th>Total Volume of Claims submitted to PIAB</th>
<th>Monthly On-Line % (based on monthly application volumes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan</td>
<td>520</td>
<td>2,787</td>
<td>18.66%</td>
</tr>
<tr>
<td>Feb</td>
<td>450</td>
<td>2,932</td>
<td>15.35%</td>
</tr>
<tr>
<td>Mar</td>
<td>425</td>
<td>2,751</td>
<td>15.45%</td>
</tr>
<tr>
<td>Apr</td>
<td>567</td>
<td>2,941</td>
<td>19.30%</td>
</tr>
<tr>
<td>May</td>
<td>553</td>
<td>2,875</td>
<td>19.23%</td>
</tr>
<tr>
<td>Jun</td>
<td>508</td>
<td>2,551</td>
<td>19.91%</td>
</tr>
<tr>
<td>Jul</td>
<td>541</td>
<td>2,882</td>
<td>18.77%</td>
</tr>
<tr>
<td>Aug</td>
<td>574</td>
<td>2,419</td>
<td>23.73%</td>
</tr>
<tr>
<td>Sept</td>
<td>1,142</td>
<td>2,256</td>
<td>50.62% *</td>
</tr>
<tr>
<td>Oct</td>
<td>1,425</td>
<td>2,497</td>
<td>57.07%</td>
</tr>
<tr>
<td>Nov</td>
<td>1,405</td>
<td>2,395</td>
<td>58.66%</td>
</tr>
<tr>
<td>Dec</td>
<td>1,083</td>
<td>1,857</td>
<td>58.32%</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>9,193</strong></td>
<td><strong>31,143</strong></td>
<td></td>
</tr>
</tbody>
</table>

Table 1: Volume of online applications versus total applications to PIAB in 2019
Amendment to Section 50: Ensures consistency in the disapplication of limitation periods under the Statute of Limitations within the PIAB process.

The amendment to Section 50 removes the possibility of additional respondents being added and notified years after an application to PIAB is originally made. A scenario where time limits prescribed by the Statute of Limitations could be indefinitely deferred by repeated applications to PIAB is contrary to the objectives behind the establishment of PIAB to enable timely claims resolution.

The equitable maxim “Equity defeats delay” is reflected in the policy objective that claimants must assert their rights in a reasonable and timely manner. Limitation periods exist for this purpose.

The Government’s aim in establishing PIAB was to “fairly, promptly and transparently compensate the victims of accidents involving personal injuries in a cost-effective manner”. These aims would be significantly compromised if the PIAB process was utilised to repeatedly extend the timeframe of a claim.

PIAB do not determine whether or not a claim is statute barred. However, providing clarity and consistency in the disapplication of limitation periods within the PIAB process strikes the proper balance among the interests of potential claimants, potential respondents and society in ensuring there are remedies for injury from wrongful conduct and a consistent, fair and efficient process for determining when to award them. Existing provisions in the Statute of Limitations (Amendment) Act 1991 provide protection for claimants who may require same when there is difficulty in identifying respondents.

Amendment to Section 51: Addresses issues relating to non-cooperation, such as non-attendance at medicals and failure to provide details of special damages or loss of earnings.

The 2017 Report by the Cost of Insurance Working Group (CIWG) outlines that the delivery cost of personal injury claims is significantly cheaper through the PIAB model than through litigation.

When the original legislation was drafted, it was envisaged that the medical information and special damages submitted by the claimant with the application would reflect the full extent of the claim. However, to ensure accurate assessments it has proven necessary for
PIAB subsequent to application to obtain an independent medical examination in the majority of assessments.

In circumstances where the claimant information is withheld, the assessment of damages by PIAB cannot reflect the full value of the individual’s claim. This leaves the claim open to litigation where legal fees are incurred. This inhibits PIAB’s ability to process an accurate assessment of the claimant’s injury for compensation. Therefore, the assessment is far more likely to be rejected by the claimant.

The CIWG Report recommended that the Department of Business, Enterprise and Innovation consider cases of non-cooperation such as non-attendance at medicals and refusal to provide details of special damages to PIAB. The Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach issued a report in November 2016 on the rising cost of motor insurance. It put forward a recommendation that stated, ‘if requested by PIAB to do so, a claimant who does not attend a medical assessment may have that non-attendance taken into account for the purposes of a decision.’

The amendment to Section 51 of the Principal Act provides discretion for the court to impose certain penalties in claims where parties do not comply with PIAB’s processes. The penalties to be applied are in relation to legal costs following on a court hearing. The legislation commenced on the 3rd April 2019 and it is unlikely that any relevant cases will come to trial before 2021.

In relation to compliance with PIAB’s legislation while it is still early days PIAB have noticed an improvement in relation to the attendance at medical examinations and return of special damages. Assessments to which the legislation applies are only being made in recent months, but a comparison shows the following improvement:

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2019</th>
<th>H1 2019</th>
<th>H2 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-attendance at medical</td>
<td>280</td>
<td>241</td>
<td>143</td>
<td>98</td>
</tr>
<tr>
<td>Non-return of special damages</td>
<td>648</td>
<td>636</td>
<td>368</td>
<td>268</td>
</tr>
</tbody>
</table>

Table 2: Non-compliance rates
Table 2 on the previous page shows there has been a reduction in the number of instances of non-attendance at medicals and non-return of special damages which is positive. Up to date data will be available at the end of 2020.

**Amendment to Section 54: Provides that the Book of Quantum will be published every three years.**

Section 54 of the principal Act provides for the functions of PIAB including making assessments of relevant claims and preparing a Book of Quantum.

The Book of Quantum published by PIAB contains general guidelines as to the appropriate amount of compensation to be awarded for various categories of personal injuries. Previously, the legislation did not make it clear that the Book of Quantum should be updated at regular intervals. The CIWG Report on the Cost of Motor Insurance, published in January 2017 recommended that “the frequency of future book of quantum updates in terms of any future changes to its production should be examined.”

Arising from this recommendation Section 9 of the Personal Injuries Assessment Board (Amendment) Act 2019 amends section 54 of the Principal Act to ensure the Book of Quantum is reviewed and that at least once every three years a revised Book of Quantum should be prepared and published.

Recommendation 14 of the same CIWG report was the establishment of the Personal Injuries Commission (PIC). The PIC was established in January 2017 and over 18 months completed an ambitious work programme examining processes in other jurisdictions that could enhance the claims process in Ireland and benchmarked Ireland’s personal injury awards against other countries.

Separate from the work of the PIC the 2nd report of the CIWG was published in January 2018 on the Cost of Employer and Public Liability Insurance. Recommendation 15 of this report recommended that the “Department of Justice and Equality were to consider proposing an amendment to the Judicial Council Bill to facilitate training and information supports for the judiciary in relation to the assessment of damages in personal injury cases”.
The Judicial Council Bill had been published in June 2017 and provided for the establishment of a Judicial Council which would promote and maintain excellence functions and high standards of conduct among judges.

The PIC’s 2nd and final report was published in September 2018 and recommended that “the Judicial Council should, when established, be requested by the Minister for Justice and Equality to compile guidelines for appropriate general damages for various types of personal injury.”

The Judicial Council Act 2019 was signed into law on 23 July 2019. The Judicial Council was formally established on 17 December 2019 and has set up the Personal Injuries Guidelines Committee to carry out this task. This Committee, made up of seven members of the judiciary chaired by Ms. Justice Mary Irvine, is an independent body subject only to direction from the Judicial Council.

Section 98 of the Judicial Council Act 2019, when commenced, will remove the amendment to Section 54 of the Personal Injuries Assessment Board Act 2003.

**Amendment to Section 54A: Provides PIAB with the power to obtain information from any person or body to fulfil its functions.**

Amendment to section 54A gives PIAB power to obtain information/data from individuals/bodies including the Central Bank for the purpose of PIAB fulfilling its functions in terms of preparing and publishing the Book of Quantum, causing the making of a cost benefit analysis, and collecting and analysing data in relation to amounts awarded or agreed in settlements.

While the establishment of the Judicial Council and in particular the Personal Injuries Guidelines committee will supersede PIAB’s function in relation to the Book of Quantum, PIAB still retains functions under Section 54 relating to:

- Cost benefit analysis of legal procedures and the associated processes that are currently employed in the State for the purpose of awarding compensation for personal injuries;
- Collection and analysis of data in relation to amounts awarded on foot of or agreed in settlement of civil actions to which the Personal Injuries Assessment Board Act 2003 applies;
• Performance of any additional functions conferred under Section 55 of the Act of 2003.

Prior to the Amendments of the 2019 Act, there were no specific powers under the legislation to compel bodies to supply information on settlements to PIAB.

PIAB work closely with stakeholders and to date has not needed to utilise the provision introduced by this amendment to ensure cooperation.

**Amendments to Section 56/57:** Provides that, in line with Government policy, more appointments to the Board of non-commercial Bodies are appointed following a Public Appointments Service process. Provision is also made that Board members cannot serve more than 10 years on the Board.

The warrants for the Members of the Board designated by Ibec and ICTU are due to expire in April 2021 at which time the vacant positions will be filled through the Public Appointments Service (PAS). 3 of the current Board members have been appointed following a selection process through PAS.

**Amendments to Section 74:** Provides for the remittance by PIAB of moneys to the Minister.

The Personal Injuries Assessment Board (PIAB) operates as a self-funding State Agency through income generated from the fees charged to claimants and respondents.

Section 74A of the Personal Injuries Assessment Board Act 2003 as inserted by the Personal Injuries Assessment Board (Amendment) Act 2019, allows the Personal Injuries Assessment Board (PIAB), with the authorisation of the Minister for Business, Enterprise and Innovation and with the consent of the Minister for Public Expenditure and Reform, to retain a specified sum of money for the purposes of expenditure by PIAB in the performance of its functions. The sum to be retained is to be determined having regard to the operational, capital and contingency costs of PIAB including:

• Sufficient reserves required to cover contingency costs;
• Additional reserves in respect of upcoming capital expenditure requirements in respect of a digitisation project;
• Reasonable provision in respect of operational costs, including potential legal costs.

It is intended that PIAB would be permitted to retain sufficient funds to meet these costs.

The Department of Business, Enterprise and Innovation and PIAB are in the process of determining the level of reserves to be retained and the Minister for Business, Enterprise and Innovation will seek the consent of the Minister for Public Expenditure and Reform in relation to any proposed sum. Any amount in excess of that level will be remitted to the Exchequer. As an interim measure, in July 2019, PIAB remitted an amount of €9 million, through the Department of Business, Enterprise and Innovation, to the Department of Public Expenditure and Reform.

**Section 79: Enables PIAB to serve documents electronically or through a document exchange mail service, thus modernising and expediting the administrative process.**

There have been significant technological advances since PIAB was established in 2004. PIAB continue to work to utilise new technology to create a more efficient process. The introduction of electronic portals enables claimants and respondents to upload and download documents and monitor the status of relevant claims. It also facilitates medical professionals to submit reports electronically.

This is in keeping with PIAB’s long-term strategy to move to an entirely paperless process. Portal enhancements, to facilitate the service of statutory documents electronically, are due to go-live in Quarter 1 2020 and savings in relation to the serving of statutory documents electronically can be calculated thereafter.