

Do I need a Solicitor when filing a PIAB Personal Injury Claim?

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The Personal Injuries Assessment Board (PIAB) is an independent statutory body set up under the Personal Injuries Assessment Board Act 2003. All personal injury claims in Ireland (except for cases involving Medical Negligence) must be submitted to PIAB for assessment.

1. Why I wrote this Guide

Making a personal injury claim can be very stressful and difficult, particularly when you are at your most vulnerable.

If you've just had an accident, you may be facing the following problems...

You may have sustained serious injury. You may have been left without transport, unable to get to work. You could be struggling to meet your financial, employment, and family responsibilities. You may be feeling overwhelmed at the thought of processing a Claim with an insurance company, or completing a PIAB claim on your own to get the compensation to which you are entitled.

You may have been unable to access the appropriate medical care for your injuries, or you may be experiencing anxiety and guilt about taking a Claim. You could be worried that it will take you years to get your compensation.

You may be concerned that your Civil Claim (Court Proceedings) arising out of your accident could take months or even years to be resolved. You might be tempted, by advertising which you have heard, to believe that filing a Claim yourself directly Online with PIAB might be the quickest and easiest way to resolve your Claim. You have heard that Solicitors will charge fees and that these fees will not be recoverable against the Third Party Insurers. You'll be tempted by the fact that it only costs €45 + the fee for a Doctor's Medical Report to file your PIAB Claim. You will certainly be given the impression, from reading the PIAB website, that it is a stress-free process and that you will get all the compensation to which you are entitled.

And at no Risk or Cost to you

But is this all correct?

NO

That is why I wrote this Guide.

That is why you need to consult a solicitor. Contrary to mistaken belief, most Solicitors will provide a First Free Consultation for victims of accidents – to advise you of your rights, to ensure that you adopt the correct route to resolve your Claim. We will not bounce you into expensive Court Proceedings. You will be the boss. The difference however is that you will have the benefit of advice from a solicitor who has many years legal experience in resolving Personal Injury Claims and who will fight your corner.

Surely it would make sense to at least seek this First Free Consultation before going it alone. If your home was flooded because of a burst pipe you would engage a Contractor who knows how to resolve your problem. You wouldn't decide to take on the job yourself because of cost! You would want a Professional who will keep you right! Why then would you not consult a Professional where you have sustained injury, to resolve your Claim?

If you, because of the severity of your injuries, cannot make immediate contact with your solicitor, then ask your loved one or friend to make immediate contact: your solicitor will be happy to visit you if required.

That is why I wrote this Guide: to ensure that you will have the full facts before you embark on a Personal Injury Claim and particularly before you might consider filing your Claim Form with PIAB before taking legal advice.

2. How to use this Guide

Chapter 3 (“Submitting a Claim to the Personal Injuries Assessment Board”) contains a brief description of the steps involved in making a Claim to PIAB. The Chapters which follow go into this process in more detail and it is in those Chapters that I explain the various pitfalls which arise for a Claimant in those steps and how an accident victim can be very much prejudiced in the process; particularly where they do not have the benefit of legal advice.

While I have tried to keep my language non-legal, unfortunately it is impossible to avoid technical terms. For this reason I have created a Glossary of Terms to the end of the Guide. Therefore, if you come across a term which you don't understand, please refer to the Glossary and hopefully this will provide the necessary explanation.

Where I have created explanations for phrases in the Glossary of Terms I have placed an asterisk (*) after the relevant phrase throughout the Guide.

3. Submitting a Claim to the Personal Injuries Assessment Board

I have provided below a short synopsis of the PIAB process. Later in this Guide I will go through the process in more detail, highlighting just how unfair the process is to you, the victim.

PIAB is a State Agency and was set up under the Personal Injuries Assessment Board Act 2003. From the 22nd July 2004 all Claims for Personal Injury (excluding Medical Negligence) must be submitted to PIAB before starting Legal Proceedings. This applies even where it is correctly anticipated that the Respondent will dispute liability. This applies to accidents in Ireland only or where Respondents in Ireland are being sued in Ireland arising out of accidents elsewhere. It does not arise where the Proceedings are being issued in Northern Ireland.

Who does it deal with?

It deals with a Claim from the person who has had an injury, the Claimant* / or their solicitor and the person who is being held responsible for causing the injury, the Respondent* or their Insurers*.

What does it do?

It assesses how much compensation for Personal Injury should be given to the Claimant*, who has sustained an injury by the Respondent*. It claims to deliver compensation without the legal costs and experts fees. It claims to reduce the amount of time it takes to finalise a Compensation Claim*.

No Oral Hearings*

It works using documents only. There are no Oral Hearings. The Claimants do not have direct access to the PIAB Assessment Team*.

How do you make a Claim?

You complete an Application Form. This is a specific Form which is downloaded from the PIAB website. The Form is sent to PIAB together with a Medical Report and a fee.

What happens then?

PIAB will send the Respondent a copy of your Application. The Respondent has 90 days to let PIAB know if they are happy for them to assess your Claim. If they don't contact PIAB within 90 days PIAB don't issue an Authorisation*, entitling you to proceed with your Claim to the Court. In that instance the Respondent is deemed to have agreed that PIAB can assess the Claim (whether it has agreed or not!) and the resolution of your Claim can then be delayed by a further year (to allow the PIAB Assessment process take place) particularly where the Respondent later declines to accept the Assessment made by PIAB.

If the Respondent believes they are not responsible for your injury they may turn down the opportunity for PIAB to handle your case. If this happens PIAB will issue the Authorisation to allow you bring your Claim to the Courts if you so wish.

Assessing your Case

Your claim is assessed by the PIAB Assessment Team. They are allowed a period of 9 months, from the date when the Respondent agrees to them assessing the Claim, to come to their Assessment*. This 9 month period can be extended by a further 6 months on notice by PIAB to the parties. If the Respondent allows PIAB to assess your Claim, this does not mean that a Respondent has accepted legal liability*. At all times, it is open to the parties involved to agree settlement of the Claim and you should advise PIAB if this occurs.

Making the Assessment

Once PIAB has all the information it needs, it will normally make the Assessment (an estimate of the value of your Claim) based on the Medical Report from your treating practitioner and its own Medical Reports. PIAB will be guided by the Book of Quantum* in coming to its assessment of the valuation of the General Damages element of the Claim. PIAB will write to you telling you how much the Assessment is. You must write back

to PIAB within 28 days to confirm whether or not you wish to accept this Assessment.

What happens if you don't accept PIAB's Assessment?

If you don't write back to PIAB accepting the Assessment, PIAB will assume that you have rejected it. In this case PIAB will give you an Authorisation to continue your case through the Courts, if you so wish, but you could be subject to severe penalty (this is explained later in this Guide). PIAB will have no more contact with you.

All sounds simple? PIAB would like you to think so!

In some instances during this stage of the process the Insurance Company is happy to undertake "Without Prejudice" settlement discussions with the Claimant's Solicitors with a view to early settlement where it may not be able to have such discussions with a Claimant who is not legally represented.

4. Do not delay in notifying your Claim in writing

Under Section 8 of the Civil Liability and Courts Act 2004 *you are required to issue a notice in writing (a “Claim Letter”) to the Respondent providing details of the nature of the wrong alleged to a Respondent within two months of the date of the cause of action* or as soon as practicable thereafter. (I should emphasize here that I am speaking of the “Claim Letter”, not the PIAB Application or the Court Proceedings which are subsequently issued.) If you fail to do so a Court can subsequently make adverse comment on this failure and this could affect the Judge`s decision, where you could obtain less compensation than that to which you were entitled or where you may be penalized on Costs.

I have had cases where the my client has waited for over a year to instruct me; the Claim Letter is obviously therefore way out of time and the Respondent`s Insurers have tried to raise issue with this delay.

There are many cases where some accident victims will not consider issuing a Civil Claim* as they believe that their symptoms will resolve with time and only subsequently consult a solicitor because they then realize that their symptoms are getting worse.

While this is understandable, it can also be dangerous.

The problem with going solo on a PIAB Claim is that no one tells you about Section 8 of the Civil Liability and Courts Act 2004. The PIAB website tells you nothing about this possible prejudice you could suffer. After all, PIAB is hoping to resolve your Claim without the necessity of Court Proceedings; therefore, why would it be bothered keeping you right on this very important provision?

5. Is there a Time Limit within which I must commence my Civil Claim?

In Ireland a Claimant has only 2 years within which to issue a Civil Claim. If you don't issue Court Proceedings within that time your Claim becomes Statute-Barred: that is, you can no longer issue a Claim. Two years may seem like a long time, but remember that, before your Court Proceedings can be issued, your Solicitor must first get Medical Reports from GP's and Consultants. Consultants particularly are very busy people and it can often take months to get appointments and then Reports. Sometimes it is necessary to get Reports from a number of Consultants and this can therefore give rise to further delays. Two years can pass very quickly!

The problem again is however that this Time Limit is not explained anywhere on the PIAB website. Therefore, if you have decided not to consult a solicitor and use the PIAB website as your sole means of pursuing your Claim, but decided to delay issuing your Claim to see how your injuries resolve 2 years go by and your Claim is Statute-Barred. A Solicitor would not let this happen, but PIAB would!

The periods allowable for the issue of Court Proceedings get even more complicated once a Civil Claim* is issued before PIAB and cannot be covered by this Guide (it is covered on the Morgan McManus website www.morganmcmanus.com). All that I can state to you is that you should consult a Solicitor for further advice, rather than run the risk of your Claim becoming Statute-Barred.

6. Immediate Steps I must take following an Accident

There are steps which you must take following an accident to ensure that you preserve vital evidence. At this point can I suggest that you download from our website www.morganmcmanus.com either of the 2 following Guides which I have also written:

- **The 7 Immediate Steps I must take if I'm involved in a Road Traffic Accident;**
- **The 7 Immediate Steps I must take if I'm involved in a Factory Accident**

While either of these publications can be adapted to many other Accident circumstances, such as trips & falls in public places, Bullying Claims, Occupational Stress Claims, Farm Accidents etc., the important point is that essential evidence must be preserved and at the earliest opportunity.

Why preserve evidence if PIAB is going to deal with my Claim?

While a Respondent may be happy to allow PIAB to assess your Claim, this does not mean that the Respondent is accepting responsibility. Therefore, where the Respondent does not accept an Assessment made by PIAB it can turn around and defend any subsequent Civil Proceedings issued by you. But what if you had not preserved vital evidence because you assumed that PIAB would be able to resolve your Claim? Again, there is nothing on the PIAB website about this eventuality!

7. PIAB will not advise you at the appropriate time of your obligations despite complex legislation

As well as not advising you of your obligations under the Statute of Limitations, PIAB will not advise you at the appropriate time of your obligations under the Civil Liability and Courts Act 2004 or the MIBI Agreement (See article by Brian Morgan: **Personal Injury Accident Claims 2011 - You still need a Solicitor** on the Morgan McManus website www.morganmcmanus.com).

The Civil Liability and Courts Act 2004

For instance, you are not advised by PIAB of your obligations under the Civil Liability and Courts Act 2004 in the event that your Claim does not settle through the PIAB process and it is necessary subsequently to issue Court Proceedings. This arises particularly where there are very strict rules relating to Court Pleadings* and where, through genuine mistake made by an unrepresented Claimant during the PIAB process, there may be a difference between facts detailed in the PIAB Application Form and subsequent Court Pleading filed. Such discrepancies would be highlighted by a Respondent`s Barrister at the Court Hearing in an effort to discredit the Claimant before the Judge – and thus reduce his Compensation.

Such Court Pleadings include

Section 14 (Verifying Affidavits)

Where either Party (Claimant or Respondent) to the Action delivers a Court document which “contains assertions or allegations” of fact, he is required to swear a Verifying Affidavit* and have that Affidavit filed in the Court Office, swearing as to the accuracy of the assertions and allegations which have been made.

Section 19 (Evidence on Affidavit)

Evidence on Affidavit shall be given in any matter where the Court directs – although the right to cross-examine remains. What this means is that a Claimant who, for instance, files Court Pleadings inconsistent with his previous PIAB Application Form, can be cross-examined by the Respondent's Barrister. Bear in mind that the Court Pleadings must be accurate – even if they differ from the contents of the PIAB Application – as Verifying Affidavits will have already been sworn by the Claimant vouching as to the Accuracy of the Pleadings!

Section 22 (Book of Quantum)

The court shall have regard to the PIAB Book of Quantum when assessing damages, although it may take into account other matters. Other matters could include inconsistencies in the Claimant's evidence!

Section 25 (False Evidence)

This creates an offence for anyone to knowingly give false or misleading material evidence in a Personal Injuries action or to a solicitor, or person acting on behalf of a solicitor, or an expert, if done with the intention of misleading the court.

Section 26 (Fraudulent Actions)

If a Claimant, in any action, knowingly gives false or misleading material evidence (or swears a false and misleading Verifying Affidavit) then the Court shall dismiss the Claimant's claim unless this would result in an injustice being done. While the Act states that it must be done with the intention of misleading the Court, that will be a matter for the Judge to decide.

The MIBI Agreement 2009

Nor are you advised of your obligations under the MIBI Agreement 2009 in the event that it transpires subsequently that the other driver was uninsured. The Motor Insurers Bureau of Ireland (MIBI) compensates victims who have been involved in a road traffic accident caused by uninsured or unidentified vehicles. Unless you

comply strictly with the terms of the Agreement and the strict procedures outlined in that Agreement you run the risk that the MIBI could decline to provide Cover. You receive no warning or advice about this on the PIAB website.

As you will have seen, because of the complexities which arise today by reason of new legislation it is imperative that every Claimant takes legal advice before submitting a Claim to PIAB.

8. PIAB will not advise you on the correct Respondents against whom you should make your Claim

PIAB will not advise you on the correct Respondents against whom you should issue your Claim. That is, what if you should have claimed against the Respondent's limited liability company but incorrectly issued Proceedings against the Respondent personally? The PIAB Authorization would issue in due course in the name of the incorrect Respondent. You can only sue the Respondent named in PIAB Authorization.

By way of another example, what if you were walking down the street and suffered injury where a slate fell from the roof of a building under the course of renovation. You know the identity of the man working on the building (the "builder") and issue your PIAB Claim against him only. PIAB issues an Assessment against the builder which you or he declines and in turn you issue your Civil Proceedings, but against the builder only. It subsequently transpires that the builder is uninsured. But what if further investigation at an early stage by a solicitor might have revealed that the builder was employed by a Building Contractor in circumstances where the Building Contractor was liable for the negligence of the builder by reason of Vicarious Liability* and the Building Contractor was insured?

What if you only found out, after the 2 year limitation* period had expired? Your Claim against the correct Respondent could be Statute-Barred. This is another very good reason for seeing a solicitor as soon as you think you may have a Claim for Compensation and before you file a PIAB Application. The consequences of issuing Proceedings after the expiry of the Limitation period means that your Claim will be Statute-Barred. That is, it will be too late to make a Claim. By instructing a Solicitor immediately that Solicitor will ensure that you sue the correct Respondent.

Furthermore, what if you were involved in a 3-car collision but only sued the car which immediately collided with you (Car A) as you assumed that the driver of the other car (Car B) had no liability? PIAB will not give you any advice on this, but a solicitor would! What if you are subsequently obliged to issue Civil Proceedings and can only sue Car A because your Claim against Car B is Statute-Barred? What if the Judge states that Car A was only 40% to blame for the accident? You will only in those circumstances recover 40% of your compensation.

Would it not have been prudent in all these situations to consult a solicitor before you filed your PIAB Application? These are only some examples where problems will arise.

9. Ensuring that you submit a correct Claim

The PIAB Application form is known as Form A. It is essential that the Application Form is properly and carefully completed as information on this Form may be used in evidence by the Respondent against you in a future Court Hearing.

Under the PIAB Act a Claimant may withdraw an Application made by him or her at any time before an Assessment is made in respect of the relevant Claim concerned and, where a Claimant does so, the Act recites that “the Board shall cause no step or no further step under this Part in relation to the claim to be taken”.

However the Act also recites that if such an Application is so withdrawn the Claimant may not, in relation to the relevant Claim concerned, either make a fresh Application or bring Proceedings. A Claimant should therefore not be under the illusion that he can submit a Claim without the necessity of legal advice and only consider getting legal advice if PIAB Claim subsequently turns out to be difficult. He will not be able to withdraw his badly drafted Claim and get his newly instructed Solicitor to submit a fresh Claim. It is extremely important therefore that a Solicitor is instructed in the first instance to submit your Injuries Board Application.

More importantly, what if a Claimant withdrew his Claim, incorrectly believing that he could submit amended Claim himself? If not represented by a Solicitor, who would advise him in advance of this withdrawal that he could no longer issue a formal Civil Court Claim? What if his injuries were catastrophic and his future livelihood depended on him getting adequate Compensation for his support?

A prudent Claimant will ensure to instruct a Solicitor at the start of PIAB process.

Finally, an experienced Personal Injury solicitor will advise you not to put too much detail in the PIAB Application Form about the circumstances of the accident; particularly where liability could be in dispute. For instance, if in describing the circumstances of the accident you incorrectly described how the accident occurred you could subsequently be cross-examined on this by the Respondent's barrister at the Civil Court Hearing in the event that your Claim did not settle through the PIAB process.

10. PIAB will not ensure to investigate all relevant facts prior to completing your Claim

You trip on a faulty footpath in a Housing Estate and assume that the footpath was constructed by the Local Authority. You issue your PIAB Claim against the Local Authority. The Local Authority does not consent to your Claim being assessed by PIAB. In fact the Local Authority does not even check its records to see if it actually constructed the footpath. You subsequently receive the Authorization from PIAB entitling you to issue Civil Proceedings against the Local Authority. After the Statute of Limitations period has expired the Local Authority delivers a Defence denying liability and stating that the footpath had not been taken in charge by the Local Authority as of the date of your accident and that you should have sued the Developer who constructed the Housing Estate in the first instance. But it is now too late to sue the Developer: you are Statute-Barred.

PIAB will not take on to advise you or to undertake due diligence in these circumstances. A prudent solicitor would undertake appropriate investigations, such as Local Authority and Land Registry Searches, prior to issuing the PIAB Claim to ensure that the correct owner of the footpath was ascertained.

Another good reason to instruct a solicitor?

11. PIAB delivers your Medical Report to the Respondent in circumstances where the information in the Report may be extremely sensitive

On receipt of your Application, PIAB delivers your Medical Report to the Respondent. If the Respondent is not insured or fails to notify PIAB of the identity of his Insurers, the Form and Medical Report will be sent by the Board to the Respondent personally without any due process investigation by the Board as to whether that Respondent should receive that sensitive information directly. This can be an extreme breach of confidentiality where, very often, sensitive Medical information is delivered, for instance, to the third party driver who collided with you. This is, more than likely, in breach of its obligations under the Data Protection Acts.

PIAB has now published the manner in which it deals with sensitive information of this nature. However PIAB has released such sensitive information in the past to third parties, despite being requested not to do so. A solicitor with knowledge of obligations and duties under the Data Protection Acts can check the Medical Report on receipt from your doctor before delivery to PIAB to ensure that it does not contain sensitive information which will be released to the Respondent personally and the Solicitor will also warn PIAB of its obligations under the Acts, to ensure that it does not release sensitive information to the Respondent personally.

12. The Respondent gets an opportunity to see the good and bad points in your case

The Respondent gets an opportunity to see the good and bad points in your case. If he doesn't like the Assessment made by PIAB, the Respondent can then change his mind and deny liability for the accident when the case goes to Court. The Claimant however does

not get the same opportunity to inspect the good and bad points of the Respondent`s case during PIAB process.

By instructing a Solicitor you get the benefit of legal advice to ensure that only the minimum required information is furnished with your PIAB Application and you are not subsequently prejudiced, should it be necessary for your Claim to go to Court Hearing.

Remember, many Claims are not resolved by PIAB. Therefore, it is always wise to assume that your Claim could be the one to proceed to Court and therefore you should ensure, from the start, to take the benefit of legal advice.

13. PIAB will assess your Claim on one Medical Report only from your doctor

As PIAB will assess your Claim on one Medical Report only from your doctor it is more than likely that it will not have an accurate understanding of your injuries. It is accepted that PIAB will also rely on other Medical Reports obtained at its request from its own doctors, but generally those medical examinations will only be prompted by what is in your initial Medical Report. What if your Medical Report does not contain all relevant injuries? This is not unusual, where often a Claimant can be seen by a number of different GP`s in a Medical Practice over a period of time, but only one GP writes the Report.

Furthermore, the restriction on the Claimant only being allowed submit one Medical Report does not allow for the fact that you may have been treated by one or more doctors; e.g, a Consultant Surgeon in a hospital, a Psychiatrist, a Dental Surgeon, a Pain Specialist etc. Nor does it allow for the fact that, in that first Medical Report which is generally submitted shortly after your accident, your doctor may not be able to give an accurate prognosis at that early stage on the prognosis for your injuries. What if your injuries turn out to be more serious than originally anticipated by your doctor?

14. What happens after I have submitted my PIAB Application?

I have already set out briefly in Chapter 3 that, after formally accepting your Claim, PIAB will send the Respondent a copy of your Application. The Respondent has 90 days to let PIAB know if they are happy for them to assess your Claim. If they don't contact PIAB within 90 days PIAB should issue an Authorisation, entitling you to proceed with your Claim to the Court. If the Respondent believes they are not responsible for your injury they may turn down the opportunity for PIAB to handle your case. If this happens PIAB will issue the Authorisation to allow you bring your Claim to the Courts if you so wish.

Why should the Respondent have 90 days from notification by PIAB to let PIAB know if it is happy for PIAB to assess the Claim? Where the Respondent subsequently writes stating that it does not want PIAB to assess the Claim, this will result in at least a three month delay in the resolution of the Claimant's case. If you have consulted a solicitor he can write on your behalf to the Respondent / his Insurance Company demanding that a decision is made without delay on whether the Claim is to proceed through PIAB.

If the Respondent allows PIAB to assess your Claim, this does not mean that a Respondent has accepted legal liability. At all times, it is open to the parties involved to agree settlement of the Claim and you should advise PIAB if this occurs.

Once PIAB has all the information it needs, it will normally make the Assessment (an estimate of the value of your Claim) based on the Medical Report from your treating practitioner, its own Medical Reports and the Book of Quantum. PIAB will write to you telling you how much the Assessment is. You must write back to PIAB within 28 days to accept this Assessment. The Respondent must reply within 21 days.

Just a word on delays, before we go any further

PIAB would like you to think that this is an expedient way of settling your Claim. In fact, on their website, they give the wrong impression that Claims are settled within 7 months. A closer analysis, as detailed below, demonstrates what a waste of time this whole process can be:

Period for Respondent to decide if they consent to PIAB assessing the Claim, after acceptance of Claim	3 months
Period to allow PIAB to assess the Claim	9 months
Extendable period to allow PIAB to assess the Claim	3 months
28 day Period for Parties to consider Assessment	1 month
Total period before Assessment is issued from acceptance of Claim Form by PIAB	16 months

After all this delay a Respondent can inform PIAB that it does not agree to the Assessment. The Claimant can only then enter into the formal Courts Civil process – after a possible 16 months delay.

So much for the quickest and easiest way to settle your Claim!

15. But how is my Claim actually assessed?

Unlike a Civil Claim, where Court Proceedings are issued, there is no actual Hearing of your PIAB Claim. The value of your Claim is decided by the PIAB Assessment Team, who decide on the value of your Claim based on the Medical Reports before it and reference to the Book of Quantum. You do not get a chance to speak to that Team or to clarify how some of your symptoms are still continuing.

If your Medical Report was prepared by your doctor and he omitted to detail some of your injuries how can you ensure that these injuries will be brought to the attention of PIAB if there is no Oral Hearing? While PIAB will arrange to have you medically assessed and while

you might hope that any such omission would be picked up by PIAB Medical Consultants the reality is that the Medical Consultants retained by PIAB, who are paid by the Respondent, are not there to assist the Claimant in ensuring that the Claimant details all his injuries.

16. The Assessment issues – what are my options?

PIAB will write to you telling you how much the Assessment is. You must write back to PIAB within 28 days to accept this Assessment. The Respondent has 21 days to respond. You will not know during your 28 day period whether or not the Respondent has accepted or rejected the Assessment.

What happens if you don't accept PIAB's Assessment?

If you don't write back to PIAB accepting the Assessment, PIAB will assume that you have rejected it, and issue an Authorization. Ironically, if the Respondent does not reply within 21 days to the Assessment he is deemed to have accepted it!

If both parties accept the Assessment then PIAB will issue an Order to Pay to the Respondent. That is then the end of PIAB's involvement in the matter.

17. Ensuring that PIAB Order to Pay is a guarantee of payment

If both the Claimant and the Respondent agree to the Assessment PIAB will then issue an Order to Pay to the Respondent. In almost every case the Respondent, or its Insurer, will in turn issue a cheque for payment to the Claimant.

By issuing an Order to Pay to the Respondent, PIAB is not guaranteeing that the Respondent will make that payment. Nor is PIAB confirming that the Respondent has the necessary resources to make the payment or Insurance Cover to assist him in making that payment. Therefore you, in reliance on PIAB's assurances that it can settle Claims quickly and without stress in a Solicitor-free zone, accept the Assessment on the assumption that you will be paid immediately. In fact, you have accepted less than what you believe your case is worth because you just want the process completed and to get on with your life. The Respondent doesn't reply because he never dreamed that you would get such a high Assessment. He doesn't have the money to pay you. He is not insured (PIAB did not inform you of this: they are not obliged to investigate Insurance Cover on your behalf). In effect, the Respondent has lost interest. Remember, his failure to respond is deemed under the PIAB Act to be an Acceptance. An Order to Pay consequently issues but at this stage the Respondent has gone to ground! You are going to be extremely disappointed.

A prudent Solicitor would not allow you to settle a Claim without ensuring that the Respondent had the ability to pay the Award.

If our client is accepting an Assessment we always write to PIAB stating that the Acceptance is conditional on payment actually being received.

18. What if the Respondent rejects the Assessment? Who compensates me for the delay?

Where the Respondent allows PIAB to assess the case but subsequently rejects PIAB's Assessment this will result in at least one year's delay in the resolution of the Claimant's case: remember my period computation at Chapter 14.

The Respondent is not penalized at any stage in either the PIAB or subsequent Court process for rejecting an Assessment.

Now, does that seem fair on the Claim?

Does PIAB warn the Claimant of this at the start of the process?

No, but as you will have now realized from reading this Guide, this is only one of the many occasions where the Claimant is not alerted by PIAB to problems which could arise for the Claimant.

Highlighting to the Respondent the cost of delays

We are told by PIAB that if the Respondent unreasonably refuses to allow a case to proceed to Assessment they may face additional costs if pursued through the Courts. There is no provision for compensating the Claimant where he suffers loss by reason of the Respondent's delay. For instance, PIAB has made no provision for the fact that a Claimant, in a case where the Respondent rejects the Assessment made by PIAB, will be delayed by at least a further year in getting his case to Court Hearing. This could be a very long period of time for a Claimant who has been rendered unable to work by reason of severe injuries sustained.

Again, the involvement of a solicitor acting for the Claimant at this stage can bring home to the Respondent just how serious the Claimant's injuries are and how delays by the Respondent in these circumstances are only serving to aggravate the Claimant's injuries and consequently increase the compensation payable to the Claimant in the long term.

Again, the involvement of a solicitor acting for the Claimant can often force the Respondent to come to a decision more quickly as to whether he will defend the Claim / deny liability and thus avoid the necessity for the Claim to proceed through the long drawn out Assessment process undertaken by PIAB – only for the Assessment to be rejected by the Respondent.

19. What if I reject the Assessment? Will I be penalized?

When the PIAB Act 2003 was first enacted in 2004 the PIAB process was very much heralded as a system where the Claimant, at no risk or cost to the Claimant, got the opportunity to settle his Claim quickly in a Solicitor-free zone. He was advised that if he refused the Award made by PIAB he could issue Court Proceedings and would not be penalized for the fact that he had rejected PIAB Award.

This was however all changed by the Personal Injuries Assessment Board (Amendment) Act 2007, just 3 years later, when the Government, under this new Act, inserted a new Section 51B into the original Act to state that if you, the Claimant, rejected the Assessment (but the Respondent had accepted it) and if subsequently through the Court system you obtained a Court Award of compensation which is less than the amount of PIAB Assessment then you could be liable for all of the Costs of the subsequent Court Proceedings.

Previously ...

Previously, if you were successful in your legal action through the Court system in the ordinary way, you would have been entitled to seek to recover your Legal Costs of those Court Proceedings without automatically facing this penalization.

This was an incredible turnabout. First of all, a Claimant is told he must go through this PIAB process. He is told he can only get one Medical Report (or at least he will only be re-imbursed for one!). The

Respondent / PIAB are allowed at least a year to issue an Assessment (see Periods outlined by me at Chapter 14), during which period PIAB can organize as many Medical examinations as it wants. PIAB then issues an Assessment without notice giving its estimate of the value of the Claim. It tells the Claimant that he has 28 days to decide if he will accept the valuation, but that if he doesn't accept it he could be obliged to pay the Legal Costs of both sides if the matter goes to Court and he gets less subsequently from the Judge (who incidentally won't be aware of the amount of the PIAB Assessment). All through this process PIAB is telling you that you don't need a Solicitor!

How did this get enacted?

On 11th July 2007, the Personal Injuries Assessment Board (Amendment) Act was signed into law. This followed a heated debate in the Dail (the Irish Parliament) on 5th July 2007 when the Bill passed all stages in one day without amendment and was, bizarrely, effectively treated as emergency legislation! The Law Society obtained an Opinion from Senior Counsel, a recognized expert in Constitutional Law, who opined that Section 51B of the new Act may well be Unconstitutional. This Opinion was passed to Micheal Martin, Minister for Enterprise, Trade and Employment at the time, who was responsible for the introduction of the Act and also to Attorney General at the time, Paul Gallagher S.C. A further letter was sent to the Minister outlining the potential injustices to Claimants. Opposition deputies demanded to know why the Government were rushing through such legislation in the light of these concerns. The Government, however, insisted that its own legal advice from the then current Attorney General and his predecessor was that it was constitutionally sound. Minister Martin also insisted that the Act was a pro-consumer piece of legislation (**what? !!!**) and was only designed to close a loophole.

To explain in more detail ...

To put this in more detail, this change in the law means that if the PIAB Assessment amount is rejected by you the Claimant, but is accepted by the Respondent, then even if you are successful in your subsequent legal action through the Court system in the ordinary way, but either:-

(a) the amount of compensation for your injuries, losses and expenses which you may be awarded by the Court or,

(b) the amount which you may decide to accept in settlement if a suitable Out of Court Offer in Settlement is made to you in that subsequent legal action through the Court system,

actually turns out to be less than the amount of PIAB Assessment, then in most circumstances:-

(1). No award of Legal Costs of those Court proceedings may be made to you, and

(2). The Court has a discretion to award against you all or some of the Costs of those Court proceedings which were incurred by the person(s) you are claiming against who had accepted the PIAB Assessment.

Reasoning behind this Amendment?

There is no doubt that these changes in the law were designed by the Oireachtas (the Irish Parliament) to get Claimants to settle up their Claims as quickly as possible and as cheaply as possible for the Respondents (in most instances the Insurance Companies!). This process is not in the best interests of the Claimant. Nor is it pro-Consumer!

It is the duty of the Claimant's Solicitor to protect the client against larger commercial interests. This has always been the case; except in this instance this large commercial interest, namely PIAB, has been telling you that you do not need a Solicitor. Who do you believe?

What will your Solicitor do?

The Claimant's solicitor will consider and review each tactical step as it occurs in PIAB process and / or in any subsequent Court Proceedings and advise you the Claimant as to your best options for obtaining full and proper compensation for the injuries and losses which you have suffered as a result of your accident, and to recoup the out-of-pocket, Legal and Medical expenses which the law requires you to incur at the outset to be able to bring a claim to recover such compensation.

I share the considered opinion of the Litigation Committee of the Law Society that any Injuries Board Assessment or later Offer from the Respondent which is inadequate will be clearly advised by experienced Solicitors to you as being such. The experience of the Courts to date since PIAB system came into effect in mid-2004 has shown that the majority of rejected Injuries Board Assessments are comfortably exceeded in subsequent Court proceedings.

But how could a Claimant make a considered evaluation of the risks if he did not consult a solicitor?

20. Solicitors issuing Judicial Review Proceedings to protect the interests of the Claimant

In many instances Solicitors and Barristers have issued Judicial Review Proceedings before the High Court seeking to review unfair actions by PIAB.

Some examples ...

i. Cost of Medical Reports

Initially, Claimants were only allowed to claim the cost of one Medical Report at a restricted cost of €150 payable to the doctor, despite the fact the Claimant may have been obliged to pay anything up to €350 to the doctor to secure that Report. This was despite the fact that PIAB was often paying its own independent medical consultants more than €350 for their Medical Reports. As of 25 June 2007 PIAB announced a change in their policy of payment of fees for Medical Reports.

This followed a Judicial Review High Court application brought by a Claimant, through his solicitor, in which the inflexible policy of awarding €150.00 for medical reports was challenged. The Board is now obliged to consider the fee for each Report on its merits. This prior discrepancy was quite clearly unjust. It was necessary for a

Claimant, represented by a Solicitor and Counsel, under risk of High Court costs, to issue Judicial Review Proceedings to get the High Court's direction on the unfairness of this discrepancy.

ii. PIAB must correspond with Solicitors

When PIAB first commenced business it refused to correspond with solicitors, but correspond only with the Claimant. This was obviously in an effort to try to obliterate the involvement of solicitors in the process going forward. That was until the Decision of the Supreme Court in the case of O'Brien -v- Personal Injuries Assessment Board on December 19th, 2008. The Court ruled that if an applicant to PIAB wishes to have a legal representative, he or she is entitled to have one. However, PIAB is entitled to send the claimant copies of correspondence with the solicitor, in order to keep the claimant informed.

Background

After Mr O'Brien's solicitor had filed his client's Application Form, PIAB wrote directly to Mr O'Brien, which was at variance with the authority that had been given to it. Mr Boland, the Claimant's solicitor, wrote to PIAB complaining that it had not recognised the authority. He obtained a phone call from PIAB indicating that it would not deal directly with solicitors, but indicating that it would provide copies of its correspondence with Mr O'Brien. He then initiated Judicial Review proceedings. An injunction was sought directing PIAB to stop interfering in the solicitor/client relationship.

In the High Court Counsel for the Claimant pointed out that there were legal consequences of a PIAB decision in that if an applicant did not accept an assessment and went to court, he was in danger on costs. In this case there were also statute of limitations issues.

In the Supreme Court Ms Justice Denham noted that PIAB dealt with respondents' agents and insurers, thus the policy of not dealing with Claimant's legal representatives did not apply to respondents. Therefore its policy was one-sided and, given that claimants by their very nature lacked the skill or expertise of respondents' agents or insurers, it would be open to question on grounds of fairness.

The process before PIAB had serious consequences for a client. Because a person who rejected a PIAB assessment and went to court could be liable for the respondent's costs if the award was lower than that offered by PIAB, a claim before PIAB should be processed very carefully and professional guidance may be very important.

These are only 2 examples of many instances where it has been necessary for legal representatives to take PIAB to task over the unfair manner in which it has tried to deal with Claims.

Solicitors, not PIAB, will continue to fight for the rights of their clients where they perceive that an injustice is occurring.

21. Independent evidence that Claimants represented by Solicitors get more Compensation

In 2011 the Central Bank instigated a 'desktop audit' of 25 non-life Insurance Companies (that is, those who deal also with Accident Insurance Claims) in Ireland to assess their compliance with regard to Third Party Personal Injury Claims. The audit looked at file reports from 6,672 third party Personal Injury Claims cases that had been settled or closed in 2010.

The Central Bank subsequently wrote to the insurance companies concerned. Although they did not divulge the raw data associated with their audit, a letter from the Bank to the insurance company management subsequently became available and contains some very interesting findings; one of which was:

“For claims assessments that were made by the InjuriesBoard.ie and subsequently rejected, it was noted that the ultimate settlement was higher than the InjuriesBoard.ie assessment.”

and many other very well qualified professionals – to protect their interests.

And PIAB tells you, the victim, that you don't need a Solicitor!

Consult a Solicitor now

If you were ever in doubt as to whether you required the services of a Solicitor to enable you file a PIAB Claim, there should be no doubt now.

Legal Minefield

A victim might be led to assume that they no longer need a solicitor. The victim might assume that his claim will be simple and “hassle-free”. What he won't be told by PIAB is that, when commencing a Civil Claim, he is entering a minefield where his rights to privacy could be invaded and where he could end up in prison where it is deemed by a court that he has misrepresented or exaggerated his claim.

In this Guide I have given a summary of some of the dramatic changes that have been enacted by the PIAB Act 2003 and the Civil Liability and Courts Act 2004 - which highlight the importance of getting legal advice from the commencement of the Claim.

There should now be no doubt!

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** In contentious business a solicitor may not calculate fees or other charges as a percentage or proportion of any award or settlement.*

This booklet is intended to give an overview of the law only and is not intended as full legal advice. As such you should always take full legal advice before you take any decisions that may impact on matters referred to in this booklet.

23. Glossary of Terms

“Claimant”: that is you – the Accident Victim (sometimes also referred to as the “Plaintiff”);

“Respondent”: that is the other driver or the person responsible for your injury, whom you will be suing (sometimes also referred to as the “Defendant”);

“Respondent`s Insurers”: Just as you have taken out a Policy of Insurance for your motor vehicle, so also the other driver will have done so. You may get the impression from this Guide that the Respondent`s Insurers are on the “dark side” but they are representing their insured`s interests and it is in their interests to minimize your Claim and even at times suggest that you are exaggerating your Claim. It`s just business; so don`t take it personally.

“Compensation Claim”: The legal process whereby money is awarded by a Court to someone in recognition of loss, suffering, or injury sustained by them. It will generally comprise of 2 elements: (1) General Damages for Pain & Suffering, past and future, and (2) Special Damages to compensate for out-of-pocket expenses, such as Loss of Earnings. While it can involve the necessity to go through a Court Hearing to have your Compensation assessed by a Judge, the vast majority of Claims are settled amicably out of Court.

“Oral Hearing”: An Oral Hearing is where the Claimant and the Respondent, and their supporting witnesses, give their evidence by word of mouth in open Court in public before a Judge and in turn the Judge makes a binding Decision, having heard the evidence of all persons.

“PIAB Assessment team”: these are officials in PIAB, working individually or collectively, who assess the value of a Personal Injury Claim based on their assessment of the injuries recorded in the Medical Reports. They are not permitted by Statute to consult individually with you, the Claimant, in advance of reaching their assessment.

“Authorization”: this is a document issued by PIAB formally bringing its involvement in the Compensation Claim process to an end and allowing the Claimant to process his Claim through the Courts.

“Assessment”: this is a formal document issued by PIAB in which it records its valuation of the Claimant’s Injuries (to cover both General Damages and Special Damages). Unlike a Court Award, it is not legally binding on the parties.

“Liability”: that is, who was responsible for the accident – remember, you can only recover compensation against a Respondent if you can prove he was either fully or partly responsible for the accident;

“Book of Quantum”: this is a booklet produced for PIAB, based on research of previous Court Awards and Settlements, estimating the value of certain injuries by reference to the category and severity of the injury.

“The Civil Liability and Courts Act 2004”: this is a Statute enacted by Government to provide for certain procedural changes in Personal Injury Claims before the Courts.

“Civil Claim”: The various terms “Claim Notice”, “PIAB Application” and “Court Proceedings” can be very confusing. The “Claim Notice” is the letter (described at Chapter 4) which must be delivered within 2 months after the accident. The “PIAB Application” is the formal Application which is submitted to PIAB. The “Court Proceedings” is the process of Pleadings before the Court which can only be started once the PIAB process has been completed. Both the “PIAB Application” and the “Court Proceedings” are loosely described as the “Civil Claim” and, as explained at Chapter 5, the Civil Claim must be issued within 2 years of the accident.

“Cause of Action”: a fact or facts that enable a person to bring an action against another. For instance, the date of a Road Traffic Accident constitutes the Cause of Action.

“Court Pleadings”: Before your case gets to a Court Hearing or settlement, it will be necessary for your Solicitor to deliver a number of Court Pleadings. To start the Court Proceedings, it is necessary to issue a Personal Injury Summons. Subsequently, a Reply to Particulars will be delivered where the Respondent’s solicitors seek further particulars of your Claim, and at various time

Notices of Further Injuries are delivered as updated Medical Reports are received.

“Verifying Affidavit”: Where the Claimant in a Personal Injuries Action serves on the Respondent any Court Pleading containing assertions or allegations of fact the Claimant shall swear an Affidavit verifying those assertions or allegations. If a person makes a statement in the Verifying Affidavit that is false or misleading in any material respect, and that he or she knows to be false or misleading he or she shall be guilty of an offence.

“Vicarious Liability”: Generally, an employer will be held responsible for any wrongdoing committed while an employee is conducting their duties. Therefore, while the employer may not have personally caused your accident, he will be responsible if one of his employees caused the accident.

“the 2 year limitation”: this is the 2 year period, under the Civil Liability and Courts Act 2004 whereby Court Proceedings must be issued from the date of the accident. (Previously, it was a 3 year period.) If not issued within that limitation period, the Court Proceedings will be Statute-Barred, meaning that you are too late to issue a Civil Claim.

Get in Touch

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