



April 2020

## The Judicial Council and Personal Injuries

The Judicial Council (the **Council**), which consists of all of the Judges in the State, met in full for the first time on 7 February 2020.

The Council was established pursuant to the Judicial Council Act 2019 (the **Act**), which was brought into force with the purpose of promoting and maintaining judicial excellence and independence to ensure public confidence in the administration of justice.

### Committees

In pursuant of its aims, and in accordance with the Act, a number of committees are being established within the Council:

1. **Personal Injuries Guidelines Committee:** Tasked with compiling guidelines for appropriate levels of damages for personal injuries, this committee is discussed in more detail below.
2. **Sentencing Guidelines Committee:** Responsible for compiling guidelines designed to increase consistency in relation to criminal sentences.
3. **Judicial Studies Committee:** Establishing a formal professional training regime for judges in line with other jurisdictions.
4. **Judicial Support Committees:** One will be established for each court jurisdiction, to assist the Council with its functions.
5. **Judicial Conduct Committee:** A disciplinary committee made up of eight judges and five “lay” people, with power to investigate complaints and issue reprimands, which will be published in the Council’s annual report.

For further information on any of the issues discussed in this article please contact:



Róisín Peart  
Professional Support Lawyer,  
Litigation  
DD: + 353 (0)1 673 1781  
[roisin.peart@dilloneustace.ie](mailto:roisin.peart@dilloneustace.ie)



Elaine Healy  
Partner, Litigation  
DD: + 353 (0)1 673 1797  
[elaine.healy@dilloneustace.ie](mailto:elaine.healy@dilloneustace.ie)

## Personal Injuries Guidelines

Of particular interest to our clients will be the Personal Injuries Guidelines Committee (the **Committee**), which is due to be established on 28 April 2020. The Act provides that the first meeting must take place within one month of its establishment, with the new guidelines to follow within six months – by 28 October 2020.

The seven Judges who have been nominated to form the Committee are Ms. Justice Mary Irvine (Chair), Supreme Court; Mr. Justice Seamus Noonan, Court of Appeal; Mr. Justice Michael McGrath, High Court; Mr. Justice Senan Allen, High Court; Judge Jacqueline Linnane, Circuit Court; Judge Seán Ó Donnabháin, Circuit Court; and Judge Brian O'Shea, District Court.

The Act provides that the guidelines should be prepared by the Committee with regard to:

- The level of damages awarded for personal injuries by the Irish Courts.
- The level of damages awarded for personal injuries in other similar jurisdictions.
- The principles for the assessment and award of damages for personal injuries as determined by the High Court, Court of Appeal and Supreme Court.
- The need to promote consistency in levels of damages for personal injuries.
- Such other factors as the Committee considers appropriate.

The guidelines, once adopted, will replace the Book of Quantum and the Personal Injuries Assessment Board Act, 2003 has been amended accordingly. Judges will be required to provide reasons for any departure from the new guidelines in assessing damages in personal injury cases. It is understood that the "Committee Designate" has already commenced aspects of the work, with a view to adhering to the deadline of 29 October next, but that it does not intend to meet with or consider submissions from third parties other than the Personal Injuries Assessment Board.

## Fraudulent Claims

The Chief Justice has commented that whilst the Committee does not, strictly speaking, come within the ambit of insurance fraud, the judiciary do consider false or exaggerated claims to be a serious matter. It was emphasised, however, that for fraud to be established in accordance with the law, evidence must be produced to the criminal standard of proof beyond reasonable doubt, as opposed to the civil standard of the balance of probabilities.

## Conclusion

The Council has launched a new website at <https://judicialcouncil.ie/> where further updates will be posted in relation to its activities as matters progress. Most recently, on 31 March 2020, the Chief Justice indicated in his statement regarding the COVID-19 pandemic that work is nonetheless continuing to ensure that all elements of the Judicial Council are fully operational within the deadlines prescribed by the Act.

A number of notable decisions of the Court of Appeal in the course of 2018 and 2019 have already had the effect of recalibrating personal injuries awards in the Superior Courts. Indeed, the Courts

Service 2018 annual report observed a 29% reduction in the average High Court award. The extent to which the new guidelines will follow the trend toward a reduction in personal injuries awards remains to be seen, but they will undoubtedly result in more consistency in the assessment of damages for personal injuries claims in the future.

## Dillon Eustace

## DILLON EUSTACE

### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### **New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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