Welcome to the December 2020 issue of Keeping In Touch

This is the 12th issue of our newsletter which we have issued this year.

Normally, at this time of year we would wish everybody a happy and peaceful Christmas. This year is different. This year we wish you a healthy, happy, peaceful and safe Christmas.

2020 has been a very hard year for everybody. The start of 2020 started great. There was great confidence in the economy. There were job opportunities. Businesses and professions were moving forward. Many businesses and employees were looking forward to a great year.

All that changed in March. We went into lockdown. We then came back out of lockdown in the summer. The figures suffering from the pandemic reduced. Confidence was coming back. That confidence was then dashed as the numbers rose and we went into a level 5 lockdown. We have come out of that lockdown now just before Christmas.

There are positives and there are negatives. The negatives are that the figures are rising. The negatives are that there is concern that come 2021 we will be back into some form of lockdown. The positives are that the vaccines are coming. Hopefully they will be successful in driving the pandemic from our country and from society generally and that we can all get back to living as we did prior to Covid19.

At the same time there are a number of issues which will be affecting employment law Solicitors and personal injury law Solicitors.

In the area of employment law these are;

1. With 350,000 on the PUP the sad reality is that because of the way businesses have been affected or in the future will work there is the potential for a significant number of redundancies which will arise. Some of these will arise because of the way businesses will operate going forward. Others unfortunately will arise because of the businesses going out of business through liquidation.

2. Statutory Sick pay which is good news for employees is due to be introduced in 2021. This will be a significant cost for employers. The bill which was a private members bill proposed 30 days full pay in any 12 month period. The challenge here will be whether this will be less statutory sick pay or will it be a way of the Department of Social Protection avoiding paying sick pay for 30 days. That would be a significant cost to SME's.

3. Additional Parents Leave is proposed from April 2021.

4. The issue of remote working is under consideration. This may be as minimal as a right to request it and have the employer consider such a request. In reality that will not be dealing with the issue. There are a number of issues here. The first is that some employees will want to work remotely. Equally there will be others who do not. There will be others who will like to work remotely some times and not others. For employers the same issues will arise. Employers may want some people working remotely all the time or just some of the time or in the workplace all of the time. The issue is making sure that the interests of employers and employees are fairly balanced. That is going to be a significant challenge. If any right is simply to be a right to request it and have the employer consider such a request then that is not going to address the issue. In reality that right is already there. There is nothing to stop an employee asking for a facility. The only matters that is not there is the obligation for an employer to consider it. However every good employer will consider an application for facilities.

5. The next issue is the right to disconnect. The right to disconnect is already there in Legislation in the Organisation of Working Time Act. Saying this it is probably beneficial if the legislation is more robust and is clearly stated. As matters stand provisions of Sections 11, 12, 13, 14, 15 and 17 along with the holiday law provisions in the Organisation of Working Time Act give significant protections for employees as regards their free time. This would include such simple matters as not working excessive hours, being notified at least 24 hours in advance of

having to take on additional work and the right to uninterrupted holidays.

6. The next issue is that of mandatory pension schemes. This is long overdue. We do have a pension time bomb in this country. This will be good news for employees in that they will get a pension. The bad news for employees is that they will along with their employer be contributing. For employers there is going to be the contribution cost where they do not already provide pension cover. For some employees, particularly those who are younger and on lower pay, seeing part of their wages or salary going to a pension will be something they may not see as a great benefit to them. It will be in later years but initially they will simply see it as a deduction.

Now is the time for employers to be looking at the cost of a number of these issues which will come in place. Larger organisations will have many of these rights already in the conditions of employment of their employees. Smaller companies and particularly those in the SME's will not. This will be a significant challenge to those entities and companies at a time when we head into what is probably going to be a recession. We may buy ourselves out of it through the EU but at some stage the supports for businesses and the economy will cease and unless we are back up and running to a significant extent unfortunately many businesses will struggle in 2021 and any additional costs will cause significant concerns for them. In reality however at some stage these issues need to be addressed and putting them off is simply an issue which kicks the can down the road but the same issue arose as regards the cost when we were in the boom as they will when we are in a recession. One issue which has not been addressed is the issue of maternity pay. Again, larger employers will tend to pay it. In respect of smaller employers some do. Some provide a claw back provision if the individual does not return from maternity or leaves within a set period of time. While the issue of maternity pay is not currently on the agenda it is probably the most important issue for many younger women and is one that does need to be looked at and addressed sooner rather than later.

As we head to 2021 there will be huge challenges. There will also be opportunities in the employment area.

In the area of personal injury work the issue of accidents particularly in workplaces is an issue which we are seeing a lot more of. Remote working is already causing problems As regards eye injury issues with people working effectively full time on screens where before they would have worked partly on a screen and partly on hard copy. In addition, people are spending a lot more time on Skype, Zoom or Microsoft Teams in remote meetings. Again this is additional time looking at a screen which previously would have been in face to face meetings where the same strain issue on individual's eyes would not have been arising.

We are also seeing an increase in individuals complaining of back injuries and back complaints due to poor work stations when working remotely. Again, there is an obligation on an employer, in those circumstances, to have an appropriate health and safety check for each employee to make sure that their work station when they are working remotely is suitable. In March we had an emergency situation. Companies and businesses reacted to stay open and to keep people employed. Employees equally put their shoulder to the wheel to assist the company or businesses survive and operate. We are however now 9 months down the road. We are still in stressful times but the emergency situation is over and now businesses do need to look at making sure that those working remotely do so in a safe way in line with the Safety Health and Welfare at Work Act.

The issue of injuries in the workplace itself is certainly one which is going to arise in 2021. Many businesses will have fewer employees. They will be looking for individuals to do a multiple of tasks. There will be pressure on. That all created an environment when it is more likely that an accident will happen and this is an issue which employers need to be aware of to minimise risk.

Finally, one of the more troubling areas which is arising now is the issue of mental health issues. Stress and mental health issues caused by individuals having to go to the workplace or not go to the workplace, feeling divorced from their workplace, feeling divorced from fellow employees, concern about lack of opportunities and interaction because they are not in the workplace when others might be, stress

caused by isolation coupled with stress where individuals believe they are not as integrated into the workplace as they had been previously are all on the rise. One of the unfortunate effects of the pandemic is going to be that businesses are going to have to address the issue of mental health issues and stress which employees have been under for the last 9 months in many cases. This will be a challenge. It will be challenge for employers. It is equally a challenge for employees. Being sensitive and understanding is going to be vitally important. Finally again we would like to wish you a safe happy, peaceful and healthy Christmas and New Year. We do hope that it will be prosperous for you next year but most importantly that you stay safe.

We as a firm will be available to assist on any employment or personal injury or accident claim issues which you want to discuss with us. We can be contacted at 01 9695781 or at info@grogansolicitors.ie.

We are here to help and will do our very best to help you.

Stay Safe.

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Out and About in November 2020

Richard Grogan of our firm was re-elected to the Council of the Law Society. Richard will serve a further two years on the Council.

Richard's approach is that he is there to represent every solicitor and every firm from the largest firm to the smallest firm and from the longest serving solicitor to the most newly qualified solicitor. The mobile number for Richard is in the law directory and any solicitor

who has any issue which they wish to raise with Richard is free to give him a call at any stage.

Richard was interviewed on Lunchtime Live on 11 November discussing issues around employment law matters for those remote working.

On 16 November Richard was on Claire Byrne on RTE again discussing the issue of remote working but in particular covering the issue of employees who would have gone home to other countries and are now being asked to return to Ireland even where they will then be working remotely in Ireland.

On 20 November Richard presented a seminar to the Tipperary Solicitors Bar Association dealing with the practical issues of both presenting and defending claims in the Workplace Relations Commission. We are always delighted to receive requests from local solicitors to discuss legal issues with them and are always delighted to attend personally, where that is possible or to do so remotely as was in this case by way of a Zoom conference.

On 23 November Richard was quoted about a case involving a meat processing worker who was dismissed in Agriland.

Senior Executives and the Employment Law issues affecting them.

There are many employment law issues which relate specifically to senior executives. These include bonuses, restrictive covenants, onerous clauses in your contract of employment or service agreement, notice periods, settlement agreement terms, stocks and shares, references and particularly in the financial services area these are extremely important, and increasingly whistle blowing.

The breakdown of an employment relationship and problems at work can be stressful especially for a Director of senior executive who invests significant time and emotion into their working life. Difficulties may arise as a result of a restructure, a change in duties and responsibilities, discrimination, bullying and harassment, disciplinary issues or grievances. For Senior Executives finding an amicable

resolution to workplace problems taking into account reputation and financial considerations is a very important fact which we recognise and take into account.

If it is not possible to resolve matters in an amicable way it can be necessary for proceedings to issue.

Our approach in dealing with cases where proceedings have to issue is that we always offer medication at the very start. There is good reason for this. If a matter goes to Court the Court itself will look to see was mediation looked for and sought. Our experience is that where mediation is offered at an early stage and that that offer is taken up by the employer it is possible then to obtain a mediated agreement.

The great advantage of mediation is that it is confidential. We know that the word “confidential” is thrown around quite a lot and that in Ireland there is a view that nothing is confidential. However our experience is that that with a properly accredited mediator appointed with the parties being legally represented that the issue of confidentiality is to the forefront. The mediation document to actually go to mediation will indicate that everything at mediation will be confidential and the parties sign up to same.

For a senior executive the issue of their reputation will be paramount. However, we recognise that the issue of the reputation of the firm or company they work with is equally of paramount importance to them. For them the ability to attract and retain senior executive can be such that it helps getting to a negotiated settlement because the reputational risk for the employer company or firm is actually significantly greater than it is for the senior executive.

The issue which we are finding at the present time is that some solicitors will act for both employers and employees. Of course there will be checks made so that there is no conflict of interest. However, our approach is that we will only act for employees in such circumstances. The reason being is that it ensures that there can never be a conflict of interest. It also ensures that whatever arguements or legal points that we would raise on behalf of the senior executive is not one that we would be worried about raising for fear that it could have a negative impact on a commercial client in a similar type of case.

Our approach is that you either act solely for companies or firms or for senior executives and Directors. That is simply our approach. Others may not agree with it but it is the approach we have taken and therefore we decided that our approach would only be to act for senior executives or Directors in such cases.

Currently we envisage that due to Covid-19 it is being used as an opportunity to dispense with the services of senior executives and Directors.

We expect to see more of these types of cases arising in the next twelve months but we certainly are in a position to support and advice any individual in this situation where their job is at risk in a way which is supportive but at the same time realistic.

Our approach is always that we will discuss relevant issues with you; we will decide with you what course of action to take. We will explain the risks and the benefits. We will not take on a case unless we believe that it is a case where we can add value.

While we will be supportive you will find that we are a straight talking firm. We will tell you what it is whether it is advice you want to receive or not. Our approach is to give you the advice that we believe you need to hear rather than the advice you want to hear. If we do not believe that you have a good case or that we cannot assist you we will tell you so upfront. If we do believe that you have a case we can assist you on and ca add value to you then equally we will be very clear and tell you so.

Bullying in the Workplace

The recent issue in the UK with the UK Prime Minister deciding to stand by Priti Patel and judge that she did not breach the ministerial code over bullying and harassment has been criticised by some employment lawyers.

Sir Alex Allan the advisor on ministerial standards resigned following the decision of the Prime Minister not to sack Ms Patel despite the finding of a cabinet office enquiry of bullying and harassment by the

Home Secretary. The enquiry examined her behaviour in three different government departments being the Home Office, Works and Pensions and International Development. The report found that she had broken the ministerial code and stated she had not consistently met the high standards required by the ministerial code of treating civil servants with consideration and respect.

One of the issues with bullying is that it has a significant impact on individuals. It does not matter how powerful the organisations workplace bulling cannot be tolerated. Bullying fundamentally is about the abuse of power. It is not a male or female issue though admittedly it can often be seen as this as it is the abuse of power which is the relevant issue.

Organisations which tolerate bullying tend to have a high level of attrition which mitigates against good performance and outputs because there is no continuity.

The position in relation to bullying is that whether it's in the UK or here the cases highlight the inadequate state of the law when it comes to dealing with bullying. The only remedy for bullying is that the individual raises grievance. There is no provision for compensation from the WRC for being bullied by way of a decision which can be enforced. Yes, it can result in a constructive dismissal claim where an individual has to quit their employment because of the way they are treated but that means that they have had to cut off their salary or wages immediately and issue a constructive dismissal case. The reality is that very few people can afford to do that.

In the case of bullying unless the bullying creates a recognised psychiatric or physical injury in which case it is possible to bring a personal injury claim there is very little protection for employees. Even in personal injury cases it is a question of trying to shoehorn a bullying claim into a personal injury claim.

The difficulty with bullying is that the definition is quite wide. One person's management style can be another's bullying.

There is also the question as to whether women in power or in senior positions will be judged harsher that a male comparator. The question is will they be seen as being aggressive rather than assertive.

Clearly bullying is a problem in workplaces. It can often be very difficult to actually describe bullying. At the same time employers at least seem to be getting better at recognising it.

One of the issues however in relation to issues of bullying is that where an employer puts in place an investigation and then overturns the investigator it does create issues as to whether the employer actually is intent on eradicating bullying in the workplace. The reality is that the majority of bullying cases are going to be taken against individuals who are more senior than the person making the complaint. Unless there is a policy which is applied fairly and consistently then there is a significant concern that individuals are simply not going to raise grievances. They will keep their head down.

They will say nothing. They will not support fellow employees who do complain and ultimately that kind of culture can either create illness by way of mental health matters which could ultimately end up in personal injury claims or alternatively that good employees will simply leave. Some employers will not care but those who do care about having a productive workplace will seek to address it.

Compensation in Unfair Dismissal Cases

An interesting case is case ADJ-00025023. It involved a special needs assistant. Compensation of €10,000 was awarded for unfair dismissal.

While the case itself is interesting what is more interesting, for those involved in employment law is the fact that the level of compensation was set at this level because of the fact that the employee after the employee was dismissed insisted effectively on only applying for special needs assistant jobs.

The legislation in relation to Unfair Dismissal is that it is a matter for an employee after they are dismissed to seek employment. This does not mean that they limit their applications just to their particular qualifications or experience. Their job, if it can be called that, post termination is actually to be looking for work and it is effectively any work that they would be capable of doing.

Unfair Dismissal Cases – Fair Procedures

This issue regularly arises in Unfair Dismissal cases. It was referred to in the case ADJ-00012704. In this case the Adjudication Officer pointed out that the High Court in the case of Shortt -v- Royal Liver Assurance Limited 2008 EIHC332 is one where Laffoy J outlined that a central consideration to a fair process in an Unfair Dismissal case is whether or not any purported breach of natural justice was "*likely to imperil a fair hearing or a fair result".* The Adjudication Officer noted also the determination of the EAT in the case of Murphy -v- College Freight Limited UD867/2007 where the EAT noted that a disciplinary process does not need to be "*a counsel of perfection"* but rather "*they must be fair".* The Adjudication Officer pointed out that the complainant did receive fair procedures even though there were short comings identified but they were not likely to imperil a fair hearing or a fair result.

The issue in relation to these type of cases, and this would be our view, is whether there is a disciplinary process within the organisation. If there is a disciplinary process within the organisation then following the decisions of the Labour Court it is vital that an employer follows those procedures. If they do not then there is certainly an issue that these are not fair procedures. If they do follow their own procedures fully but those procedures do not comply with the Code of Practice on Grievance and Disciplinary procedures then the issue arises as to whether the procedures were in themself fair so as not to imperil a fair decision.

This case does not set out whether or not the employer had procedures and whether they followed them or whether just the procedures themselves were not fully in line with a Code of Practice.

Unfair Dismissal and Redundancy

The issue of an Unfair Dismissal case in a situation involving redundancy arose in a case of Trinity College Dublin and Ahmad UDD2030.
In this case the dismissal of the complainant was not in dispute. The court pointed out that consequently, having regard to the Act in

Section 6 (1) the burden of establishing that the dismissal was fair rests on the Respondent.

The Court pointed out that the Respondent had submitted to the court that the complainant was dismissed by reason of redundancy.

The court pointed out in the event that the Respondent could establish that a redundancy within the meaning of the Act had taken place the respondent would be entitled to rely on the provisions of Sections 6(4) (c) of the Act. The Court also quoted the provisions of Section 7(2) of the Redundancy Payment Act 1967.

In the discussion and conclusion, the Court pointed out
"The Acts deem a dismissal to be unfair unless the Respondent can demonstrate that it would be neither substantially nor procedurally unfair. Where redundancy is put forward by the Respondent as the reason for termination of the employment it is necessary for the Respondent to establish that the purported redundancy not only meets the definition of that term but that the Complainant was fairly dismissed by virtue of fair selection for redundancy. In that case the argument by the employee was that the procedures afforded to him were unfair."

The Court referred to the case of Gillian Free -v- Oxigen Environmental UD206/2011 where the Employment Appeals Tribunal noted that;

"When an employer is making an employee redundant while retaining other employees, this selection criteria being used should be objectively applied in a fair manner. While there are no hard and fast rules as to what constitutes the criteria to be adopted nevertheless the criteria adopted will come under close scrutiny if an employee claims that he/she was unfairly selected for redundancy... Where there is no grieve procedures in relation to selection for redundancy... Then the employer must act fairly and reasonably"

The Court pointed out that;

"The Court accepts, on balance, that the requirements of the university for the work the complainant was carrying out had ceased due to lack of funding for that role and that therefore was a cause of termination of

the complainant's employment. On that basis the Courts find that there was a redundancy situation. However, the Court notes that he was no longer on a specified purpose contract and was now on a contract of indefinite duration. It is clear to the Court that sufficient efforts were not made to seek alternative roles for him, the Court therefore, cannot accept that his dismissal by virtue of fair selection for redundancy had been discharged by the respondent and consequently finds that the complainant was unfairly dismissed."

This decision of the Labour Court is very clear and very precise. Even in a redundancy situation it is necessary for an employer to apply fair procedures. That is not only in relation to the selection process but also in relation to the dismissal itself. At a minimum it would be our view that the code of practice on grievance and disciplinary procedures must be applied to the employee. If the employer has a disciplinary process which is more extensive then in those circumstances that process effectively has to be applied. It might be said that a person being made redundant has done nothing wrong and why would the disciplinary process be applied. Effectively, it is the disciplinary process applying on the basis of no wrongdoing but just that the role is being made redundant. Therefore, that would give the employee the right to advance notice, a right to be represented, a right to be notified of same, a right effectively to be given an at-risk letter and a right of appeal.

It is likely there are going to be a significant number of cases coming forward where an individual has been made redundant but will also be claiming unfair dismissal subsequently because of the fact that fair procedures were not applied.

In this case compensation on top of the statutory redundancy was awarded.

Mitigation of Loss in Unfair Dismissal Cases

This issue of mitigation of loss in Unfair Dismissal cases was very clearly set out by the Labour Court in case UDD2028 being a case of Connemara Marble Industries Limited and Anne Marie Lally.
The Court in that case stated;

"The other factor that the court must take into account in determining compensation is the extent to which the complainant sought to mitigate her losses. From the time of her dismissal to June 2019, the only job secured by her was for one day per week from March 2017 to October 2017. In a period of significant growth in employment opportunities, this is difficult to understand. While the complainant noted she had made many informal enquiries at the time, the only actual evidence of active job seeking in that period produced to the court were 13 written job applications. As the respondent pointed out, the level of requirement on a dismissed employee to seek alternative employment is very significant and was put very well by the Employment Appeals Tribunal in Sheehan -v- Continental Administration Company Limited where the tribunal noted that "the time that a claimant finds on his hands is not his own, unless he chooses it to be, but rather to be profitably employed in seeking to mitigate his loss".

The above is a very clear and definitive statement by the Labour Court as to the manner in which a dismissed employee must act to mitigate their loss.

Effectively, once an employee is dismissed their new job is looking for a job. If they cannot do so or do not do so or cannot produce evidence of having applied for jobs then in those circumstances this has to be taken into account in setting compensation.

It is therefore imperative if any employee is dismissed that they not only look for work but keep a detailed record of having looked for work. Employees who are dismissed must show their efforts to mitigate their loss in Unfair Dismissal cases. Failure to show mitigation of loss in Unfair Dismissal cases may result in a Court or Tribunal being limited to giving just 4 weeks salary due to the way the Unfair Dismissal Acts 1977 – 2015 are drafted.

Constructive Dismissal - Importance of Following Procedures

The issue of following procedures arose in case ADJ-00026427. The Adjudication Officer in this case helpfully noted the case of EAT case UD142/1987 Beatty -v- Bayside Supermarkets where is stated;

"The Tribunal considers that it is reasonable to expect that procedures laid down in such agreements be substantially followed in appropriate cases by employers and employees as the case may be, this is the view expressed and followed by the Tribunal in Conway -v- Ulster Bank Limited 474/1981. In this case the Tribunal considers that procedures were not followed by the claimant and that it was unreasonable for him not to do so. Accordingly, we consider that applying the test of reasonableness to the claimant's resignation he was not constructively dismissed".

In this case the Adjudication Officer found that the employee had failed to utilise and exhaust the grievance procedures as it required. In constructive dismissal cases it is imperative that employees use the internal procedures. Many will say that using them would not have made any difference. That is an opinion. Unless the employee can actually prove this, they have significant difficulties in getting a constructive dismissal case over the line where the grievance procedure has not been used.

Redundancy Restrictions Extended

On 26th November it was announced that the right to claim redundancy has now been extended to 31 March 2021. This was fully expected. This is the third extension of the restriction on claiming redundancy for those who are on lay-off or short time.
For those employees who are on lay-off there is the annoyance of the delay but that is about it. They will be able to claim redundancy at their normal weekly wage when the restriction is removed.

For those who are on short time however the position is different. Where those individuals had been working since March or as late as June or July on short time then there will be an arguement that their wages will be, from calculation redundancy, their short time wages not what was their prior to Covid 19 wages. The reason for same is that the calculation under the Redundancy payment Acts refers to the normal weekly wage in the period just prior to the employee being made redundant.

There is a view that the Regulations could be used as regards Regulation 20 in the Schedule of the Redundancy payment Act 1967

to include a period of 52 weeks so as to bring them back to their normal wage. However where somebody will be on short time for 52 weeks at the time that the right to claim redundancy arises or when they claim redundancy then in those circumstances it is probably going to be argued, by employers, that their normal weekly wage is their short time wage not the pre short time wage.

The Government have announced that the reason for this restriction is to avoid companies being made insolvent. That of course is complete and utter rubbish. Under the Insolvency Directive the obligation to pay statutory redundancy falls on the Department of Social Protection. The extension of the right to claim redundancy is nothing to do with protecting businesses. It is to protect the Department of Social Protection. The Department of Social Protection will be looking to restrict the right to claim redundancy for as long as possible. Expect the next move being to reduce the cap on redundancy. Currently the redundancy is capped at a wage of €600 per week. It may well be that an attempt will be made to reduce that to €450 or €500. Of course there are a significant number of people currently on the PUP. The extension to 31 March is really putting a four month period on it. In reality we would expect the Government to try extend it again into the middle of next year and possibly back up to October of next year. Everything that can possibly be done by the Government to restrict the claims for redundancy will be done. The issue will be however that once the PUP finishes and the EWSS there will be calls for individuals to be entitled to get their redundancy payments.

At the present time there is a significant number of individuals who are not working, who will never return to the workplace, where even the workplace has closed and has no intention of reopening where they cannot claim their redundancy payment and move on.

This is a fact of life. It is extremely hard on those who would need that redundancy payment to be able to move on.

Redundancy - Change of Location

This issue arose in a case of L Connaughton & Sons Limited and Yvonne Healy RPD 205.

The facts are relevant.

The employee was employed and an Office Administrator in the employer company in their warehouse at Grand Canal Quay Dublin. She lived in Wicklow and travelled to work by train. The company moved the business to Clonsaugh. The employee could no longer commute to work by train. She requested Redundancy and was refused. The employer contended that the new location was within 10 Kilometres of the previous location and that the employer was willing to collect the employee at the train station at her usual starting time with her return journey each working day to leave her back there at her usual time.

In this case the Labour Court held that while there was a move within Dublin there is a difference in terms of place for an employee who commuted by train but then found that her employer was relocating to a place where there was no train links and which is considerably further from her home. The Court said that in circumstances of the commuting difficulties in Dublin this represented a major change to the terms of her contract which most rational people would regard as a change of such significance would effect the employees ability to continue to work for the employer.

The Labour Court affirmed the decision to provide for Redundancy.

The relevant Legislation is in Section 7(2)(b) which relates to business ceasing or diminishing in the place where the employee works. There is a provision in Section 15 which allows for a brr on Redundancy claims where an appropriate new contract is provided.

Most employment contracts will have a provision in them which provides for an employee agreeing to change location. However, any change must be reasonable. This will depend on the particular facts. It will also to an extent depend on the location of an employee.

While it is not an issue that was raised in this case, the particular issue of change of location is likely once the Pandemic is finished or during it to arise more often. As businesses move to remote working either full time or part-time for all or some of the staff it is likely that business will seek to move offices. This will then give rise to issues of Redundancy claims.

It must of course be remembered if a business is moving location that is not of itself a ground for an employer to make an employee redundant. It is a matter for an employee in those circumstances to seek Redundancy. Cases involving particularly a change of location is always going to depend upon how much of an additional commute the employee will be subjected to. Limited commute times will not result in Redundancy claims being successful. Longer ones will.

There is no hard and fast rules in these cases. There is no guide that would say that five minutes is ok but twenty minutes is not.

These cases will depend on the particular circumstances of the particular case and often also the particular circumstances of the employee. By this we mean that you could have a situation where one employee travels by bus or train. The other employee travels by car and has car parking place. The location changes. The employee who travels by public transport and does not have access to car parking has an additional twenty-minute walk to get to work. By this we mean that if you have two employees, one who is travelling by public transport and does not have a car and another who has a car and is provided with car parking on site have a change in location that the additional commute time may be exactly the same but the person who is provided with a car and car parking space may not be in a position to claim Redundancy whereas the other individual who is travelling by public transport who has the additional commuting time where they have to walk in foul or fine weather.

Each of these cases will depend on the particular circumstances of the particular case.

Redundancy - Suitable Alternative Employment

This issue arose in case ADJ-000026793. The case involved a security guard and a security company. The complainant contended that he was entitled to a redundancy payment as the Respondent removed him from his job on a particular site and failed to offer him reasonable alternative employment. The Complainant in this case was a static security guard. He was informed there was no work for him on the site he usually worked at. He was given no reason except that the client

did not want him here and the Respondent offered him alternative work in Limerick which was well away from his home in Galway. Work was offered in Galway but at 50% of the hours. The Respondent contented that this was reasonable.

The Adjudication Officer referred to Section 7 and Section 15 of the Act. Section 15 (2) (c) refers to the offer constitutes an offer of suitable employment in relation to the employee.

The Adjudication Officer in this case held that the offer of re-engagement was alternative employment with very different and less favourable conditions and that it was not unreasonable to refuse the offer. In the circumstances redundancy was awarded.

This is the type of issue which is likely to arise in cases on a reasonably regular basis particularly post Covid where a business may be closing down in one location but moving to another.

Protected Disclosure Act 2014.

An issue arose in relation to this Act in the case of Connemara Marble Industries Limited and Frances Murphy. The reference is PDD2006. In that case the employee referred to the case of *Babula -v- Waltham Forest College 2007 ICR1026* where the UK Court of Appeal determined that the fact an employee may be wrong in their belief is not relevant provided their belief is reasonable and the disclosure to the employer was made in good faith. The case of *Aidan and Henrietta McGrath Partnership -v- Anna Monaghan PDD162* was referred to on the 'but for' test and said that the employee would not have been refused but for her refusal to operate an illegal act and reported that to her employers which related to being treated poorly in work, locked out of the office or suspended.

The Court referred to the relevant Legislation in particular Sections 2,5,6 and 12 of the Act. The Court stated that it follows that a complaint under the 2014 Act must demonstrate firstly that they made one or more Protected Disclosures, secondly that they suffered a detriment and thirdly that there was a causal connection between the first two matters.

The Court pointed out that the fact that no mention was made of the term protected disclosure prior to this does not mean that matters raised before this time are not protected and referred to the decision of Mr Justice Humphreys in the case of *Clarke -v- CTI Food Services Limited 2020 IEHC368* where the Court stated;

"One can make a Protected Disclosure without invoking the 2014 Act or without using the language of 'Protected Disclosure'. It is often only after the victimisation, dismissal or other adverse consequence arise that one has to retrospectively figure out what really happened and analyse it in the statutory language. There is nothing wrong with that process and it is certainly different from retrospectively creating a case from nothing"

The Court looked at the question as to whether refusing to work a cash till amounted to a Protected Disclosure within Section 5. The Court referred to the case of *Baranya -v- Rosderra Irish Meat Groups Limited 2020 IHC560* where Mr Justice Regan stated;

"Although the concept of a Protected Disclosure is effectively a term of art as defined by the 2014 Act, the word 'Disclosed' has the ordinary meaning of to 'reveal' or 'make known'. In this context the statement that the communication did not disclose any wrongdoing on the part of the respondent is, in fact, factually correct as the communication by the appellant, as found by the Labour Court, did not reveal or make known any wrongdoing on the part of the respondent. In those events it was not possible to read into the communication any reasonable belief of a relevant wrongdoing on the part of the employer".

This is a very useful decision for setting out the law in some detail.

Protection of Employees (Temporary Agency Work) Act 2012

The issue as to what the protections under that act applies to arose in a case of CPL Solutions Limited trading as Flexsource Solutions and Wrodarczyk. The employee originally won the case in the WRC where a sum of €2,500 was awarded. The claim by the employee was that he was not provided with the same conditions to which he would have been provided had he been employed directly by the hirer in that he was not allowed to bring a representative chosen from among

employees of the hirer company but was instead instructed to bring a fellow employee of the agency.

The Labour Court looked at Section 6(1) of the Act and set out that it provides that an agency worker is entitled to the same basic working and employment conditions. The Court then looked at the provision of Section 2 which sets out what those basic working conditions are. The Court pointed out that nowhere in Section 2 does it make provision for a right of representation. Accordingly, the Labour Court overturned the decision of the Adjudication Officer.

This might not appear to be the most important case ever but it is actually very relevant in that it is important in looking at these claims that the protections, in the Act only relate to the provisions that are actually set out in the Act.

Parental Leave

Currently, parents are entitled to two weeks' Parents Leave during the first year of a child's birth or adoption. Parents receive the benefit of €245 per week. There is no requirement on employers to top up this benefit.

Employers cannot refuse this leave although they may in limited circumstances postpone it.

In Budget 2021 it was announced that the Leave and the state benefit would be extended by a further 3 weeks. This means parents will be entitled to five weeks Leave.

Legislation has not been enacted yet but it is expected that this will take effect in April 2021.

The benefit will apply to any child born or adopted after 1 November 2019. The time frame for availing of the leave has been extended from 12 months to 24 months. On that basis parents who took the two weeks leave and benefit prior to April 2021 will be entitled to the extended benefit once the changes come into effect. This however will be subject to the 24 month time frame.

Mediation – Workplace and Employment Disputes

As a boutique employment law firm we know that where there is a relationship in the workplace there is a possibility for employment disputes. This may involve performance issues, discrimination, bullying, harassment or sexual harassment.

Richard Grogan of our firm is an Accredited Mediator from the Mediators' Institute of Ireland and is a CEDR Accredited Mediator.

Mediation is a voluntary but at the same time a totally confidential process.

Mediation is an ideal way to help employers and employees resolve their issues and to help them to rebuild their working relationship.

Mediation helps get matters resolved without the necessity of going to Court or the Workplace Relations Commission.

Mediation is quick. It is confidential. The role of the mediator is there to work with employers and employees for them to reach an agreement, and if it is possible to do so, to resolve any matters.

The mediator is independent. The mediator is not there to represent the employer or the employee. The mediator is there to help both reach agreement.

In some cases the employer and the employee might be represented by Solicitors or by a Union or possibly by both. In other cases they will not be. Neither situation changes the role of the mediator which is there to seek to get matters settled.

The benefit of mediation is that it is non confrontational. It is there to let both parties set out their case in a balanced and fair way. A mediator does not act as a Judge or Arbitrator but more as a facilitator but at the same time making sure that the mediation is dealt with in a way which is fair to both parties and is done in, as we have said, in a non confrontational way.

We only provide mediation services in the employment area. We have significant experience in this area. We can use that experience to keep all parties focused on the issues which are in dispute.

For further information on our mediation services we can be contacted at 01 9695781 or email us at info@grogansolicitors.ie.

Mediation

Mediation – Fees and Costs

In our mediation services it is important that we set out very clearly what our fees and costs will be.

Firstly, we are happy to agree a fee in advance of the mediation and this will be set out in an agreement to mediate.

The costs may be paid by one party by agreement or may be shared by the parties.

In employment cases normally the employer agrees to pay the mediation in relation to a workplace dispute.

The fees and costs of mediation shall be reasonable and proportionate to the complexity of the issue and will be agreed in advance.

Presenting claims to the WRC – Use of the WRC claim form

This issue arose in a case of Stanislawska & Jaguar Landrover Ireland ADJ-00023582.

An arguement was made by the Respondent that the WRC had no jurisdiction. The arguement was that the WRC had no jurisdiction where the Claimant, at the material time, issued her complaint not under the Employment Equality Acts but under the Equality Status Act. This arguement was made under Section 41 of the Workplace Relations Act 2014. The respondent referred in support of this to the case of an Employee –v- A Supermarket ADJ-00007376. The Adjudication Officer pointed out that the Respondent had pointed out

that the WRC is not always consistent in this and referred to a case of McCormack –v- Powercity ADJ-00003730 but contended that that case was wrongly decided on the basis of the wording of Section 41 of the Act. The Responded cited the decision of the Supreme Court in County Louth Vocational Education Committee –v- Brannigan 2016 IESC40 which it was submitted is authority for the proposition that once an outline of the main complaints is made under the appropriate Statutory Provision then it is open to an Adjudication Officer to allow further details to be provided even where such details are not provided on the form. The Respondent relied on this decision and the statutory wording underpinning the holding of WRC hearings in order to impugn the jurisdiction of the WRC to proceed with the complaint.

The Adjudication Officer pointed out that the respondent had submitted their interpretation of the Brannigan decision had been endorsed and accepted by the WRC in the case of an Employee –v- An Employer ADJ-00024725. The Respondent submitted that the failure of the Complainant to present a workplace relations complaint form identifying a complaint under the Employment Equality Act meant that it was ultra vires for the WRC to proceed to hear this complaint.

The Adjudication Officer pointed out that the Adjudication Officer was satisfied that the narrative in the complaint form clearly showed the nature in the substantive claim being made by the complainant and that it as clear that in submitting the compliant the complainant had ticked the wrong box on the initial complaint form. The Adjudication Officer placed significant reliance on the Supreme Court case of Co. Louth VETC –v- Equality Tribunal 2016 IESC40. In that Judgement Mr. Justice McKechnie explained the status and importance of the EE1 Form which was used by the Equality Tribunal at that time. In paragraph 9 of the Judgement he summarised the finding made by McGovern J in the High Court as follows;

"*That the EE1 Form which has no statutory footing and which was merely an administrative document had as its purpose the setting out in brief outline of the nature of the complaint as such, a complainant was not limited to its contents. That as a result, by analogy with the Court proceedings, there was no reason why the claim as formulated could not be amended so long as the general nature of the complaint remained the same...".*

The Adjudication Officer pointed out in paragraph 2 of the Judgement Mr. Justice McKechney further stated;

"I agree with the view that there is nothing sacrosanct about the use of an EE1 Form to activate the jurisdiction of the Tribunal. I see no reason why any method of written communication could not, in principle, serve the same purpose".

The Adjudication Officer pointed out that the Adjudication Officer did not accept the respondent's narrow interpretation that it is necessary for an employment related complaint to be submitted in a particular format or on a specific form.

The Adjudication Officer pointed out that the WRC complaint form is not a statutory form therefore according to the Brannigan case the WRC is not required by the Legislation to comply with any strict legislative requirements of form and substance. The Adjudication Officer pointed out that they were satisfied that there is nothing in Section 75, 77 or 79 of the Employment Equality Act, to suggest that a complaint must be submitted to the Director General of the WRC in a strictly specified form or substance and was also satisfied that no regulations have been made by the Minister under Section 79 (4) of the Employment Equality Act.

An issue had been raised about the fact that a complainant had legal advice at the time that the complaint was submitted but it was pointed out by the Adjudication Officer that it was submitted by the Legal Aid Board who at that time was supporting the complainant in an advisory capacity and had no subsequent involvement or representation of the complaint.

This is an important decision of the WRC. The issue about a person having legal representation or any form of representation in line with the other matters set out is probably irrelevant in our view.

The WRC has no statutory complaint form. There are no Regulations regarding how a complaint is to be submitted. The Adjudication Officer is absolutely correct on this point. In theory it would appear that a complaint can be issued on a simple piece of paper setting out what the complaints are, in very broad terms, without specifying any particular Act. The issue then is what happens if a particular Act is

referred to. Again, because this is not a statutory form there is no rules or regulations as to how it is set out and the fact that an employee or complainant ticks the incorrect box or does not tick a particular box in no way impacts on the complaint. One of the difficulties with the WRC complaint form is that it is cumbersome. It is not particularly user friendly. It would appear following this decision that if a complaint is lodged and subsequently written submission is put in within the 6 months in respect of which a particular complaint has been made that the written submission in itself will actually form part of the complaint. This may be one reason why those representing employees will seek to lodge complaints and thereafter the submission at the earliest possible date.

However, there is a lack of consistency in relation to this issue and an interesting case on this is a case of a Transport Manager and a Transport Company ADJ-00025200. While the issue was not argued in that case similar to the previous case in relation to the status of a particular complaint the employee in this case issued a claim under the Minimum Notice and Terms of Employment Act seeking in accordance with the terms and conditions of his contract of employment 6 months notice. The Adjudication Officer in this case pointed out that the complaint was a complaint in reach of the Minimum Notice and Terms of Employment Act 1973 and that section 4 of that Act provided at the termination of employment an employee is entitled to certain periods of notice depending on their length of service and that employees who have more than 13 weeks of service are entitled to notice on a graduated basis from one week to eight weeks after more than 20 years of service. The Adjudication Officer concluded that the complainant had less than 13 weeks of service and therefore was not entitled to notice. In our view if this case had been taken under the Payment of Wages Act there may well have been an entitlement to the contractual notice. Therefore the issue in a case like this is whether or not the Adjudication Officer, and we have not seen the complaint form, could reasonably have said that this claim would have been brought under the Payment of Wages Act and not under the Minimum Notice and Terms of Employment Act 1973.

The alternative arguement can be made here effectively that it is important that the employee nominates the correct Act under which to bring a complaint.

In the case of any doubt of course the better course is to bring a claim under every possible Act that the employee believes they have a claim under. The alternative if there is any doubt is to submit, very quickly, and within the six month period a submission which sets out the facts of the complaint but without identifying any particular Act when setting out the relevant facts and requesting that the submission document be treated as a complaint and associated with the previous complaint as lodged.

It might be useful however for the WRC to set out some guidance notes as to what is going to happen where a person lodged a complaint and where the complaint if taken under a different Act would have been a legitimate complaint.

This is particularly so as the WRC is an inquisitorial process and therefore there is an arguement in itself that the requirement to specify a particular Act should be part of the inquisitorial process rather than on the employee having to specify a particular Act.

In relation to the second case we are certainly not raising any complaint in relation to the Adjudication Officer as no particular arguement appears to have been made to the Adjudication Officer that it should have been moved to a different Act. Although at the same time it would be useful if there was a clear and definitive statement by the WRC as to how complaints will be dealt with in those circumstances.

The WRC do not follow procedures.

Well of course they follow procedures. However, they follow the wrong procedures.

In relation to the case of Minister for Justice, Equality and Law Reform and the Commissioner of An Garda Síochána Applicants, the Workplace Relations Commissions, Respondent and Ronald Boyle and Others, Notice parties. The then Mr Justice Frank Clark now chief Justice Clarke delivered the decision of the Supreme Court on the 15th June 2017.

In that case at Paragraph 7.12 of the judgment it was stated;

"In that context it is also said, correctly so far as it goes, that the procedure before the Tribunal is inquisitorial whereas the procedure before the High Court is adversarial"

The relevant Legislation being the Workplace Relations Act 2015 in Section 41(5) sets out that an Adjudication Officer shall;

" (i) Inquire into the complaint or dispute.
(ii) Give the parties to the complaint or dispute an opportunity to;
- *(i) Be heard by the Adjudication Officer and;*
- *(ii) Present to the Adjudication Officer any evidence relevant to the complaint or dispute;*
- *(iii) Make a decision in relation to the complaint or dispute in accordance with the relevant redress provisions…"*

That is no the procedure being applied by the Workplace Relations Commission.

The procedures adopted by the WRC are in effect adversarial. The party bringing the complaint or the Respondent to the complaint are required to give evidence. That evidence can be dealt with by way of examination and cross-examination. The Adjudication Officer can of course ask questions. However, they do not operate an inquisitorial process.

The Labour Relations Commission was a pure inquisitorial process. There was no examination and cross-examination. The Rights Commissioners heard the case. They listened to the arguments on both sides. If there was evidence to be given they would ask the questions. If there was questions that needed to be asked of a particular witness for an employer or employee they would often allow the representatives ask their client the relevant question. If it came to cross-examination however, that cross-examination was undertaken by the Rights Commissioner with the representative of the other party asking the Rights Commissioner to put certain questions.

In the Equality Tribunal they operated an inquisitorial process as well. The Equality Officer would have read the submissions. They would come in with a list of questions. If there was any question that a party believed had not been put to them they could say it themselves or their representative could ask that their client would give evidence on

a particular matter. Some cross-examination was allowed but only to the extent that a matter had not already been covered by the Equality Officer and even then it was not cross-examination as normally dealt with. It was matter for the Equality Officer to decide to what extent any cross-examination would be required.

In the WRC we have a situation where they have rules that say documentation should be produced in advance. It is not. The reality of matters is that in a minority of cases the Adjudication Officer has read the documentation in advance. There is no question of an Adjudication Officer opening up matter, with a few exceptions, by seeking clarification on matters or raising questions themselves. It is run very much as an adversarial system.

In an adversarial system in the High Court or the Courts generally a party who wins their case will get their costs because of the fact they incurred the expense of getting representation. In the WRC they contend that representation is not necessary yet at the same time they run a full adversarial system.

The Legislation governing the WRC is very clear it requires the Adjudication Officer to inquire into matters. This is the view taken by the Supreme Court that this is an inquisitorial process.

Despite what is in the Legislation and a Supreme Court decision the approach of the WRC is effectively to ignore both the Legislation and more importantly more so the determination of the Supreme Court as to what process they are to apply.

Effectively the approach of the WRC is to give two fingers to the Legislation and to the jurisprudence of the Supreme Court.

There is a small minority of Adjudication Officers who apply the inquisitorial process. They are people who have read the submissions in advance, and are coming in seeking the relevant information on which to make a decision. Even those Adjudication Officers can be frustrated at times due to the fact that parties do not lodge their documentation in time.

Some Adjudication Officers take the view that it is a matter for them to set out the procedures which are going to apply and by that we

mean effectively an adversarial process. Others contend that it is a matter for the employee to set out their claim in full detail rather than having to have them investigate an inquiry into the process. The majority of the Adjudication Officers take the view where there are records that that is a matter for the other party to highlight where there may be any defects rather than the Adjudication Officer themselves to go through the documentation.

When the Employment Appeals Tribunal was originally formed it was on the basis that it would be a lawyer free zone. The EAT became a lawyer zone.

When the WRC was being formed the then Minister announced that this was going to be a world class service. Many of us took that comment on face value. We were told that there would be a research facility and there would be clear guidelines and documentation so that effectively lawyers would not be needed as it was going to be this leading-edge process. What we have received is a third world service.

There are no comprehensive guides. The guides which are produced by the WRC on the law have a nice disclaimer provision in it. They take no responsibility. They have a help number that people can phone but again they take no responsibility if they get it wrong, and often their advice is wrong. There is no comprehensive research facility in relation to decisions. The Labour Court before the WRC highjacked their website had a very comprehensive and well thought out website. You could check cases by name or by section or even subsection of particular Sections of an Act or if you knew even the names of the representative you could check matters. No such facility is in the WRC. What they have is a list of decisions that come out on various stages that are of a limited value to try and research down by way of Act and certainly they do not cover matters by way of Section and Subsection.

The whole issue in relation to how cases in the WRC are run is highly questionable. We have said that they have effectively given two fingers to the Legislation and to the Supreme Court. The reality is that that is exactly what they have done. They do not operate an inquisitorial process. Their procedures are adversarial. Examination and cross-examination are the order of the day.

We make no bones about matters but that we are looking for the right case to bring to the High Court and if necessary up to the Supreme Court on this issue. The WRC cannot be allowed in a situation where they disregard the Legislation and they disregard the decision of the Supreme Court. They are allowed set out their own procedures. Any Tribunal is entitled to do so. However, they cannot do so in an excess of the Statutory provisions. That means that they cannot impose their own will to have an adversarial process when the Legislation provides for an inquisitorial process.

We will see how matters develop but the right case is going to result in a judicial review of the WRC. If we are right then the WRC is completely wrong and will mean that they will have to completely change their procedures to comply with both the decision of the Supreme Court and the Legislation. Even if the Legislation is changed it is difficult to see how it could be without providing for Legal Aid and equally in an adversarial process for a completely different procedure to include issues such as discovery.

It will be interesting to see how matters develop. We do not of course blame the Adjudication Officers who are in a very difficult position.

Factory Accidents and Meat Processing Injury Claim Solicitors*

If you have suffered an accident in a factory or food and meat processing plant, you may have certain questions. You may want to know is your employer liable. You may want to know whether you are able to make a claim for the injury you suffered. Factory accidents and meat processing injuries are rising unfortunately.

Investigating a claim for negligence

Factory accidents and accidents at work involving meat processing equipment are common. This is because of the nature of the risks with the job. As factory accidents and meat processing injury claim Solicitors we are here to help.

Many accidents in meat factories are due to having to handle or carry excessive weight which is too heavy for you.

In some cases employees will find it is not possible for them to work as quickly as they are expected to by their employer. This can happen where they are wearing protective clothes. This can result in hand injuries from knives and other cutting implements. As factory accidents and meat processing injury claim Solicitors this is an issue we see a lot.

In many cases those working in meat processing plants do not have English as their first language. They may have been trained in certain areas of Health and Safety but because of the language differences may not have properly understood what was involved or expected, which can cause accidents to happen.

Employees are often trained and shown an ideal way of doing the work. Then the employee is expected to work at such a speed that it is not possible to work in the way they were trained. This is because targets which are set. Because of the pressure of getting the work done corners can be cut and safety polices not followed. This is often seen by managers. It is not stopped because they want to get the work done as quickly as possible.

In these types of cases the factory owners will often say that the employee was responsible for or at least contributed to the accident. When a Solicitor looks at this they will check the paperwork was in order first. It may well be. They will check that training was provided. It may well have been. We as Solicitors will look at how an employee actually worked on a normal day and how the management of the site safety was looked after. This shows that the Health and Safety procedures were not followed at times and particularly on the day that the accident happened. As factory accidents and meat processing injury claim Solicitors we are here to help.

Contact us.

You can contact us by phoning us on 01 9695781 where an experienced Solicitor will discuss your case with you. You can also email us on info@grogansolicitors.ie and we will get back to you very quickly.

A compensation accident claim by an employee may be that a pre-existing condition has been aggravated

An employee injured while working may make a compensation claim to secure benefits and compensation. The benefits would include the loss of earnings and the medical expenses incurred. The compensation is for the pain and suffering you have suffered.

A common defence from an employer is that an injury did not result from the accident but rather was the result of a pre-existing medical condition.

If you are injured in a work-related injury you may be surprised to find your employer and their insurer may attempt to deny your claim.

The situation can be made even more difficult if you had previously suffered from a similar injury. In such a situation you need the help of an experienced Personal Injury Solicitor who will help you receive the full benefits and compensation you are entitled to under the law.

In such cases it will be important to obtain medical evidence to support your claim. The medical evidence from a specialist consultant with extensive experience and training in the area relating to your injury will be able to determine to what extent an accident did aggravate a pre-existing condition and how that may affect a compensation accident claim by an employee that a pre-existing condition has been aggravated.

If that can be shown then in those circumstances you are entitled to compensation.

The approach of a Personal Injury Solicitor is to get you the compensation which you are entitled to. This is the compensation for the actual injuries sustained by you and for how it affected you.
In any Personal Injury the start is to go through with you exactly how cases run, what your rights are, and what the costs will be. It is only when you have had that meeting with a Personal Injury Solicitor that they start acting. There is no obligation on you to talk to a Solicitor about making a claim.

Damages in Personal Injury Cases – Were the Injuries Catastrophic?

This issue arose in the case of Oliver Bennett –v- John Cod and Wallace Taverns Limited 2020 IEHC554.

The facts of this case were that the plaintiff was a visitor to a public house. He was the victim of an unprovoked by a customer in the public house. The Plaintiff claimed that the second defendant, being the owners of the public house, failed to prevent or to protect him from the assault. The liability in this case was not contested. The issue was whether the injuries suffered were catastrophic injuries.

Mr. Justice O' Hanlon considered the extensive evidence and the medical and therapy reports having regard to the economic climate in the country and to the circumstances concerning both defendants and also to the Book of Quantum. The Court found that the plaintiff had suffered a significant life threatening injury. The Court found that this resulted in him having serious consequences for his life including the amenities and would continue into the future including his capacity to work in the future would be significantly diminished. In this case the Court deemed the award of general damages to be €150,000 for pain and suffering to date and a further €50,000 for pain and suffering into the future. In addition, special damages which are in effect the loss which the Plaintiff would have incurred amounted to €31,663.02 making a total award of €231,663.02. In this case the Court held that while the injuries were extremely serious, the injuries were not catastrophic within the context of the law as it stood even though they have life altering consequences and a huge limitation on his life and capacities as was outlined in the medical reports.

The employee in this case had suffered a life threatening head injury as a result of which he would be left with long term neurological deficits. The Plaintiff as set out in the decision has issues with reading and is limited to travelling within his own locality.

The Court set out that the purposes of an award of damages for personal injuries is to put the injured person in the same position, so far as money can do so, as if the injury involved had not happened.

Where injuries are profound then it is very difficult to achieve in practice and an award of money could only be viewed at best as an approximation of what the law is intended to achieve. The decision of McDonagh –v- Sunday Newspapers 2018 2 IR79 was referred to.

It was argued on behalf of the plaintiff that with regard to the award of general damages since the case of Sinnott –v- Quinnsworth the Supreme Court had identified a monetary cap on the quantum of awards for such damages. The case of Morrissey –v- Health Service Executive 2020 IESC6 was referred to where the Supreme Court identified the sum of €500,000 as;

"The limit on general damages for pain and suffering". On behalf of the Plaintiff it was pointed out that in fixing the limit the Supreme Court had played down a number of general principles which should guide a Court in assessing the value of general damaged;

The Court would approve the statement of principles by Chief Justice O Higgins in Sinnott –v- Quinnsworth to the effect that general damages are intended to represent fair and reasonable monetary compensation for the suffering and inconvenience with which a plaintiff is afflicted by reason of their injuries.

Secondly, in doing so the Court also referred with approval to the dictum of Griffin J in Reddy –v- Bates in which Mr. Justice Griffin recognised that where damages are to be assessed under several headings it is necessary to consider whether the total sum awarded is in the circumstances of the case fair compensation for the plaintiff for the injuries suffered or whether it is out of all proportion in such circumstances.

The third issue was that the Courts recognise that where there might at least be something approaching a broad consensus among the public generally as to the relative seriousness or otherwise of certain injuries the precise translation of any particular set of injuries into a sum of compensation is necessarily somewhere subjective.

That there are relatively few reported judgements which address the assessment of general damages in personal injuries action in detail.

Fifthly, that the Supreme Court has held that while an award of damages is an imperfect mode of compensating a plaintiff however it is the only method available.

This is an important decision of the Court dealing with the issue of catastrophic injuries.

***Before acting or refraining from acting on anything in this Newsletter, legal advice should be sought from a solicitor.**
****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**