

## **How do you make a Personal Injury Claim\***

A Personal Injury Claim is the legal action taken by a person where they have been involved in an accident or injured because of the negligence of another party for acting or failing to act in a proper way.

## **What are the types of Personal Injury Claims**

The most common Personal Injury Claims\* are:

Road traffic accident claims - A road traffic accident claim is the result of any type of accident or injury caused on the road by road users. It includes drivers of vehicles, passengers in vehicles, and, pedestrians, motorcyclists, and, cyclists.

There are various types of claim and these are usually

- Car accidents
- Side impact collisions
- Collisions caused by one vehicle hitting the rear of another vehicle
- Incorrectly or poorly maintained roads
- Bicycle accidents
- Bus accidents
- LUAS accidents
- Motorcycle accidents
- Passenger accidents
- Pedestrian accidents
- Taxi accidents
- Uninsured drivers – hit and run accidents

## **Workplace accidents**

A workplace accident (which are known as employer liability claims), are any accident, or, injury caused in the workplace where the accident or injury is a direct result of the negligence of the employer or a fellow employee. This can often be down to the fact the proper health and safety assessments have not been put in place, lack of training, or, often due to lack of safe systems of work. These type of accidents include

- Building site accidents
- Dangerous or improperly maintained machinery accidents
- Forklift accidents
- Repetitive strain injuries

- Lack of personal protective equipment\* such as helmets, boots, gloves, visors, and, eye protection
- Back injuries at work – often due to heavy lifting or incorrect workstations
- Manual handling injuries

## **Accidents in public places**

Accidents in public places which are known as Public Liability Claims are accidents or an injury caused in a public place which are a direct result of the negligence or action or inaction of a person or persons responsible for maintaining a safe place for public use. Some of the most common accident claims\* in this category are

- Accidents in shops and supermarkets
- Accidents in car parks – especially due to incorrectly maintained surfaces causing falls
- Claims against a Local Authority for accidents on a footpath, public park, or, negligently maintained or dangerous public space
- Slips, falls, and, trips in public places
- Spillages causing an accident to occur

## **Medical Negligence**

Medical Negligence is a case where a person is injured or their current medical condition is caused to worsen, because of substandard care delivered by a medical professional. These injuries could have been avoided if the medical practitioner had delivered the correct level of patient care. These negligent claims\* include

- Cosmetic surgery claims
- Misdiagnosis claims
- Misdiagnosis claims involving fractures
- Failure to properly treat an injury
- Surgery claims
- Surgical instrument claims which occur where a surgical instrument is left inside a person
- Prescription error claims
- Treatment error claims

## **How long do you have to make a claim?**

There are strict time limits which set out how long a person has to make a personal injury claim after an accident.

In most cases a person has two years less 1 day from the date of knowledge of their injury to bring the claim.

Questions are asked as to what is the date of knowledge?

The date of knowledge is the date on which a person injured gained knowledge or as the law says they should have had knowledge of the following facts

- That they had been injured
- That the injury was significant and not just minor
- That the injury was caused by the negligence, or, breach of duty by a party at fault for the accident

In most cases this date will be the day of the accident if the injuries are immediately noticeable. For example, a car accident or an accident at work. In some cases, an injury or illness may not become clear for some time after the accident. This can happen particularly in medical negligence claims or in some workplace accident claims, for example, loss of hearing or impaired hearing claims.

### **Accidents involving children**

These can be very upsetting claims particularly for children.

Where a case involves a child, who is referred in law as a “minor”, being a person under the age of 18 years of age, these cases are treated differently to those involving a person who is an adult.

A minor cannot bring a case themselves before they turn 18. When they turn 18 the minor has two years less one day after their 18<sup>th</sup> birthday to make a claim.

However, claims do not have to wait until that date. A parent or guardian may bring a claim on behalf of a child before they reach 18 years of age. The claim is brought by the parent or guardian acting as the “next friend” of the minor.

There are special protections in place for claims involving a minor. If the case is settled then any settlement has to be approved by the courts as being a fair and reasonable settlement. Any settlement or

court award made is held by the courts until the minor reaches 18 years of age. At that stage the monies are then paid out to the minor.

## **What is a case worth?**

This is a question which always comes up.

In any case nearly all personal injury claims go to the Personal Injury Assessment Board (“PIAB”) to assess the claim. Normally PIAB will not assess claims involving psychiatric injuries or where assessing the injuries are likely to be complex such as situations where there will be a continuing loss of earnings as can arise in a catastrophic injury claim or where the injury is likely to have an ongoing impact on the ability of a person to work. Also, medical negligence claims are not reviewed by PIAB.

In other cases, PIAB will value the claim on the basis of the Book of Quantum, and the forthcoming Judicial Guidelines.

## **What are these values?**

These are general guidelines on how much may be awarded for a particular claim. The information is on the basis of figures from various cases and settlements over many years. PIAB will assess injuries in terms of severity and how long it may take to recover. These guidelines do not determine the exact value of your case. Your actual circumstances and expense incurred may lead to a different outcome.

PIAB in assessing value will take into account

- The medical reports in respect of the injuries
- Loss of earnings both to the time the claim is sent to them and into the future
- Medical bills both past and future
- Other out of pocket expenses which could include travel costs

Where an assessment has been made your Solicitor will advise you as to whether this assessment should be accepted or not. It is important that at all stages you have the final say in whether to accept or reject a PIAB assessment.

## **Making a PIAB claim**

Your Personal Injuries Solicitor is the person best placed to help you. Your Solicitor will set out to you how to gather all the information needed. They will prepare and submit your application making sure that it is done correctly.

## **How can you help your Solicitor submit a proper PIAB claim for you?**

There are lots of ways that you can help your Solicitor submit a PIAB claim for you. Some of these will include

- Setting out in detail how the accident happened. This is setting out on a step-by-step basis just what happened and how. It is important to set this out properly as this will be used by PIAB and if the case does not settle at PIAB in Court in setting out how you say your accident happened.
- Setting out details of the injuries you suffered. It is very handy if you have photographs of the injuries.
- Setting out any pre-existing medical or other conditions or previous injuries which you suffered. This information will be required.
- Setting out any expenses incurred as a result of the accident. This would include medical bills, the cost of medicines or any treatment.
- Setting out who you say was at fault for the accident.

It is very important that you can identify the person at fault for the accident. In a workplace accident this will normally be your employer but could also be a supplier. However, it is important to set out the legal name of your employer. This may often be a company. If you have had an accident in a shop or supermarket your Solicitor can help you find out the correct name of the owner of the premises. If it is a car accident which involved a hit and run, for example, then in those circumstances the case goes to the Motor Insurers Bureau of Ireland (“MIBI”).

The PIAB application, can be complex. It is always better to use a Personal Injury Claims Solicitor in dealing with PIAB. Legal representation is necessary to guarantee the rights of victims of accidents against the interests of big business and the insurance industry according to the Law Society of Ireland.

## **Medical Reports**

In making a submission to PIAB a medical report is needed to set out the details of your injuries. A Personal Injuries Solicitor can ask for the reports from your medical practitioner who treated you for the injuries. The Solicitor will always ask for a prognosis from the doctor setting out when the doctor believes you will be recovered from those injuries. They will also ask in addition to the estimated time for recovery what treatment going forward you will need. All of this is important to put into PIAB so that your claim can be properly assessed.

If there have been any psychological injuries then your Solicitor can also request a report from a psychologist or psychiatrist to confirm those injuries.

In certain cases, the psychological or psychiatric element associated with the injuries are significant.

## **What is submitted to PIAB?**

A Form A is the name of the application form which PIAB uses. When the required information is obtained by your Solicitor then your Solicitor will submit this along with all medical records and details of expenses.

PIAB will then send a letter to confirm receipt of your application and will issue a reference number.

PIAB will notify the person or company responsible for your accident at this stage.

Some individuals are concerned that if they issue a PIAB claim against their employer that they could lose their job. We have separate guides on this. We can however assure you that that is not something you should be concerned about. There are special protections in place if an employer was to attempt to dismiss you or penalise you for having put in an injury claim.

## **What do PIAB do with the claim form?**

When PIAB receive the claim form they first of all decide if this is a case where they will accept it is reasonable and proper for them to make an assessment.

There are two possible outcomes at this stage of the process

1. An Order to Pay – if you and the person at fault for the accident agree to the amount of compensation proposed by PIAB then they will issue an Order to Pay. This orders the party at fault to pay the settlement amount to you. Both you and the other party have a right to refuse the compensation amount put forward by PIAB.
2. If you or the person at fault do not agree with PIAB's amount then what is called an Authorisation will issue. This means that you can then bring the proceedings to Court.

It is worth noting that even in cases where the Authorisation to move to Court proceedings issues a significant number of these cases settle before reaching a courtroom.

### **Settling a claim**

A claim can settle at various stages and these include

- Before documentation is sent to PIAB
- Where both you and the party at fault agree to a PIAB assessment
- Or where an Authorisation to proceed to Court issues but the case is settled before the case actually goes to Court.

A Personal Injuries Solicitor will be in a position to advise you fully on the entire process from start to finish. There will be cases where there will be a barrister involved. Your Solicitor will help choose the best barrister for your type of case.

If a case does have to go to Court then your Personal Injuries Solicitor along with the barrister will get all the paperwork in place to present your case fully and properly.

### **How can we help?**

Richard Grogan & Associates Solicitors has over 30 years' experience in Personal Injury and Medical Negligence Claims. We are also a leading Employment Law Firm. That means that we have additional

specialist expertise, available to you, when it comes to workplace accidents due to our knowledge of issues involving employment law. Our goal is to make sure that you make the best possible recovery. We are there to take the worry away from you. We want you to focus on getting better. We will be there to deal with bringing any claim you have in accordance with law and in accordance with best practice. You can contact us for a private and confidential discussion about your claim. You can contact us on 01-9695781. Or you can email us at [info@grogansolicitors.ie](mailto:info@grogansolicitors.ie) or you can visit our website [www.grogansolicitors.ie](http://www.grogansolicitors.ie) where there are other guides but there is also a contact form.

Anything you say to us is entirely confidential and will be dealt with in a confidential way.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*In contentious cases a solicitor may not charge fees or expenses as a proportion or percentage of any award or settlement.**